RESISTANCE TO EXPLOITATION:
EAST INDIANS AND THE RISE OF THE
CANADIAN FARMWORKERS UNION IN B.C.

by

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Abstract

British Columbia has an undistinguished history of racial discrimination against ethnic minorities, most notably against "Asiatics", such as the Chinese, the Japanese and East Indians. Members of these "visible" minorities were allowed into the province in the past as cheap labour, often with the proviso that they enter designated occupations. These occupations were usually the low-status, low-paying jobs spurned by whites, such as domestic service and farmwork. "Asiatics" were systematically denied the opportunity to participate in the political sphere by Acts of disfranchisement, which in turn prohibited access to certain potentially powerful positions. Discrimination by statute was both blatant and intentional, and there is little doubt that the law sanctioned public animosity towards non-white minorities.

One particularly subordinated sector of the work force was (and is) agricultural labour. Farmworkers are a minority both numerically and in that approximately ninety per cent of them in B.C. are of East Indian origin. As a group they have never enjoyed the benefits of protective labour legislation afforded other B.C. workers. Discrimination against farmworkers has taken the forms, either of omission from certain acts, or outright exclusion from protective provisions. Farmworkers have, until recently, been denied the right to unionize, as well as the coverage of minimum wages, Workers' Compensation and statutory safety regulations for farms, despite the fact that farmwork is the third most dangerous occupation in Canada.

In 1979, a Farmworkers Organizing Committee was formed, which later became the Canadian Farmworkers Union. The C.F.U. represents a response to legislative discrimination, and its purpose is to fight for the rights and dignity of farmworkers. The strategies employed by the Union in pursuit of its goals have been those of a resource-poor minority, and are aimed at securing benefits for farmworkers comparable to those of other B.C. workers.
This thesis is the story of that struggle. It is a struggle against injustice, inequality and exploitation. The thesis explores the grievances of B.C.'s farmworkers and analyses the tactics utilized by the C.F.U. The argument presented, however, maintains that although the Union has enjoyed some success in its attempts to eliminate discrimination, it has been partially pre-empted by the Social Credit government's Employment Standards Act of 1980. Further, the (limited) degree of success has, to an extent, obviated the basis of the C.F.U.'s continued struggle. The Union is currently at a political cross-roads, whereby its survival is threatened by the dual problems of a critical financial situation and a depleting membership, and not least by the unconcealed anti-unionism of the present Social Credit government and the resistance of the farmers' B.C. Federation of Agriculture.

A Note on Methodology

Because the C.F.U. is unparalleled in Canada, and because it is relatively new, little literature exists which is specifically related to the issue. Therefore, the primary research presented here is based primarily on interviews with individuals concerned in one way or another with the farmwork issue. They included members of and workers for the C.F.U., lawyers, trade unionists, politicians, bureaucrats, farmers, contractors and farmworkers. Where portrayals of the 'facts' differed, I have recorded the range of opinion (where numbers warranted), and where information was corroborated by newspaper reports or other written sources, I have quoted those sources for easy reference. Another major source of information was that provided by various written submissions (for example, recommendations and briefs) to the government and to the Human Rights Commission, as well as occasional informal papers written by concerned individuals.
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Gratitude seems a superfluous offering to my Editor and Inspiration, Nancy McMaster, who has made this work a thesis, rather than an amorphous bunch of words strewn about at random. You'll get plenty good karma for this one, Nancy.

Finally, to my Mother and Friend, Alice, and my late Father, Derek Jhappan, I dedicate this thesis, with love.
The Encounter

One fine summer's day in 1973, a twenty-four year old recent immigrant from India went to work at a farm in Clearbrook, B.C., having responded to a labour contractor's advertisement in a local newspaper. On his first day, Raj Chouhan was fired. He had seen and heard the contractor, also of Indian origin, hurling verbal abuse at an old woman in the fields. Chouhan had intervened, asking the contractor to show some respect for his elders, and had lost his job for his pains. Moving to another farm and another contractor, he found similar conditions, similar disrespect for the workers, a similar inequity in the distribution of power between employers and employees. It was not long before Chouhan began to wonder how and why this situation was allowed to persist, why farmworkers were unable or unwilling to resist such treatment. He began to make enquiries as to whether any union existed which was capable of defending the workers' rights and dignity. No such organization existed, and furthermore, no one had ever heard of a union for farmworkers in the whole of Canada, much less in British Columbia. Chouhan was quickly dropped from the labour force when the contractor heard of his 'union talk'.

His next job took Chouhan to a turkey farm in the Clearbrook area, where twelve workers each earned approximately $2.00 an hour. Again, his talk of unions resulted in a speedy dismissal. A few weeks later, in a small chemical plant which employed five workers, Chouhan discovered the existence of an Oil and Chemical Workers' Union, and eventually persuaded his fellow workers to become members. He was fired after three months. It was not until January, 1974 that he got his first taste of bitter struggle. Along with thirty-six other workers in a small Lower Mainland lumber factory, he
fought for several months to get a local of the International Woodworkers of America (I.W.A.) certified by the B.C. Labour Relations Board (L.R.B.) - and again found himself unemployed. After working in a small organized sawmill for eight months, a frustrated and brow-beaten Chouhan returned to India in 1975. With ample time for reflection, he decided his future lay in Canada and so came back in 1976. This time he found employment in a plywood factory on the Fraser River. This was to provide his most stable economic base to date, from which he could pursue what was increasingly becoming a major goal - the creation of an organization which could fight for the rights of farmworkers as workers.

Raj Chouhan is a member of one of Canada's 'visible' ethnic minorities, more specifically, a member of Vancouver's East Indian community. His experience on the farms of the Fraser Valley in B.C. is an experience shared by many farmworkers in the province. There are an estimated thirteen thousand farmworkers in British Columbia, and they are, almost without exception, members of various ethnic minorities. In the Fraser Valley, nearly ninety per cent of farmworkers are of East Indian origin (the remainder being mostly Chinese) and in the Okanagan they are mostly drawn from the Quebecois and Native Indian communities, with some student and miscellaneous labour during the peak of the season. Out of the total, an estimated sixty-five per cent are women, while the rest are mainly older men and children. Many farmworkers speak no English and some are also illiterate in their first language.

Farmworkers in B.C. have never enjoyed the rights and privileges conferred upon other workers in the province. With the exception of domestic workers, they have traditionally been the most lowly paid section of the Canadian labour force. They have always been exempted from protective labour legislation. Their relative powerlessness has reinforced their subordinate
position in society and they have largely been ignored by government, by the
trade union movement and by the wider society.

Yet in the last three years a union claiming to represent these neglected workers has arisen, its leaders and membership drawn from the East Indian community of Vancouver. Its aims are to fight for the 'rights' and human dignity of farmworkers by modifying the existing institutional and legislative environment. In this sense, the Canadian Farmworkers Union (C.F.U.) can be seen as a response to legislative discrimination.

The C.F.U. at this point can legitimately claim to be the only union for farmworkers in Canada. Its leaders are careful to present the organization as an ordinary trade union, with the usual concerns of trade unions such as hours, overtime, holidays, health and safety and collective bargaining. Yet the C.F.U. is further distinguished by its marriage of traditional class-based actions with a distinct, ethnically-oriented approach to political and economic conflict. Although the Union seeks to represent all Canadian farmworkers, its emergence from within the East Indian community of Vancouver has given the organization a singularly ethnic flavour.

Farmworkers, as mentioned above, have traditionally been one of the most lowly paid sectors of society. They have also traditionally been drawn from ethnic minorities. Is this mere coincidence, or is ethnicity a determining factor in the economic subordination of farmworkers? How do governments balance their obligations to represent the diffuse, and sometimes conflicting interests of all sections of the electorate? Who has the power to change the system of distribution of rewards?

With respect to the last question posed, the C.F.U. believes itself to be capable of effecting changes in farmworkers' living and working conditions, and has enjoyed a measure of success in the past three years. However, this thesis will argue that the few victories the Union has achieved have been
more in the nature of placebos than of fundamental changes in the structure of social and economic relations.

It will be argued that the concessions made (by government) have been the results of two main pressures - first, the negative publicity generated by the C.F.U.'s agitation and, second, the imperatives foisted upon both federal and provincial governments by the non-discrimination clauses of the 1981 Canadian Charter of Rights and Freedoms. In other words, it is political expediency rather than an induced awareness of social injustice and inequality which has motivated shifts in policy towards the farmworkers.

Furthermore, this thesis will argue that the C.F.U. (notwithstanding the enormous difficulties associated with organizing farmworkers) has made a number of strategic mistakes which have serious implications for its effectiveness as a pressure group. By 'going public' from the outset, the Union was somewhat successful in embarrassing the government. However, the changes incorporated into the 1980 Employment Standards Act, it will be argued, have to a large extent pre-empted the C.F.U.'s case for further mobilization. This dilemma, combined with the fact that the Union does not have a mass support base among farmworkers, has serious implications for the survival of the Union in the immediate future.

The last major argument of this thesis will refute an argument presented by recent British Columbian governments to rebut charges of racial discrimination. Although post-war B.C. governments have claimed that discrimination against farmworkers is inadvertent, an unfortunate and unforeseen side-effect of expedient policies, the facts support an argument to the contrary. There is a long and ignominious history of legal discrimination against East Indians (among other groups) in B.C., and a similar history of segregative treatment of farmworkers which militate against the 'expediency' claim. The essential argument of this thesis is as follows: if a government perceives
that a group is experiencing discrimination as a result of its policies, and that this discrimination is pernicious in its effects upon that group, and if, furthermore, it is within the government's power to rectify the situation but it does not, then that discrimination is, to all intents and purposes, both intentional and purposive.

To date, the present work is the only academic enquiry into the emergence and progress of the Canadian Farmworkers Union. It will examine the progress of the Union from its inception in 1979/80 through a chronology of events, as well as through an analysis of the implications of actions, responses and their motivations. It will deal with the issues, the participants and the means employed in the pursuit of ends, as well as assess the gains and losses to the main protagonists. Finally, the thesis will provide some insight into the complex process by which an ethnic minority group perceives itself as a victim of discrimination and mobilizes in order to defend its interests. To this end, the thesis begins by setting up a theoretical framework within which information can be interpreted and which will, it is hoped, have some predictive value.

Theoretical Propositions: A Paradigm of Conflict

Theoretical frameworks are mischievous creatures. They invariably restrict; they rarely liberate, although they can enlighten. Their function is to narrow discourse and "keep us from leaping the walls of our own imagination". The theoretical model presented here is of limited scope and applicability. It is designed to illuminate a dynamic process between certain types of antagonists, exemplified by the C.F.U. and the B.C. government.

a. What Needs Doing - What Can Be Done?

Because the Canadian Farmworkers Union is engaging in an adversarial struggle with the B.C. provincial government (as well as with farmers and
contractors), the conceptual paradigm utilized here is based on conflict theory. The notion of conflict implies a perception of incompatible views or interests between two or more parties. In the case of minority groups, it refers to dissent, where the minority not only perceives itself as having different values and goals from the dominant group, but finds itself opposing those of the latter. For the purposes of this discussion, therefore, conflict will be defined as a situation where minority groups (or individual leaders) question the legitimacy of the system of distribution of rewards and enter a political battle against the dominant group.

The term 'minority' as used here is a qualitative rather than a quantitative term. In other words, a minority group will have a range of characteristics, above and beyond its numerical strength (or weakness). Louis Wirth used the following definition:

We may define a minority as a group of people who, because of their physical or cultural characteristics, are singled out for differential and unequal treatment, and who therefore regard themselves as objects of collective discrimination. The existence of a minority in a society implies the existence of a corresponding dominant group enjoying higher social status and greater privileges. Minority status carries with it the exclusion from full participation in the life of the society. Though not necessarily an alien group, the minority is treated and regards itself as a people apart.

This definition of minority is based on both the minority and the dominant groups' perceptions of inter-group separateness and intra-group sameness. Yet it is possible for a group to be treated separately and unequally without engaging in conflict.

The notion of conflict presupposes certain levels and types of awareness, which have been identified by Kriesberg as follows:

For social conflicts to emerge, three major elements of awareness are needed. First, the groups or parties to the conflict must be conscious of themselves as collective entities, separate from each other. Second,
one or more groups must be dissatisfied with their position relative to another group. Finally, they must think that they can reduce their dissatisfaction by the other group acting or being different; that is, they must have aims which involve the other group yielding what it would not otherwise yield.

Even if the dissatisfied group does not hold the dominant group directly responsible for its position, there must be at least a belief that the dominant group is able to redistribute goods. As Kriesberg points out, "dissatisfaction, discontent or a sense of grievance analytically entails people having less than they think they should have and conceivably could have".

The differences between what people have and think they should have are usually based not only on the absolute magnitude of deprivation, but also on a comparison of their position relative to other groups. But the 'goods' in question are not always material ones. In the case of minority ethnic groups who have been "singled out for differential and unequal treatment", the rewards sought are often intangible or 'symbolic' rewards, such as 'rights'. As Oberschall points out:

Social conflict is seldom a simple mechanical reaction to grievances and frustrations experienced in pursuit and defence of material interests. Interests and dissatisfactions are experienced and interpreted by way of moral ideas about right and wrong, justice and injustice or conceptions of the social orders as they are expressed in ideals and highly regarded principles. The drive to change existing institutions, whether to reform or revolutionize them, is inspired by unrealized ideals. Measured against the ideals that are enshrined in the sacred books, the constitutions and collective myths, reality falls short. The gap may be wide or narrow; its very existence will justify the effort to close it in the name of legitimate, highly valued and respected principles.

The difference between this view of conflict and those approaches which stress only economic and material deprivation, lies in the possibilities of outcomes. The materialist view implies a zero-sum game, where the gains won by the minority would be precisely offset by the losses to the dominant group. Oberschall's view, on the contrary, allows for a variable-sum game,
because it is possible that the non-material gains sought by the minority may not be perceived as significant losses by the dominant group. If this is the case, then the latter may be more willing to concede to the minority's demands. However, the dominant group may be more willing to grant material concessions than to encourage a sense of moral rectitude on the part of the dissatisfied group, which may ultimately foster higher ambitions.

b. Strategies of Conflict - Creating and Sustaining Group Support

Thus far, the discussion has implicitly assumed that the minority (in this case, the farmworking minority) sees itself as an aggrieved group and is ready to act en masse. However, this is seldom the case with ethnic minorities. Often, even if group members do feel dissatisfied, they are loathe to engage in political struggle for a number of reasons. First, they may be prepared to accept their lot as present conditions may be better than past experience; their expectations may be low; their present situation may only be temporary; or the income from the industry in question is only a supplement to their total family income, so it is not a matter of survival. Second, they may feel intimidated by their employers, by the authorities, or by their fear of ending up in a worse position than before. Third, they may lack confidence in their power, individually or collectively, to effect changes in circumstances, especially if they see no reason to expect privileged others to care about their dissatisfaction.

The above constraints are some of the problems faced by emergent leaders of subordinated ethnic minority groups. Leaders, whatever their origins, must be skilled in a number of areas if they are to create and sustain group support.

First, would-be leaders must encourage a sense of common consciousness and purpose within their reference group. They must be able to identify and
articulate the grievances of the group, in a way that members can recognize. Second, leaders must highlight discrepancies between actual conditions and the ideals of the group. This can be done by pointing to the superior conditions of other groups, a comparative distinction which will make the group's relative situation appear unjust. Third, the leaders must suggest that conditions should be changed, and furthermore, that they can be changed. This entails convincing group members that there is an identifiable 'enemy', or at least a responsible party, which is capable of redistributing economic benefits and granting symbolic rewards. Fourth, leaders must convince group members they have (or can attain) appropriate resources and power to effect change, and have as well a reasonable chance of 'winning'.

Such prerequisites refer to the initial stages of creating group consciousness and confidence before entering conflict. Once the battle has begun, however, these awarenesses must be kept vivid in the consciousness of the group, and supplemented by further strategies.

If the group as a whole is demand-rich but resource-poor, it may be necessary to appeal not only to members' desires for material benefits, but also to their sense of righteousness, the feeling that the struggle itself is intrinsically valuable and rewarding. One effective way of appealing to this sense is to create a "vile enemy". As Shibutani and Kwan observe, concomitant with the nurturing of group identity, groups will characteristically "impute vile motives to their opponents". A form of 'ethical dualism' evolves through contrasting images of oneself as against the 'enemy':

> Whatever the enemy does is interpreted in the least favourable light...Everything that is condemned in one's own group is imputed to the enemy. He is cruel, treacherous, sordid, perfidious, destructive. He is a fiend who commits atrocities against women and children, the old and the blind.

Under such assumptions, anyone joining the struggle will be helping to combat evil. One of the remarkable ironies of conflict, as Shibutani and Kwan note,
is that the conception of the enemy formed on one side is almost a mirror image of the conception formed on the other.\textsuperscript{11}

Finally, if leaders are to sustain group support during the struggle, they must be seen to be making gains. Their goals, both strategic (long-run) and tactical (short-run), must at all times be 'realistic'. The succession of goals must always be related to group capacities, and they must allow the sense of grievance to grow, if the movement is to sustain itself:

There is a paradox here. In one sense the organization must succeed in meeting the demands of the supporters, but success obviates the basis for support of the organization. Leaders, the opposition and fortuitous circumstances may or may not conjoin to yield a combination of distant goals and immediate achievements which sustain the emerging conflict organization.\textsuperscript{12}

c. Strategies of Conflict - Winning

The idea of conflict often involves coercion. Opposing sides will attempt to utilize their power (which is taken here as the relative coercive strength of the conflicting parties) to induce desired behaviour. Assuming a resource-poor minority (such as farmworkers), efficacious strategies in conflict will not only act as means toward end goals, they can also yield more resources in the process. For example, by enlisting the support of the trade union movement, the group can win more supporters of 'the cause', as well as monetary assistance. A resource-poor minority can thus vary strategies with increasing resources and/or power. These strategies can be identified as (1) Persuasion; (2) Embarrassment; (3) Bargaining; and (4) Coercion.

Persuasion is an appropriate technique for influencing the adversary's behaviour where the dissatisfied group has limited human and material resources. By appealing to the dominant group's sense of 'fair play' or unwillingness to be seen as a discriminator, the minority group hopes to persuade the dominant group that meeting its 'requests' would be in both parties' interests. Persuasion therefore involves inducing the dominant group to want to
make appropriate concessions.

Embarrassment is a technique used by relatively powerless minority groups, particularly if persuasion has failed. It involves publicizing the issues in the hope of exposing inadequacies in the system as unjust, thereby enlisting the support of members of 'the public'. As democratic governments are founded upon consensus, public opinion can be used as a formidable weapon. To embarrass a government means to attack its public image by highlighting its unresponsiveness to 'justified' claims.

Bargaining occurs when group leaders have enlisted enough support and accrued sufficient resources to present themselves as legitimate representatives of a group with legitimate grievances. This applies particularly to would-be trade unions, such as the C.F.U. Once formally recognized, the group becomes a partner to negotiations, rather than an extraneous pressure group.

Finally, coercion is a strategy which may be utilized if all else fails. It depends, of course, on how much power the minority group leaders are able to wield. However, the use of coercive tactics normally invites similar tactics from the dominant group (government, in our case). The ethnic minority group will inevitably be dwarfed by the corporate power wielded by governments, though some strategies, such as strikes and boycotts, can still be effective.

d. Dominant Group Strategies - "Won't You Come Into My Parlour?"

The case under scrutiny here features the government as the object of the C.F.U.'s attention. Anderson and Frideres have outlined four major techniques by which dominant groups maintain political control over ethnic minority groups. They are (1) Insulation; (2) Sanctions; (3) Persuasion; and (4) Co-optation. To these techniques, 'pre-emption' should be added. Like
the strategies subordinated groups may employ in conflict, the selection of strategies by a dominant group will depend on its power relative to that of the aggrieved group, as well as what it can hope to 'get away with' in the public eye.

Insulation refers to the process of keeping a minority from effectively participating in the political and economic life of the society. In the past, such techniques have included disfranchisement and exclusion from certain forms of employment, from education, from public positions and even from residing in certain areas. Today, most of the more archaic forms of insulation have been removed from the statutes, though the reality may still be perpetuated by other means. For example, until recently, some workers were prohibited from forming trade unions (farmworkers being a case in point). Insulation by legislative exclusion (which will be the subject of Chapter Two) can prevent (or at least delay) mobilization of ethnic minority groups by denying them the means of protest through ordinary channels.

Sanctions refer to negative or positive rewards which can be meted out by the dominant group (government). They can take physical forms, such as confiscation of property, or abstract forms, such as recognition of a group's legitimacy. In the case of a relatively powerless minority group, like farmworkers, sanctions can make the costs of protest negate the expected benefits.

Persuasion involves attempts to control the desire rather than the ability to influence, unlike sanctions or insulation. Although as an approach it closely parallels the minority's strategy, persuasion by the dominant group appeals to different emotions. Worries about the world economic recession may be played upon, for example, and the dominant group will try to convince the protesting group that they should sacrifice their own welfare for the greater good of "the national interest". The subordinate minority may be persuaded that its demands are excessive, or that the dominant group
is taking care of its interests as far as is possible.

Co-optation is another strategy for maintaining control. It involves taking some influential members of the protesting group into the dominant group's power structure or established institutions. The technique relies upon the re-socialization of the co-opted leader and his/her adoption of the norms and values of the dominant group. Co-optation is designed to isolate leaders from their reference groups, and this "seriously jeopardizes their ability to bring pressure against the dominant group".\(^{14}\)

Finally, pre-emption refers to a situation where the government gives the appearance of playing out the conflict, but in fact, its responses are attempts to pre-empt further agitation/conflict. For example, the dominant party may grant 'concessions' which prove illusory - perhaps by setting up a committee to look into grievances, which includes minority participation, but whose recommendations have no 'teeth' (as is usually the case with Human Rights Commissions). In any case, to an undiscerning public, it may look as if the minority's grievances have been addressed and rectified, so that there is no need for further public attention. If the minority keeps protesting, the government can claim to have reached an equitable 'compromise', and may accuse the minority of intransigence.\(^{16}\)

The above strategies to maintain control by the dominant group will not necessarily be used in sequence. They parallel the strategies of minority groups in that they are dependent on perceptions of relative power, goals and calculations of the efficacy of each technique. But in conflict, each party will take cues from the responses of the other party. Kriesberg notes:

> Each party affects the way the other acts, not only as each responds to the other, but as each may anticipate the responses of the other. \(^{15}\)

Parties in conflict cannot blindly follow a predetermined set of strategies. They must monitor and respond to their opponent's actions, if they are to succeed.
Figure 1. A Model depicting the Action-Response Dynamic between Farmworkers and Government.
e. An Action-Response Model

Figure 1 (page 14) is a diagrammatic illustration of the action-response dynamic between the dominant group (government) and the subordinate minority (farmworkers, as represented by the CFU). The model assumes:

(1) that the two parties engage in conflictual struggle only as a means of achieving goals, and therefore conflict is not pursued for its own sake;

(2) that both parties value stability and will usually try to return to stable positions;

(3) that the dominant society (as represented by government) experiences increasing levels of tolerance, racial enlightenment and valuation of ideals such as social justice and equal opportunity over time, and that therefore its willingness to accede to legitimate claims for fair treatment will grow over time;

(4) that the minority (farmworkers) will become increasingly aware of its subordinate position relative to other groups, and that this awareness will be accompanied by rising dissatisfaction and aspirations, manifested in higher demands;

(5) that if the dominant society is high on the liberalization scale, then most of the minority's sources of dissatisfaction will have been alleviated already, so that outstanding grievances will be addressed by means other than conflict.

The model is based on standard economic functions. Demand curves plot trade-offs between two variables. There can be infinite numbers of demand curves, so their actual representation on the diagram is entirely arbitrary. However, the slope of the demand curves (d₁ to d₈ on Figure 1) from north-west to south-east implies that demands or claims decrease as the level of liberalization increases (because of the fifth assumption). The
vertical axis represents the increasing levels of tolerance on the part of the dominant group (as in the third assumption), using the generic term, "liberalization". The horizontal axis represents the rising dissatisfaction of farmworkers, which will be manifested by increased demands (as in the fourth assumption). Finally, the function, S, at a $45^\circ$ angle from the origin, represents 'stability', which is here taken as the absence of protracted social strife and disruption.

Point E shows that level $D_3$ of ethnic minority demands is in equilibrium with the prevailing level of liberalization of the dominant group. Here, there will be little, if any, conflict. However, as the minority's collective self-image improves and its aspirations increase, it may make higher demands than the dominant group is willing to concede. Point G represents such a situation. The idea is to induce a change in what the government is prepared to give. The minority is cognisant of the fact that the government does not want protracted conflict, and so may try to hold out for its demands until the government gives in. The group does not pursue conflict for its own sake either, but it has more motivation for continuing than the government, which faces pressure from many sources.

A return to stability requires either a vertical or a horizontal movement by the protesting group. In order to reach an agreement whereby each party gains something and does not lose face (a 'good' in itself for the government, which is anxious to protect its positive public image), compromise is necessary. It may be to the farmworkers' benefit to demand more than they actually expect to win. In that way it is possible to induce a small change in the dominant group's willingness to concede. By demanding at G on $d_5$, a compromise will get the minority onto a higher demand curve ($d_4$ at point F) than its original position, though this is not as high a curve as the projected one ($d_6$ at point I). In other words, at the start of
the next round of bargaining, the minority begins from an elevated position, and it can upgrade its demands accordingly. A degree of success will reinforce the followers' faith in their ability to change their circumstances.

We have discussed earlier the requirement that goals/demands must be related to group capacities. They must also be realistic in terms of an assessment of what the prevailing level of liberalization of the dominant group will allow. Point X denotes a level of demands which far exceeds the requisite level of liberalization. At this point one of three things could happen. First, the group would ideally like to be at J. However, the dominant group will not yield to pressure. The group could therefore try to reach a compromise which will elevate its position to d₄, d₅ or d₆. Second, if this does not work, the dominant group might "crack-down" with sanctions, forcing the protesting group back to its original position, or in some cases, even to a lower position. Generally, the level of liberalization is expected to increase over time, but its real progression may be in 'stop-go' cycles. There may even be times when it actually declines. Third, the government could simply ignore the group's demands. If the group is left to flounder around at X, it risks losing support as it may be seen to be achieving nothing. This is a similar position to that at which many left-wing groups find themselves, unable to achieve goals and unable to carry mass support.

Of course, it is possible to find a society at positions to the left of the function S. For example, at K, the dominant party is willing to give much more than the minority is demanding. The anti-slavery issue in the United States after the Civil War was a good example of this, as the black ex-slaves were not themselves demanding their freedom. However, this situation is very much the exception after a minority has begun to compare its lot with other groups in the society.

From the point of view of the minority, political ingenuity will lead
to choices of strategies which yield serviceable compromises on an incremental basis. The minority should not risk losing important skirmishes for lack of preparedness, as it will risk losing the battle. It must also leave enough room for movement in response to the opponent's actions if it is to have the flexibility required by organizations in conflict.

Chapter Outlines

Chapter Two of this thesis concentrates on the 'insulation' technique utilized against East Indians by B.C. governments since the turn of the century. The chapter traces historical discrimination on the basis of race, which was enshrined in provincial legislation. It discusses how immigration policy varied with the needs of the economy, and how this policy, until very recently, blatantly expressed the racial prejudice and hatred which has been part of B.C.'s political history. Finally, Chapter Two links the historical discrimination against East Indians with historical discrimination against farmworkers. The chapter concludes that even if the exclusion of farmworkers from protective labour legislation has been only a side-effect of 'expedient' policies, the neglect of farmworkers has nonetheless been intentional, and amounts to purposive discrimination.

Chapter Three outlines the major grievances which form the basis of the C.F.U.'s campaign to modify legislation. The issues concern living and working conditions and pesticides. A fourth issue area concerns exclusion from compulsory coverage under schemes like Workers' Compensation. The chapter discusses the confusion as to which ministry is responsible for various aspects of farmworking conditions, and argues that this is part of the general disinterest in farmworkers which has rendered them a powerless and forgotten minority.

Chapter Four traces the development of the C.F.U. from its inception
in 1979/80, concentrating on the individuals involved, how the organization was formed, which strategies were used (how, why, when and to what effect) and how the government and farmers have responded to them. The chapter provides a chronology of events to date for those readers who are interested in the actual logistics of the development of the farmworkers' struggle.

Chapter Five is speculative. It discusses some of the implications of the non-discrimination clauses of the 1981 Canadian Charter of Rights and Freedoms, with respect to minorities such as farmworkers. Finally, there follows a brief discussion of the legal debate over discriminatory purpose versus disproportionate impact. This debate is intimately linked with the human rights question, because it places the burden of proof upon the alleged discriminator, as does human rights legislation. The question is an important one for minorities, for the Charter implies that discrimination against particular groups must be justified according to criteria other than expediency, and could well change the kinds of treatment sanctioned by Canadian law.

Chapter Six is a tentative conclusion - tentative because the C.F.U. is still a fledgling union whose struggle is by no means over. The chapter will assess the arguments in the light of the 'facts' and determine their validity. It reconsiders the theoretical propositions and their usefulness and proposes some provisional solutions to some of the long- and short-term problems of survival currently facing the Canadian Farmworkers Union.
Footnotes

1. Information supplied by Raj Chouhan, President of the Canadian Farmworkers Union, in an interview held on September 1, 1982.

2. This figure represents an average of estimates reported by the CFU, the Labour Relations Board, the B.C. Federation of Agriculture and the Canada Farm Labour Pool at Abbotsford. "Farmworkers" as used here includes full-time, part-time and seasonal workers who are employed in any aspect of farmwork, including machinery operators, hoers, weeders, planters and harvesters. It does not include family members of farm owners. It must be noted that the farmworking population is a transient one. Thirteen thousand is an average - some people drop out of farmwork after a year or so, while others begin it. Many people only engage in farmwork periodically or sporadically and may have other occupations with which they primarily associate themselves - for example, 'housewives' or students.

3. Again, this figure is an average of estimates from the sources quoted above.


7. Ibid., p.67.


12. Kriesberg, op. cit., p.83. For a good discussion of the functions of social conflict, see L. Coser, The Functions of Social Conflict, (Free Press, Glencoe, Illinois, 1956), and J. Hines, "The Functions of Racial Conflict", in Social Forces, 45 (1966): pp.1-10. Coser suggests that conflict (a) sets boundaries between groups by strengthening group consciousness; (b) permits the maintenance of relationships under conditions of stress; (c) provides a kind of balancing mechanism in preventing deep cleavages along the social axis; and (d) allows for a testing of power strength of each group so that accommodation
between the groups is possible. Himes identifies four dimensions in which conflict can be viewed as functional from the perspective of the subordinate group: (1) structural; (2) communication; (3) solidarity; (4) identity.


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<tr>
<th>New Advantages</th>
<th>Many 1 Full Response</th>
<th>2 Pre-emption</th>
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<tbody>
<tr>
<td>None</td>
<td>3 Co-optation</td>
<td>4 Collapse</td>
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Boxes 1 & 4 are unambiguous successes or failures
Boxes 2 & 3 are mixed outcomes

"Co-optation" = acceptance without new advantages
"Pre-emption" = new advantages without acceptance

There are four indicators of "acceptance":
1. Consultation - invitation to participate in decision-making
2. Negotiations - acceptance of group as spokesmen
3. Formal recognition - explicit recognition of group as a representative
4. Inclusion - co-optation, giving group leaders status or authority in the antagonist's organizational structure (without cutting ethnic ties).

17. Any reader not familiar with standard economic principles might refer to any introductory economics text-book for in-depth explanations of the functions and meanings of demand curves, etc.
CHAPTER TWO

HISTORICAL DISCRIMINATION AND ITS SUBTLE PERPETUATION

This Chapter discusses the 'insulation' technique utilized historically by B.C. governments against East Indians, who form the majority of the province's farmworking population. It shows how both immigration and employment policies have effectively denied East Indians full political and economic participation in society in the past. The chapter shows that farmworkers, who have traditionally been excluded from protective labour legislation, are still suffering discrimination. Finally, the chapter argues that because legislators have been, and are, aware of the ethnic composition of the farm labour force, legislative exclusion has been conscious, and the neglect of farmworkers amounts to purposive discrimination.

Unsettled Settlements

British Columbia's record concerning Asian immigration is, at best, undistinguished. The year 1983 represents the eightieth year of East Indian presence in Canada, with the community numbering about 310,000 throughout the provinces. Although people of South Asian origin probably make up the most rapidly growing ethno-cultural group in Canada, they have never received the welcome with which other groups have been greeted. Immigration of "non-whites" to Canada has fluctuated with the vagaries and needs of the Canadian economy and with the 'tolerance' of white society - itself composed of a multiplicity of ethnic groups. Because they did not have free access to the realm of formal politics, employment or housing, and because their entry status was a subordinate one from the start, East Indians were effectively hampered in all aspects of Canadian life. Without presuming to identify the origins of racism, one may be certain that the law has sanctioned public antipathy towards East Indians.
East Indians first arrived in Canada around 1898, though official records of entry only began in 1904. Sikh regiments had passed through Canada on their return from Queen Victoria's Diamond Jubilee and had later told their compatriots of Canada's richness and opportunities. Consequently, a small number trickled into B.C., so that by 1904, approximately one hundred East Indians were living in Vancouver. They were, almost without exception, single men who had come in order to make money, which they could send home to India, where they would some day return. Their first employment was centred around the saw-mills of Port Moody. Some moved to lumber camps and the railways, while others moved on to farmwork. As most immigrants came with little or no money initially, it was not until the 1920's that some East Indians became farm owners themselves.

At first, the employment opportunities available to East Indian immigrants were circumscribed by previous exclusionary policies against Oriental labour. Chinese labour had been brought to B.C. during the Gold Rush of the 1850's to work on railroads and in mines (and later other low-status jobs), but burgeoning anti-Oriental sentiment soon resulted in a series of "head taxes" designed to 'choke off' Chinese immigration.

The ensuing curtailment of Chinese labour meant that cannery owners, farmers and employers of domestic servants would be forced to hire white workers. Given that it was common practice to pay non-white workers only two-thirds of the going rate that white workers could demand, and that white workers in general had recently won wage increases, employers were faced with higher labour costs. Claiming that these costs had tripled, they began to petition the government to re-open immigration. Thus, between 1906 and 1907, 4,700 East Indians were allowed to enter B.C. (along with 10,000 Japanese), subject to the proviso that they should enter designated occupations, namely, farming, canning and domestic service.
However, the labour shortage soon turned into a job shortage and by the end of 1907 there were 1,500 unemployed East Indians in B.C. Predictably, racist sentiments made an appearance once again. C.F. Gray, President of the Victoria Trades and Labour Council, said in 1907:

The introduction of this class of cheap labour will be the means of excluding the very class of labour that is most essential for the progress and prosperity of the country - i.e. white workers, who, if paid a fair living wage, could settle here, maintain homes and rear families and thoroughly fulfill the duties of citizenship. 9

It is interesting to note that here, 'class' refers to race. This 'class of cheap labour' was performing, for the most part, work which whites did not want to do, but the above argument was to be used again and again.

The 'duties of citizenship', whatever they were, likewise assumed importance amongst racists. R.G. McPherson, Liberal M.P. for Vancouver, said in an anti-immigration meeting in 1906:

A race of men who cannot appreciate our mode of life, our mode of education, all that goes to make up Canadian citizenship, are not fit immigrants of this country. 10

No explanation was ever offered as to why immigrants from other countries quite dissimilar to Canada were expected to adjust more readily and make a more valid contribution to society, save for the fact that they were white.

In any case, the reaction to the Asian presence was hostile, and was enhanced by lurid accounts in the newspapers of the 'raging Asiatic menace' living in hot-beds of immorality and disease and endangering the lives and safety of white women and children. 11

Closing the Floodgates

On September 8th, 1907, an enormous and ugly riot took place in Vancouver's Chinatown, led by the Asiatic Exclusion League, and was only quelled by the resistance of the Japanese. 12 With animosities still at fever pitch, it became apparent to the government that what was needed was a con-
certed, official, 'catch-all' immigration policy, supplemented by restrictive legislation on all other fronts, to limit the participation and autonomy of Asians already in the province. A series of blatantly discriminatory laws was passed over the next few years.¹³

Although Mackenzie King, Deputy Minister of Labour, admitted in his special report on the 1907 riot that "it was virtual exclusion we would like to have"¹⁴, two constraints militated against the fulfillment of these wishes. The primary constraint was a warning by the British Imperial Government, which feared that a full ban on East Indian immigration to Canada would inflame the growing Independence movement in India.¹⁵ The second constraint was the difficulty of overturning previous immigration laws which were designed to attract European immigrants, but which had not included provisions for prohibiting non-white immigrants.

The passage of P.C. 27 on June 8th, 1908, was the response of the Canadian government to the constraint imposed by the British government. This Order in Council forbade entry to Asians unless they had come by continuous journey on a through ticket.¹⁶ It was passed in the knowledge that there was only one steamship company offering through trips from India. Unofficially, Mackenzie King ordered the Canadian Pacific Railway company to stop selling through tickets to Indians. In addition, for any Asian who managed to reach Canada, the Federal Government stipulated that "Asiatics" must possess at least $200 before they would be admitted to Canada.¹⁷ The effect of these policies was that only 125 East Indians entered Canada between 1907 and 1912. Altogether, from 1904 to 1914, 5,300 East Indians were admitted, out of an immigration inflow of two and a half million.¹⁸

Three challenges were mounted to the restrictive policies. The first was the arrival of the Monteagle ship in 1908, which carried a few East Indians. They were allowed to land after the "continuous journey" Order was
ruled invalid by the B.C. Supreme Court. The second challenge came in 1913 when the 'Panama Maru' arrived with 36 passengers. Again, the "continuous journey" and "$200 in hand" requirements were declared ultra vires for exceeding the powers authorized by the Immigration Act, and again, the Indians were admitted to B.C. The third and most notorious challenge came from the 376 passengers of the 'Komagata Maru' in 1914. However, this time the court upheld the discriminatory provisions. 19

Channelling

For the "strangers within our gates" (to coin Woodsworth's term 20) already resident in B.C., the provincial government concocted a number of discriminatory acts and regulations designed to bar Asians from certain economic and political privileges. The primary means of so doing was to exclude them from voting eligibility. "Hindus", 21 together with Chinese and Japanese, were excluded from the provincial voters' list in 1907, 22 while the Municipal Elections Act barred all "Chinese, Japanese or other Asiatics" from the municipal voters' lists. 23 Because they were not eligible for local voting rights, Asians were thereby excluded from the federal franchise also. They could not be elected to the provincial legislature, or be nominated for municipal office or as school trustees, or be called upon to do jury service. 24 Disfranchisement was a powerful weapon indeed, particularly as it afforded a good excuse not to grant naturalization to any Asian. Angus noted in 1937 that few certificates had been granted to Orientals since 1923, on account of "the silent but effective discrimination which is made possible by a discretionary power...". 25

Apart from their exclusion from the franchise, Asians were also prohibited from certain occupations because non-voters were not eligible to hold hand-loggers licences for cutting timber on Crown lands 26, or become lawyers
or pharmacists.\textsuperscript{27} In addition, the standard contract of the Department of Public Works required private employers not to hire Asians.\textsuperscript{28} Furthermore, as the B.C. Human Rights Commission Report notes, the \textit{Liquor Control Act} of 1936 prevented Asians from obtaining beer licences, and the \textit{Trade Licences Board Act} of 1928 limited the number of business licences granted to Asians.\textsuperscript{29}

Several court cases were fought during this period over the exclusions. However, in the absence of a clear and articulated Bill of Rights or Human Rights Code, the justices often 'opted out' by declaring, as in the \textit{Cunningham v. Tomey Homma} case, that "the policy or impolicy of such an enactment as that which excludes a particular race from the franchise is not a topic upon which their Lordships are entitled to consider".\textsuperscript{30}

Finally, in 1925, the \textit{Minimum Wage Act} was passed. It would be mistaken to presume that this law was motivated by any benevolent, altruistic concern for the redress of wrongs against Asians. On the contrary, as Ward notes, it was publicly understood that the act was intended to reduce Asian employment.\textsuperscript{31} The logic was as follows: if employers were forced to pay a minimum wage, they would, by their 'natural' preference, hire white workers and drop their Asian labour. On the other hand, the guarantee of a minimum wage would encourage white workers to perform the labour currently done by Orientals. This would ensure that these "less desirable" workers, that is, Chinese, Japanese and East Indians, would be channelled out of well-paying jobs and herded into the only areas of employment not covered by the Act – namely, canning, farming and domestic work. Asians were to be systematically and ruthlessly denied the rights and privileges accorded other immigrants by whatever means provincial and federal governments could find. It seemed that they would be able to maintain a "white Canada forever" as long as popular prejudice prevailed.
A Change in Climate

It was not until after World War II that racial discrimination in the many areas of legislation against Asians began to change. Whether this was due to the lessons of Nazi genocide, a belated awareness that there were simply not enough Asians in Canada to make them a real threat, an upturn in the post-war economy which made cheap labour once again desirable, or a re-appraisal of the values of equality and justice, is a matter for debate. Whatever the reasons, in 1947 the Provincial Elections Act regulations were dropped, and in 1949 the Municipal Elections Act exclusions were also repealed.

In 1947, Mackenzie King, now Prime Minister, had ruled out "any fundamental alteration in the character of our population", and in keeping with this desire, P.C. 2743 (June, 1949) allowed British subjects who met Immigration Act requirements to be landed, "provided that the provisions herein above provided shall not apply to immigrants of any Asiatic race". But in 1951, when it was becoming apparent that the economy was at the beginning of a major boom, a mini-liberalization took place in immigration policy. An agreement was reached with India, Pakistan and Ceylon, establishing that a quota of 150 Indians, 100 Pakistanis and 50 Ceylonese would be admitted to Canada yearly. However, this quota was seldom filled because, although there was no shortage of applicants, bureaucratic processing took an inordinately long time, there being only one office in India (a country over half the size of the United States, with a population greater than Western Europe and North America combined).

In 1961, a "colour-blind" immigration policy was introduced, which, however, singled out Asians once again, by restricting the range and number of relatives they could sponsor. In 1967, new regulations established the present "points system", under which potential immigrants are allotted points for education, training, language skills and family connections. It was
under the family re-unification provisions that most East Indian immigrants came to Canada, sponsored by relatives here. Ninety per cent of East Indians in Canada as of 1975 had arrived since 1968, and by 1977, East Indians had become nine per cent of the total immigration flow into Canada. 37

But although these acts were increasingly more 'liberal', there was still scope for discrimination. For example, Tom McInnes, drafter of the 1910 Federal Immigration Act, wrote in 1927:

..in a certain section I thought it expedient to name Chinese and Japanese, and also Jews, Greeks, Armenians, and those of the undesirable riffraff on the Levant and the Near East who will never work with their hands on land in Canada while there are Canadian cities in which to exercise their cunning, I was not allowed to name even the name [sic] of any of them in the Act. But I got around it with a section empowering the Governor in Council by proclamation or order to "prohibit, or limit in any number for a stated period, or permanently, the landing in Canada of immigrants belonging to any nationality or race, or of immigrants of any specified class or occupation, which by reason of any economic, industrial or other condition temporarily existing in Canada, may be deemed unsuitable, having regard to the climatic, industrial, social, labour or other conditions or requirements of Canada; or because such immigrants are deemed undesirable owing to their peculiar customs, habits, modes of life and methods of holding property, and because of their probable inability to become readily assimilated, or to assume the duties and responsibilities of Canadian citizenship within a reasonable time after their entry".......There is enough dynamite in that one subsection to keep any undesirable race or class out of Canada, by naming it, whenever the government at Ottawa has the wish and courage to do so. 38

The passage in the 1910 Act quoted by McInnes is precisely the wording of Section 57 of the Immigration Act which was still on the statute books until 1978, and of which the legal scholar, W.S. Tarnopolsky wrote:

....the possibility of reintroducing a discriminatory immigration policy continues to exist, and the very presence of this provision in the regulation-making power helps to fortify the arguments of those who claim that despite the public announcements of Ministers of Immigration, discrimination continues in the treatment of potential immigrants. 39
Finally, in 1978, the Federal Government introduced a new **Immigration Act**, which was less overtly colour-conscious than any of the previous acts. The emphasis now in selection criteria is on family re-unification, concern for refugees, the promotion of Canada's economic, social, demographic and cultural goals, and non-discrimination. However, it remains to be seen whether this policy will have a significant impact on discrimination in admission policies.

**But Surely That Sort of Thing is in The Past?**

With an overwhelming history of often unabashed, sometimes subtle legislative discrimination apparently relegated to distant memory, it is tempting to think that ethnic minorities in Canada are finally free of the nettle of discrimination. It is true that B.C. is institutionally and legally more liberalized than ever before, but the following three reports suggest that racial discrimination is thriving in B.C. Fraser Valley College set up an inquiring body, which reported in February, 1982. Its purpose was to discover how widespread was the incidence of racism and to what extent it was manifested as discrimination. It concluded that:

...although quantification was impossible, prejudice appears to be a common ingredient in the attitudes of many of the community. These attitudes have encouraged a process of stereotyping which helps to provide a rationale for discrimination and thence to a circular reinforcement of the prejudiced attitudes upon which the stereotypes are based.

Furthermore, the B.C. Human Rights Commission Report of February, 1983 argued that:

...we are, at best, unwilling perpetrators of a modern 'sanitised', 'no-name' brand of discrimination.

Finally, Matsqui-Abbotsford Community Services prepared a report to the Secretary of State in 1982, which also found widespread racism in the Fraser Valley of B.C., and which made a series of recommendations concerning the
Churches, the Police, schools and all three levels of government. The report concludes:

Racism is like a strand in a braided rope. Remove one part of the rope, and the whole is weakened, but it does not disappear. Combine racism with greed, opportunism, fear and violence, and one finds a rope of injustice which has become strong indeed. Add to that neglect, benign or otherwise, and the noose of oppression holds the disadvantaged in a position from which there is no escape. 43

"Neglect" appears to be the principle behind the more recent forms of legislative discrimination against farmworkers in British Columbia. Since Hansard (B.C. Legislative Assembly Debates) began in 1971, the question of inequitable farmworking conditions has been raised by several M.L.A.s, though no legislative action was taken until 1980. For example, Mrs. P. Jordan (Social Credit, North Okanagan) expressed concern in the Legislature in 1972 that:

...there have been no provisions to assure, by the programmes of the government, that these people [farmworkers] come under the basic minimum wage. We see no assurance that the agricultural [labourers] will in fact receive a fair return for their produce. 44

In 1973, Ms. Rosemary Brown (New Democratic Party, Vancouver-Burrard) criticised the Minimum Wage Act on the grounds that:

...it was not extended to cover a very large group of people who work on farms...In my travels around the province with the Select Standing Committee on Social Welfare and Education, we were continually made aware of the hardship that is caused...because they [farmworkers] were not covered by this legislation, were offered less than the minimum wage and so were unable to demand at least the minimum wage, because they were not covered by the Act. 45

During the 1975 debates over B.C.'s new Labour Code, Mr. D.A. Anderson (Liberal), had urged the government to include farmworkers in the Code:

It's high time that agricultural workers were treated like other workers...[because contractors] are exploiting very very badly certainly a number of people who are forced to work through the contract system. 46
The government meanwhile, did extend the right to unionize to farmworkers, although this was not seen as an immediate possibility. Mr. Steves (Social Credit) noted:

Actually, as far as the organization of farmworkers is concerned...to organize a union takes time. I don't see any on the horizon at the present time so I don't think anybody really has to worry about it for a while until this happens. 47

On April 10th, 1975, the Select Standing Committee on Labour and Justice, which had been commissioned to investigate conditions in the B.C. farmworking community, submitted its report to the B.C. Legislature. Chaired by M.L.A. Colin Gabelmann, the Committee had conducted province-wide hearings, accepted many briefs and travelled extensively in order to make an assessment of the situation. The Committee noted that farmworkers were excluded without justification from nine major acts. These were: the Annual and General Holidays Act; the Control of the Employment of Children Act; the Hours of Work Act; the Employment Agencies Act; the Factories Act; the Maternity Protection Act; the Payment of Wages Act; the Truck Act; and the Minimum Wage Act. The Committee could see no reason why the protection afforded other workers with respect to payment of wages, maternity benefits, licencing of contractors, the Factories Act, the Truck Act and employment of children, could not and should not be immediately extended to farmworkers. As far as the piece-rate system was concerned (see Chapter Three), in favour of which the B.C. Federation of Agriculture had strenuously argued, 48 the Committee saw "no objection to the maintenance of piece-rates as an incentive system above and beyond the minimum standard which should be guaranteed to all workers". The Committee also recommended extension of coverage of the Workers' Compensation Act to farmworkers. Gabelmann stated that there was "no justification for exploitation", and noted that B.C. (and most of Canada) is at variance with International Labour Organization conventions, not to mention with B.C.'s
and Canada's own Human Rights Codes.

As well as evidence that the Legislature (and therefore the government) was aware of the farmwork issue since (at least) the early 1970's, there is also evidence that legislators were, and are, aware of the ethnic composition of the labour force. Karen Sanford (N.D.P., Comox), stated in the Legislature in 1979 that farmworkers were being exploited in B.C., and that the failure to include them under W.C.B. regulations amounted to an "ethnic slur".

During the second reading of the Employment Standards Bill, Sanford noted that:

...very often these farm labourers do not speak English. Most of them are East Indians, and most of them are being exploited by the way the present system operates...I think the Minister [of Labour] is aware of it. I think the Minister has had preliminary reports. I think that he has enough information at this stage to take some action which would alleviate the exploitation currently taking place.

The Employment Standards Act of 1980 represented the Social Credit Government's response to pressure from members of the Legislature, as well as from the Canadian Farmworkers Union. It was intended to 'clean up' the nine previous acts which had been cited by the 1975 Committee as discriminating without justification against farmworkers. For the first time, the Act provided coverage for maternity protection, payment of wages and juvenile employment. It also required, for the first time, that farm labour contractors should be licenced, and in some cases bonded. However, Colin Gabelmann, after congratulating the government on being only "five years behind the times", criticised the Act in the Legislature, on the grounds that it still leaves significant 'loopholes':

..The Minister [of Labour] has hailed this legislation as a breakthrough for farmworkers and domestics because it now covers them. That's not true, Mr. Speaker. The Minister, through Order-in-Council, can have the Cabinet exempt farmworkers...should he choose. There are no limitations, no rules; nor is it even implied that they will be developed in the Regulations. That is if, in fact, the regulations proceed to cover these people...Judging by the comments that float around these buildings and...
in this province, even if the Minister is in favour of making sure that farmworkers and domestics are fully covered, he will lose that fight in Cabinet... 

The 1981 Regulations appear to prove Gabelmann right. Section 3 (4) of the Regulations specifies minimum piece-rates for a range of fourteen crops, but denies the minimum hourly rates to "farmworkers who are employed on a piece-work basis to hand-harvest...vegetables or berry crops". Section 4, respecting general holidays, likewise does not apply to "an employee employed primarily to harvest fruit and berry crops", while Section 9 similarly exempts farmworkers from set hours of work and overtime payments.

Whatever the expediency of these exemptions is deemed to be, the government claims to have redressed the balance with the Employment Standards Act and the 1981 amendments to the Workers' Compensation Act. In March 1982, the Workers' Compensation Board's Chairman, Art Gibbons, announced that coverage would apply to farmworkers from April 1983. Farm employers would be required to register with the Board and pay assessments of 3% per $100 of payroll. They would also, for the first time, be obliged to comply with health and safety regulations. However, in March 1983, just one month before the regulations were to become operative, and coincidentally, two weeks before the Premier called an election, the Minister announced that the plans were to be scrapped. Instead, a farm safety agency is to be set up to promote and improve health and safety through education programmes aimed at farmers and workers. This leaves the farmworkers to "once again depend on the goodwill of the farmers", which has not proved reliable in the past.

Given that the government offered no explanation for this reversal, it is difficult to ascertain why the first scheme was at one point judged to be feasible, and then suddenly was rescinded. One explanation would be that the original modifications were introduced in order to pacify the pressure groups opposed to government policy, and then, with an election planned for May 1983,
the reversal was designed to woo the farm vote. This was the explanation offered by the N.D.P. Agriculture Critic, Barbara Wallace, who charged that the decision was a timely ploy in the electioneering campaign of the Social Credit government:

In their haste to buy the farm vote, Socred Ministers have granted a farm safety agency in lieu of regulations, with utter disregard for the consequences to both farm labourers and farmers.

Summary

British Columbia is essentially a white society which, historically, has wanted to benefit economically from cheap non-white labour, without wanting to live side-by-side with, or include in its social order, those individuals who provide that labour. This attitude resulted in a wide range of efforts to insulate the non-white population, by limiting their numbers, their citizenship, the jobs they could hold and their political voice. As the tolerance of the white majority increased over time, various control measures were relaxed. Yet, in relation to at least one section of the immigrant labour force, namely the farmworkers, governments acquiesce in the persistence of inequitable and deplorable working (and living) conditions, which could be rectified by legislation.

The continued exclusion of farmworkers from labour legislation can be seen as a matter of political expediency. Farmers represent a sizeable voting bloc (both in the predominance of rural ridings and in their traditional conservative party allegiance) and a significant lobbying force (being major suppliers of food and export goods). Their representative organization, the B.C. Federation of Agriculture, has expressed an interest in the continued exclusion of farmworkers from minimum wage legislation. On the other hand, the farmworkers, only recently permitted by law to unionize (in 1973),
often isolated by language, culture and working hours, and scattered throughout numerous ridings, do not have the numbers, organization or the 'political clout' of the B.C. Federation of Agriculture.

Although this power imbalance could, as mentioned above, explain government decisions regarding farmworkers, the following factors show that B.C. governments have been aware of the situation, but have nonetheless been willing to perpetuate discrimination:

1. The living conditions of farmworkers are so bad as to be shocking to the public and to the members of various government investigatory committees.
2. Their working conditions are poor enough to be identified as "exploitative" by several M.L.A.s.
3. Farmworkers have been consistently singled out and specifically excluded in B.C.'s labour legislation, to date.
4. Recent B.C. governments, by the commissioning of several investigatory studies, have demonstrated an awareness of the quality of conditions in farmwork.
5. The committee members of these committees have declared that full coverage of farmworkers under the law is both justified and feasible.
6. Recent labour legislation, to date, has withheld full coverage of farmworkers, despite the findings, recommendations and feasibility studies of their committees.
7. New legislation has demonstrated a recognition of the legitimacy of farmworkers' grievances, and an acceptance of governmental responsibility for the improvement of farmworking conditions through the law.
8. This new legislation took ten years to enact, from the first available records of governmental cognizance of farmworking conditions, and six years after the reports of the Standing Committee on Labour and Justice.
9. All of the recent legislation regarding farmworkers contains various escape
clauses, which effectively preclude any assurance of the maintenance of protection for farmworkers.

As can be seen, in view of their mandate to represent all sectors of the population, ensure fair treatment of all individuals and uphold basic human rights insofar as it is within their power, the government of B.C. has been notably remiss regarding the farmworkers. Regardless of the ethnic composition of this labour force, the limited willingness of the government to rectify their situation, once it had been made known, would demand an explanation. Given the fact that farmworkers are predominantly East Indian in the Fraser Valley, and are being so deliberately disadvantaged, the fact of ethnicity as a causal element in this persistent discrimination cannot be denied.
Footnotes


7. Ward, op. cit., p.79.


12. See Ward, Chapter 6, for more details.

13. See Sandborn, op. cit., for a list of all the discriminatory laws of the period.


15. Buchignani's "Political Organization of South Asians in Canada" (cf. footnote #6 above) for a very good discussion of the revolutionary Ghadr Party tradition in B.C., and other East Indian political responses/organizations in Canada.

16. Sandborn, op. cit., p.6. The Superintendent of Immigration had made it clear that the order was only intended against "really undesirable immigrants".


21. "Hindus" were defined as "any native of India not born of Anglo-Saxon parents". Apart from the fact that all immigrants to Canada from India were Punjabi Sikhs, this definition meant that any person born in India of Italian, Dutch, Turkish, Russian or any other parents was automatically a "Hindu".

22. The Provincial Elections Act, S.B.C., 1907, ch.16, s.2-3.


24. R.S.B.C. 1924, ch.45, s.27; R.S.B.C. 1924, ch.75, s.42; R.S.B.C. 1926, ch.179, s.37; R.S.B.C. 1924, ch.123, s.4.


26. Ibid., p.82.

27. Ibid., p.83.

28. Ibid., p.82.

29. Ibid., p.84.


35. Ibid., p.24.


'Racism', as used here, refers to a negative pre-judgement of individuals on the basis of race. 'Discrimination' is the manifestation of this usually unfounded predisposition. Personal discrimination refers to acts taken by individuals and can range from 'name-calling' to refusing to employ persons of the group which is the object of racially-based hatred. Institutional discrimination refers to practices which are sanctioned by and are integral parts of institutional arrangements. Examples would be discriminatory wage structures, hiring and firing practices, or any built-in mechanism in the various social, cultural, economic and political institutions of a society. Legislative discrimination is that enshrined in the law, by which some groups are singled out for unfair and unequal treatment, and are exempted from the enjoyment of the same rights and privileges as other members of a society.


B.C. Legislative Assembly Debates, October 23, 1972: 1568.


In fact, the B.C. Federation of Agriculture has considerable power and influence over pertinent legislation. For example, the Honourable Mr. Stupich said in the Assembly in 1973:

"...there was some disagreement within the Federation itself as to whether they wanted the regulation that says the minimum wage legislation does not apply to agriculture; whether or not they wanted that taken out. The current thinking is that they're a bit reluctant to have it removed". (p.928).


B.C. Legislative Assembly Debates, 1979, Q.343: 934-935.

Ibid.

The Employment Standards Act, Part 9, Sections 60-70.


Employment Standards Act Regulations, Section 3(4).

Employment Standards Act Regulations, Section 4.

57. It had previously been 6%, when the scheme was operated on the basis of voluntary 'opting in'. However, as the government has now chosen to rescind the planned decrease to 3% and participation will remain voluntary, most farmers will continue to be discouraged from opting in to the Workers' Compensation scheme by the high costs of participation.

58. Health and safety regulations have not been rigorously articulated for application to farms and it seems unlikely that the proposed farm safety agency will be given any power to enforce its guidelines.

59. Raj Chouhan, from a speech delivered at a fund-raising benefit at the University of British Columbia on April 9th, 1983.

60. Quoted in the Vancouver Sun, March 14th, 1983.

61. See footnote #48.

62. The right of farmworkers to unionize was granted by the 1973 Labour Code, which, incidentally, was passed by the only New Democratic Party government British Columbia has ever had.
CHAPTER THREE
POVERTY IN THE VALLEY OF PLENTY

The previous chapter concentrated on the historical discrimination lev­
elled against both farmworkers and East Indians in general. It was suggested that although it could not categorically be proven that the farmworkers' ex­
clusion from certain protective legislation was motivated by racism, the la­
tter is certainly a contributory factor. Neglect, benign or otherwise, was posited as the principle behind recent provincial governments' treatment of farmworkers, while it was further argued that such 'neglect' amounts to tacit consent to discrimination.

However, such an inference implies that there is a specific, coherent and concerted policy regarding farmworkers, as there has been in the past to­
wards East Indians. It is doubtful that this is the case today. Policy to­
wards farmworkers can best be described as uncoordinated. There are several ministries which have jurisdiction over farmworkers, including those of Labour, Health, Agriculture, Transport, Housing and Human Resources. In some cases it is not clear which ministry is accountable for what policies, and as a result, the ascription of responsibility is difficult.

The purpose of this chapter is to identify and discuss the major issues, or more accurately, the grievances of B.C. farmworkers, which form the basis of the Canadian Farmworkers Union's platform. It is argued that the inequit­able conditions prevalent in agricultural employment are exacerbated by the apparent unwillingness of the Social Credit government to synchronize inter­ministerial policies and delineate clear areas of jurisdiction. Such unclarity can be said to demonstrate, in varying degrees, ignorance, disinterest and low prioritization of the farmwork issue.

Although there have been some changes in the four years since the begin­ning of farmworker organization, it is useful to present the situation as it
existed prior to 1979, in order to appreciate fully the grievances of the province's farm labourers. It must be added that many of the conditions described here still prevail today.

The Imbalance of Power

It has already been pointed out that British Columbia's seasonal farm labourers are drawn from various ethnic minorities. More specifically, in the Fraser Valley, about ninety per cent are of East Indian origin. Of these some sixty-five per cent are women. Apart from the relative subordination of the East Indian minority as against the dominant white society, these women are rendered even more powerless by the system of economic, social and cultural relations practised in the Valley.

There are an estimated one hundred and fifty East Indian growers in the Fraser Valley, the majority of whom produce fruit, berries and cole crops. Likewise, of the thirty-five or so contractors, only two are Chinese, the remainder being of East Indian origin. This commonality of language and cultural heritage acts at once to provide both a relatively isolated working environment and a major tool of exploitation.

Women in employment have traditionally been exploited, regardless of ethnicity, and East Indian women farmworkers are by no means exempt from the tendency. Their access to information regarding rights and obligations is often severely limited: first, because of their isolation on farms during the harvesting season (where many live for four or five months a year); second, because of the lack of information from Employment and Immigration, which is not available in their first languages; and third, because the farmers act, not only as 'protectors' (from other men!), but as interpreters and filterers of information pertaining to matters such as employment, housing, payment of wages and U.I.C. contributions. This situation gives East Indian farmers and
contractors significant control over the workers as they can regulate the
degree and type of contact with the 'outside world'. This regulation often
extends to driving the farmworkers into town on Sundays to shop in stores
where the farmer or contractor has a 'deal' with the proprietor for a percen-
tage of the profits.

In addition, the traditional subjugation of women to men within Indian
society acts to reinforce the inequitable power relationship. The more pat­
ernalistic structure of working relations practised by East Indians is a for­
midable tool of exploitation which may be denied to white farmers, who have
a different tradition of employer-employee interaction. This suggestion is
not to imply that East Indians are somehow more exploitative, or more ruth­
less in their exploitation than white farmers (assuming the relationship is
such). The point is simply that it is reasonable to expect commonality of
language and a set of shared cultural traditions to render control of the
workforce more practicable. This expectation is certainly confirmed by the
relatively greater success the C.F.U. has had in organizing white-owned farms,
which lack the rather pervasive customs of East Indian modes of control.

The Grievances - Living Conditions

There are two major areas of discontent as far as farmworkers are con­
cerned. The first is living conditions, the second, working conditions.
Straddling the two is the issue of pesticides and their abuse. Pesticides
affect workers both at work and in their living quarters (for those who live
on the farms during the season), and many workers have reported being sprayed
in the fields and in the vicinity of the cabins, though more will be said of
this later.

Farmwork is seasonal. During the peak of the season, some eight thou­
sand people come to harvest the twenty-six thousand acres of berry fields in
the Fraser Valley. About half of these workers come from as far as Prince George, Williams Lake, Campbell River, Nanaimo, Port Alberni and Vancouver Island. These migratory workers must live on the farms for the duration of the harvesting season. Living quarters usually consist of converted barn-stalls and dilapidated outbuildings. Take, for example, the case of a sixty-seven year old farmworker, Pritan Clair, as reported in the *Vancouver Sun*:

She and her seventy-two year old husband, Sadhu, live in a twelve by sixteen foot, unpainted, unventilated room, the roof of which slopes from a low of three and a half, to a high of seven feet. It is lit by a single naked light-bulb and furnished with two iron-frame beds and a single table. The farmer who owns the converted chicken-coop housing the Clairs and thirty-eight other pickers (and which contains only two toilets, one sink and no shower) holds back part of their piece-meal wage as "rent" equivalent- in the case of the Clairs, with both picking ten to twelve hours a day, seven days a week, comes to over $600 a month. Assuming similar conditions for the coop's other residents, the farmer retains some $12,000 a month in already paltry wages for accommodation which, by urban standards, ranks somewhere between a slum and the gutter. By farmwork standards, the Clairs' room is slightly above the norm, which frequently precludes running water and often crams up to four adults in an 8'x10' shack. It is a heinous irony that the more the field-hands pick, the higher is their rent.

It must be noted that this example, while similar to the situations of many farmworkers interviewed, does not represent an absolute standard. Some farm buildings have been better adapted than others and do have adequate sanitary facilities. Some farmers are concerned with the health and safety of their employees and have taken steps to improve the facilities. For example, at B & G Bros. Farms in Abbotsford (operated by Gurnaib Brar and Mohinder Gill), a complex of twelve new units was built in 1981. They were made from concrete and fire-proof gyproc and contain smoke-detectors, hot-plates and fridges. These units cost $3,000 each, without government subsidies. Similarly, Jagir Bathe's Abbotsford farm has twenty new units with aluminum siding and roofing. While these buildings hardly constitute luxury, they are
inhabitable, clean and reasonably sized, and are a vast improvement over previous quarters.

Yet modern facilities such as these are by no means common. Farmers are apt to point out that these buildings are not the farmworkers permanent residences. They see themselves as providers of a service, in the absence of which farmworkers would be forced to pay rents elsewhere, and face the added inconvenience of having to travel to work each day. Whatever the merits of this argument, farmers have little incentive to improve their 'services' without 'persuasion' by health authorities or coercion by law, especially as the government has not offered to subsidize costs.

A tragic incident on July 16th, 1980 highlighted the inadequacies of the housing situation. Sukhdeep Madhar, a seven-month old infant, drowned in a bucket of drinking water after rolling off a bunk-bed. The bucket contained drinking water because no potable water was piped to the converted horse-stall where her mother was living. In addition, the incident raised questions about the lack of day-care facilities on the farms. An estimated five hundred children accompany their mothers to the fields of the Fraser Valley each year. Approximately one week after the death of Sukhdeep Madhar, three young boys (Gurgit Pehatta, 8, his 9 year old brother, Sumin and Boota Bassi, aged 10) drowned in an Aldergrove gravel pit while their parents worked in a field nearby.

The Coroner investigating Sukhdeep's death likened the living conditions on the farm to "Nazi concentration camps". On August 21st 1980, the Coroner's jury recommended that legislation be "immediately initiated", empowering the Ministry of Health to establish minimum living conditions for farmworkers housed in Fraser Valley cabins. Although it is still a "matter of interpretation" whether farm accommodation is included under industrial work-camp regulations in B.C., the jury called for "immediate inspections" by civic fire,
health and building officials, and recommended that these inspections be conducted regularly.

However, despite these recommendations, there is still some confusion as to how they can be implemented and by whom. A Matsqui Police Constable, John Spring, had testified at the hearings that as many as seventy people lived in the horse-barn on Jasmer Braich's Glearbrook farm, and one building inspector, Harold Neuman, reported that the building was much below the standards required for human habitation. Yet the chief building inspector for Abbotsford, Bill Horn, maintained that "there is not any serious problems [sic] with farm camps right now". Horn did stress that he was only concerned with new buildings and not with existing sub-standard accommodation.

The sticky question of who is responsible remains. To date, the promises of the Ministries of Health and Labour to look into living conditions ahve yielded no known studies, no recommendations and thus, no changes. Cabins are seldom, if ever, inspected, partly because, even if inspectors do want to survey premises, many camps are not recognizable as living quarters from the outside. But the main problem is for farmworkers. Inspections can only be made after a complaint has been lodged and it is incumbent upon farmworkers to make formal complaints. Several farmworkers interviewed cited fear of harrassment, retribution and even dismissal as constraints against reporting unsatisfactory conditions.

The C.F.U. has long argued that the government need not create new regulations for farm housing. Calvin Sandborn (of Farmworkers' Legal Services) notes that the "Industrial Camp" regulations of 1946 apply to farm camps, and that health officials admit as much, though the Ministry has adopted an informal policy of not enforcing the law on farms. Sandborn urges the B.C. provincial government to "stop breaking its own law" and enforce Section 2 of the Regulations for Sanitary Control of Industrial Camps, amended by
Order in Council 2780, December 1960, which states:

The application of these regulations shall apply to lumber camps, mining camps, sawmills, railway construction camps, canneries and other similar places where labour is employed throughout the province.

The Union argues that farm labour camps can be considered as "other similar places". In February 1980, the B.C. Farmworkers Organizing Committee presented a brief to Jack Heinrich, the incumbent Minister of Labour, concerning nine recommendations for provisions which were already enforced in the lumber and mining industries. However, nothing seems to have come of it.

But where the provincial government has been lax, municipal governments have tried to make amends. In January 1982, the municipality of Matsqui, where Sukhdeep Madhar was drowned, formulated a by-law "to establish standards for seasonal full-time farm help accommodation to protect the health and safety of the occupants". The main provisions of the by-law concerned garbage disposal, maintenance, minimum floor space, ceiling heights and ventilation, cooking facilities and the licensing of owners of such accommodation. Although the by-law did not provide for regular inspection of housing, failed to guarantee heating for winter workers and required only half the sleeping space required by U.S. farmworker law, it was a step in the right direction (as far as farmworkers are concerned). However, it has not been approved by the Health Minister, so the by-law cannot become operative.

In a submission to the B.C. Human Rights Commission, Charan Gill noted that in California there are twenty-five state-owned migrant family centres operating in rural areas. He also noted that the U.S. Federal Department of Labour issued rules and regulations for housing for agricultural labour in March 1980, a law which is enforceable in every state. Charan Gill, Secretary of the C.F.U., recommended that the B.C. government "should build government-subsidized public housing on Crown land, managed by its own administrative machinery in order to comply with the criteria of existing legislation"
of the Ministries of Health, Agriculture and Housing. The idea of placing the housing blocks on Crown land came from Gill's conviction that the only way to eliminate "the feudal style of employer-employee relationships practised by the growers" is to take the workers away "from the direct influence of the growers". Again, the government has yet to respond to this suggestion.

Because of the uncertainty concerning which department, ministry or agency is responsible for enforcing health and safety regulations on farms, an inter-ministerial committee was set up in July 1981. It comprised the Ministries of Health, Human Resources, Agriculture, Labour, Fire and Municipal Affairs. Yet very little is known, either of the proceedings of the committee's meetings, or of their results. Andy Hindley, Chairman of the Committee, announced that recommendations had been sent to the Ministers concerned, though he "couldn't even guess" when the Ministers would make a decision. He added that "...from our point of view, public health, working on stopping the spread of communicable diseases...we don't see that much of a problem".

If the public health authorities are only concerned with stopping the spread of communicable diseases, then they are not concerned with taking preventive measures against the many diseases to which farmworkers are prone. Examples include everything from the common cold (a consequence of working long hours in wet conditions), to intestinal and stomach disorders (often contracted from unclean drinking water) to a variety of diseases associated with exposure to pesticides. These include lung and heart diseases, skin rashes, eye infections, incremental deafness and even cancer. In terms of the Ministry of Health's criteria, exposure to such diseases or illnesses does not amount to a public health hazard, as long as they are not communicable to the rest of the community.

In February 1981, the C.F.U. asked the Ministry of Health whether it could submit recommendations regarding health and safety, but only received
a letter from the Ministry acknowledging its request. This is consistent with the government's reticence and inaction regarding the inclusion of farmworkers under any protective legislation.

Farmwork May Be Dangerous to Your Health

In an article entitled "Racism and Labour: The Struggle of B.C.'s Farmworkers", Ronald Labonte wrote:

The lack of enforced or explicit regulations controlling farmworker housing and the illness consequent to such septic squalor pales in comparison to the perils lurking in the fields. Farmwork is the third most dangerous occupation in Canada, a fact which may come as a surprise to those of us equating our backyard veggie patches with a feisty cardiopulmonary workout rather than to an exercise in dying younger.

Apart from threats to health such as those associated with twelve hour daily stints of stooping, plucking, lifting and toting ('flats' weigh between sixteen and twenty pounds and must be carried long distances to the farmer's weigh station), farmworkers also face defective farm equipment, unsafe drinking water, lack of sanitation, overcrowded housing and overcrowded contract trucks (for those who 'commute' from Vancouver). In a statement released by Farmworkers' Legal Services, Calvin Sandborn noted that according to the provincial Department of Vital Statistics, at least twenty-three B.C. farmworkers were killed in farm accidents in 1977. In 1976, sixteen people died; in 1978, nine; in 1979, eleven; and in 1980, five. This brings the total to sixty-four deaths between 1976 and 1980, and the figure does not include transportation accidents or long-term occupational diseases.

In Ontario, it is estimated that one worker per week is killed performing farmwork. Further, a Saskatchewan study found that farmworkers have a much greater incidence of poor hearing, speech defects, respiratory diseases and back problems than the general population, divided into occupational categories. In addition, an American study of orchardists in the Okanagan
area of Washington State found that farmworkers had extraordinarily high
rates of lung and intestinal cancer, pernicious anaemia, cerebral embolism
and thrombosis, and concluded that there was a definite connexion with the
use and abuse of pesticides. According to the California Department of Indus­
trial Relations, the toxic chemical injury rate of Californian farmworkers
is more than double the overall injury rate of all other workers in various
industries in the state. Although there are few similar Canadian studies,
the Matsqui-Abbotsford Community Services conducted a survey in October 1982,
the major findings of which are contained in Appendix A (page 123).

The hazard of the uncontrolled use of pesticides on B.C. farms is one
area in which farmwork outweighs mining and logging on the danger scales.
Pesticides are no longer used just to kill insects, but also to kill birds,
fungus, rodents, fish and plants. There are chemicals to speed up the growth
of crops and chemicals to slow growth down. They can have both acute and
chronic health effects in humans. Acute effects include everything from skin
rashes, dizziness and vomiting to paralysis and, according to The Farmworker,
even death. Chronic effects include liver damage, cancer and the birth
of still-born or deformed children.

Varieties of pesticides have been modified over the last fifty years,
each initially acclaimed as 'safe', and many subsequently discovered to be
far from safe. Currently, although organochlorines are now banned (because
they were found to be causes of cancer), there are still some in use on B.C.
farms. Today, organophosphates are used to kill insects and, on average,
their acute effects are even more severe and dangerous than organochlorines.
They attack the nervous system and can cause paralysis.

The $250 million a year Canadian pesticide industry obviously has a ves­
ted interest in selling its wares, and has sophisticated and persuasive tech­
niques, whereby farmers are 'convinced' that without pesticides they would
suffer heavy crop losses. Thousands of tons of toxic substances are dumped over the fields and plants of Canada every year, with apparently little or no regard for their effects on workers. Many farm labourers have reported the spraying of fields while they and their children were in them, and reports of workers entering fields while the air is still a vaporous cloud are not unusual.

The recent investigation into Industrial Bio-Test Laboratories (I.B.T.) in the United States which resulted in thirty criminal indictments for fraud, raised many questions about the assurances of 'experts' that certain pesticides are safe. At least 97 chemicals listed on the falsified I.B.T. data are still allegedly in use in Canada. For example, the most widely used fungicide in Canada, Captan, was declared safe by I.B.T. 300,000 kgs. were used last year on corn, potatoes and berries. Yet Captan has been proved to cause cancer, birth defects and genetic damage in laboratory animals and is likely to do the same in humans. As Reasons, Ross and Paterson point out, the government, with its tendency to "err on the side of business" where occupational or environmental health issues are concerned, has chosen to phase out the use of Captan over several years. This leaves farmworkers to continue exposing themselves to chemicals "whose testing has been specious at best".

The recent death of Jarnail Singh Deol lends ammunition to the case of farmworkers and their supporters. Deol, a twenty-year-old farmworker, died on October 3rd 1982, after swallowing a lethal dose of the toxic pesticide, Monitor, at Mound Farm, Surrey. Although there is some suggestion that Deol committed suicide, Dr. Bill Meekison, director of the Boundary Health Unit in Surrey, was convinced that Deol's death was due to toxic psychosis induced by pesticides. Deol had been admitted to hospital three times in September, and five other farmworkers had been treated for similar symptoms (nausea,
sweating and clammy skin). These symptoms are all consistent with Meekison's suggestion of gradual and incremental poisoning over a long period.29

As mentioned above, farmworkers are not covered by the provisions of the Workers' Compensation Act. Only some workers - those under labour contractors - are covered, but only 5% of growers have opted into the scheme, which is still operated on a voluntary basis. Farmworkers are also denied the protection of health and safety regulations, as in B.C. these regulations are included with workers' compensation in the same act, and both are administered by the Workers' Compensation Board. This situation compounds the suffering of workers who are not only vulnerable to a greater number and range of injuries and diseases than other B.C. workers, but are also denied remuneration for occupational hazards.

Constitutional protection in the U.S. is far ahead of Canada's in this respect. For example, in the case of Guiterez v. Glaser Crandall Company [202 NW 2D 786 (1972)], the Supreme Court of Michigan struck down a law that denied workers' compensation coverage to seasonal farmworkers. One of the Supreme Court Justices stated that "such treatment is clearly discriminatory and has no rational basis". Another judge held that the separate classification of farmworkers was "inherently suspect" because most farmworkers are from minority ethnic backgrounds.

Sandborn noted that in 1952, and again in 1956, two Royal Commissions into Workers' Compensation recommended that farmworkers be covered, but to date they are still bereft of the insurance and safety protections offered by the scheme.30 Given the recent example of "back-tracking" by the Minister of Labour (Bob McClelland), and the Social Credit Government's renewed mandate of May 5th, 1983, it seems highly unlikely that the government will be willing to revert back to the promises of March 1982.

The Vancouver and District Labour Council had urged an investigation
into Deol's death in November 1982, with a view to bringing in regulations to control the use of pesticides throughout British Columbia. In addition, the C.F.U. released a report in October 1982, which claimed that there is widespread ignorance among B.C. farmers about the safe use of pesticides. Having interviewed two hundred and seventy-two farmworkers in the Lower Mainland, Fraser Valley and the Okanagan, the authors of the report recommended that the W.C.B. implement strong regulations, along with an education and training programme. It looks now as if the only positive step taken will be the implementation of the latter, while the C.F.U. argues that although education will undoubtedly cut the number of accidents, those injuries that do occur regardless will go uncompensated. As Ronald Labonte points out in his cited article:

A dreary irony of all this is that, while farmworkers are legally ineligible for compensation for injuries suffered from pesticide use, farmers receive legally required compensation for crop losses due to pesticide overkill.

The Grievances - Working Conditions

The area of discontent concerning living conditions discussed above is not the main focus of attention for the C.F.U., and does not appear to be a focus of the Social Credit government's attention at all. The housing issue applies to fewer than half of B.C.'s seasonal labourers. But the issues of pesticide hazards and of general working conditions apply to all farmworkers, and have consequently been the predominant focal point of C.F.U. agitation.

Some of the conditions which fall into the category of working conditions have already been mentioned above. They are the physical circumstances which are part and parcel of farmwork and which are probably unalterable. Hand-picking berries and vegetables will always involve stooping, plucking and toting in rain or sunshine for a good many years to come.
However, there are some conditions which are not immutable, and which are possibly more pernicious to farmworkers than the physical reality, assuming that farmworkers' interests are to earn as profitable a living as possible, under safe and equitable conditions. There are two major issue areas under contention, which, it is argued, can be changed via legislation. They are the piece-rate system and the contractor system.

The "piece-rate" refers to a system of payment according to productivity. While this somewhat archaic system has been replaced by hourly wage rates in most areas of work today, it is still used widely in farmwork. The appropriate unit for harvesters is payment per 'flat' of produce picked, a flat being a plastic container subdivided into sixteen compartments (for berries), each holding one pound of fruit.

Certainly it would be difficult, if not preposterous, to conceive of bank clerks being paid per customer transaction per day, or librarians being rewarded for each book checked out. Likewise, the C.F.U. argues, it is unfair that farmworkers should be paid according to the amount they can pick, when conditions vary with many things, from the time of the season to the amount of rain per day and so forth.

Yet there is an argument prevalent in farming (and government) circles that farmwork lends itself best to the piece-rate system. This argument is not without some merit. It is a fact that crops are perishable, and, during the harvesting season, must be transported to the retail outlets as soon as possible. Deadlines entail not only swift and efficient harvesting, but long hours of labour and planning co-ordination. The piece-rate system, it is argued, enables the farmer to make fairly accurate predictions of how much of the crop can be harvested within a given time-frame and what his overall profit is likely to be. The argument in favour of the piece-rate system is, of course, predicated on the assumption that an incentive system (which is the
fundamental notion behind the piece-rate) will make workers pick as quickly as they can, and that they will pick the whole crop.

The piece-rate system makes sense for the farmer in a variety of other ways. One of the most important is that it ensures equal per unit costs. This is obviously very important to farmers, who would certainly resent having to pay, say a minimum of $3.65 an hour, to a worker who picks two flats an hour, in contrast to a worker who picks four. Their per unit costs for the first worker would be $1.84, but for the second worker, it would be 91¢.

Furthermore, another of the very persuasive arguments made by farmers in defence of the piece-rate system is that it frees farmers or managers from supervisory tasks, enabling them to do other work which is more productive. By leaving productivity to the workers' anxiousness to earn as much as they can by picking as much as possible, farmers argue that the free market economy can be seen to be working in the best interests of all parties. Because workers are responsible for what they produce and do not have farmers telling them to work faster, affable industrial relations are said to be encouraged.

Ann Farrell makes what appears to be a very sound argument in a recent newspaper article. Quoting a spokesman from the Abbotsford Farm Labour Pool, a government agency, she tells of a woman who picked forty-one flats in a ten-hour day. At fifteen pounds a flat, that amounted to six hundred and fifteen pounds. At 15¢ a pound, she earned $92.25 for the day (or $9.22 per hour). Yet the average good picker fills only twenty to thirty flats a day, for between $45.00 and $67.50 a day. Farrell notes that ten hours paid at the minimum hourly rate of $3.65 would earn such a worker only $36.50 - between $8.50 and $31.00 less than s/he could earn at the piece-rate.33

While the argument that the principle of piece-rates means that the slower worker will be paid at the same rate as more productive workers seems reasonably fair, Farrell has ignored some important qualifications. First, the
forty-one flat picker is very rare, and could only have managed her feat during the three or four weeks of the season's peak. Second, speed of picking also depends on the nature of the crop - for example, how closely fruit or vegetables are grouped. This is not to mention weather conditions, or indeed, good health. Third, there is a large discrepancy between the 15¢ per pound rate and the retail price of the produce. For example, at the end of June, 1982, Safeways in Vancouver were selling strawberries at $1.79 per pound. Fourth, it is not clear whether the 15¢ per pound rate is the sum actually paid to the worker, or whether this is the rate paid by the farmer to the contractor, who then subtracts his "rake-off". Finally, Farrell misses the essential point altogether. No one is advocating $3.65 (or any other amount) as a maximum hourly rate. Rather, it is intended as a minimum hourly rate. There is no reason why the proficient worker cannot be rewarded for productivity and earn above that minimum. This is, in effect, to advocate a minimum hourly rate to ensure a reasonable return when the picking is not so good, supplemented by a piece-rate system above a certain threshold.

Of course, it could be argued that if the latter were general practice, farmers would tend to employ only the most productive workers, thereby excluding elderly or slower workers from a source of employment that is often the only one open to them. This is certainly a valid argument. However, it could be interpreted as a demonstration that perhaps farmers are not as interested in speed and efficiency as they are in exploiting cheap labour.

This argument, if true, would be consistent with the growers' position on machinery. The threat of mechanization has been made on many occasions. Some farmers have used mechanical harvesters for crops like raspberries, rather than have their operations unionized. However, machines tend to ruin a large proportion of the crop (up to 25%), and machine-harvested fruit can only be used for canning and jarring. Hand-harvested fruit, on the other
hand, comes off the bushes in much better condition and can be sold for eating, at a much higher price. Last year, of an estimated thirty mechanical harvesters in the valley, only one was used. Manual labour is still very much in demand, despite the growers' claim that they are 'doing the workers a favour' by offering them employment. Nonetheless, the argument most often invoked against the abolition of piece-rates is that it would mean an increase in retail prices to the consumer. Price rises would lead consumers not only to "squawk about the low wages farmers pay to those who harvest their crops", but also to complain about the rising prices of farm produce. However, the C.F.U. points out that labour costs account for only 8-9% of the retail price of food. In the case of Safeways strawberries, 9% of $1.79 comes to 15¢. The question then becomes one of a trade-off by consumers between cheap farm produce or clear consciences....

The Canadian Farmworkers Union claims that piece-rates work against the farm labourer in several ways. First, not only is the rate per flat low (in 1982 it was, on average, about $2.20), but the time taken to fill a flat depends on variables mentioned above (such as nature of the crop and the time of the season). If the crop is poor or the weather proves inclement, more time and effort are required to fill a flat. In effect, as the season dwindles, the workers must "work harder and harder to earn less and less". In addition, many workers have complained of harassment when they bring in their flats. They claim they are sent back to the fields to pick more, on the pretext that the flats are not properly filled, although farmers' scales are notoriously outdated and unreliable.

The final issue is the question of overtime. Farmers have claimed that because farmwork is seasonal and the crop must be taken in as quickly as possible, overtime payments are not warranted. Meanwhile, the Union claims
that non-payment of overtime contravenes the Human Rights Code, which guarantees equality of opportunity in the workplace. In this case, 'equality' refers to the overtime provisions of the regulations of the Ministry of Labour. Part 3, section 26 (b) of the 1980 Employment Standards Act defines "regular wage" as "where paid on a flat rate, piece, commission or other incentive basis, the wages of the employee in a pay period divided by the employee's total hours of work during that pay period", with overtime defined as payment due for work in excess of the average. However, the 1981 Regulations, in section 9, exempts farmworkers.39

The question of minimum wages for farmworkers is a prickly one, and has been discussed in Chapter Two. In a statement to the Vancouver Sun on July 25th 1981, Raj Chouhan charged that the Social Credit party's "expensive TV commercials and glossy leaflets" mislead the public to think that farmworkers are already covered by hourly minimum wage regulations. In fact, the government appears to have no intention of introducing hourly rates for farmworkers.

The final major issue area under working conditions is the infamous contractor system. Farmers do not generally hire their labour directly, except for those workers who migrate from the far-flung corners of B.C. Most farmworkers are hired by labour contractors, who agree to provide a steady supply of labour to the farmer, in exchange for a percentage of the payment in wages to the workers.

Like piece-rates, the contractor system makes sense for farmers. First, one telephone call will secure a labour force of the appropriate size for the appropriate length of time. Second, the grower is assured that his crop will be picked. Third, the contractor is responsible for transporting workers to the fields each day. Fourth, the contractor supervises the pickers, and where the farmer is white, the contractor acts as interpreter between the growers and the workers. Fifth, because he is actually the employer of the
workers, it is the contractor who must handle the book-keeping. This can be a formidable task in itself, as it is necessary to calculate each worker's total number of flats picked, their U.I.C. contributions, as well as C.P.P. and tax.

Contractors, who number between thirty-five and forty in the Fraser Valley, are predominantly East Indian and are usually workers from saw-mills or factories who absent themselves from their jobs to practise the lucrative business of contracting. Their incentive is undoubtedly the "rake-off", which the C.F.U. claims is often between 25 and 40 per cent. Because they have only recently been required to register (with the Employment Standards Board), and because the law has been so lax, contractors have enjoyed significant scope for exploitation. Indeed, the C.F.U. holds that they are "more responsible [than farmers] for using coercive tactics like withholding wages and threats and blackmail concerning U.I.C.".

This "legal pimping", undertaken by persons who have "become enamoured with this country's potential for exploitation", has serious effects on the farmworkers' earnings, liberty and independence. Contractors compete with each other for contracts with farmers, and as they 'win' by bidding low, they lower the workers' wages in the process. It is the contractor who decides where labourers work, for how long and for how much. It is the contractor who pays wages, negotiates with farmers over working conditions, calculates deductions (mentioned above) and arranges transport to the farms.

The typical farmworker's day begins at 5am, when s/he is driven to the Fraser Valley in converted mini-buses - 'converted' usually means that the seats have been ripped out and replaced by benches. Often, thirty workers will be herded into a van designed to take twelve. A number of driving accidents have been reported in the last few years, and of course, none of the injured was covered by Workers' Compensation.
One labour contractor, Kishan Walia, claimed in an interview with the Province that after paying for gas and two drivers, he cleared only about $80 a day. Yet according to Walia, he paid his workers $2.25 a flat out of $3.15 he was paid by the farmer. With eighty-two people working for him, collectively earning more than $5,000 a day, Walia would have been grossing more than $1,500 per day, which is 30% of the total. It is difficult to imagine gas for two trucks plus two drivers' wages coming to $1420.00 for four two-hour trips a day. Something, somewhere is missing. Why would Walia take a leave of absence from his saw-milling job where he could earn around $80 a day, without getting up at 4 a.m. and suffering all the undoubted headaches which are part and parcel of the arduous job of contracting? If it is true that "nobody's getting rich on this job" as Walia claims, why do the contractors do it?

If there is no legitimate way to make a good profit from contracting, a contractor may devise other ways of making it pay. They have enormous power over their workers, partly because, until very recently, U.I.C. regulations required farmworkers to be employed by the same employer for at least twenty-five consecutive days, in order to qualify for benefits. The contractors could, and often did, shuffle workers round from farm to farm, so that many workers could never meet U.I.C. requirements. This practice has been eliminated, however, by the new regulations, which count contractors as permanent employers.

There are several allegations of particular 'scams' practised by contractors. Many complaints concern the practice of deducting U.I.C. contributions from workers' wages. Then, at the end of the season, some contractors have feigned hard times or even bankruptcy, telling the workers they must pay the $500 or so outstanding, or else they will be in trouble with the government.
As mentioned above, given that as the season progresses it is not worth workers' while to continue working for diminishing returns to their labour, contractors have been known to withhold their wages till the end of the harvest. This was easy before the Employment Standards Act as there was no law requiring weekly, two-weekly or monthly payment of wages to farmworkers.

Much worse than this practice is the less common, but still evident, 'scam' of withholding wages altogether. When badgered by workers, contractors can, and allegedly do, write bad cheques and disappear. As this is only a criminal offence when purchasing goods, all the worker can do is file a civil suit and try to seize the contractor's possessions. As there is nothing in writing, it is very difficult to prove anything. If the contractor has transferred his assets to his wife or other relatives, virtually nothing can be done. 48

Jim McDowell cites another 'scam' in a Vancouver Free Press article:

At the end of the year a dishonest contractor may also skim off the workers, withholding tax, or demand a kick-back. If the contractor withheld $500 from the worker, he might send in $100 and pocket the rest, with no records to keep him honest. 49

It must be noted, in all fairness, that such practices are by no means common to all contractors. Nor are such practices the exclusive preserve of contractors. One of the C.F.U.'s first cases involved a Steveston truck farmer, Douglas McKim. From March 1978, McKim had employed Nachhtter Singh Sidhu and his family of six to pick strawberries, raspberries, cabbages, potatoes and cauliflowers. Their duties also included planting and weeding his four hundred acres of fields. McKim promised to pay the four adults $3.50 an hour and the two teenagers $3.00 an hour - top wages for farmwork. When the Sidhu family finally quit in November 1978, they had collected only $9,200, with wages of $31,000 due for 10,107 hours of work. The Sidhus, after exhausting negotiations, and latterly pleas, with McKim, turned to the Farmworkers Organizing Committee (FWOC) for assistance. Stuart Rush, a law-
yer acting on the Sidhus' behalf, filed suit against McKim in the Supreme Court of B.C. McKim declared bankruptcy, with eight other judgments against him. The FWOC's information picket lines outside McKim's three fields were unable to force him to settle his debts.\textsuperscript{50}

The final area in which contractors have significant control over workers is concerned with immigration. In some cases, the contractor has sponsored the worker's entry into Canada, and thus holds the threat of deportation over the worker's head. There is no concrete evidence of the practice of bringing people from the Indian sub-continent, but the present author has heard several stories of people coming over from villages without visas, but being 'taken care of' by well-dressed Sikhs who seem to hold some sway with immigration officers.\textsuperscript{51} While it would be inadvisable to imply, and unlikely to be the case that individual immigration officers may have 'deals' with contractors, there are provisions in immigration laws which permit workers in 'special categories' to be 'imported' when necessary. The Canadian Government, for example, allows West Indians to come to work in the tobacco fields of Southern Ontario under special seasonal contracts. Workers finding themselves in such a 'special category' also find themselves in a markedly inequitable power relationship with their sponsors.

There are viable solutions to the problems of the contract system. The C.F.U.'s answer is modelled on the United Farmworkers of America's hiring hall system, where the Union acts as a central pool and takes on the responsibilities currently undertaken by the contractors. In fact, the Union is already supplying labour to several farms through its limited hiring hall system. For example, at Bell Farms Ltd. of Richmond, Jack Bell claims that productivity and efficiency have actually risen since the Union assumed the functions of the contractors. This increased productivity may be explained by the greater reliability of the Union over the contractors. Many farmers
interviewed complained that they had been abandoned several times by contrac-
tors before harvesting had been completed.

However, most farmers seem to be afraid of a loss of autonomy when it
is suggested that the Union might take over the contractors' job. "Better
the devil you know than the devil you don't", sighed one farmer. Farmers
are generally suspicious of the motivations of Union leaders, who are seen as
opportunists who only want to usurp the power of the contractors. For far-
mers, unreliable contractors appear to be preferred to the Union, primarily
because of the vastly increased power the Union would have in allocating,
withdrawing and controlling the labour force. Farmers fear that they would
be at the mercy of the Union during strikes. In effect, this would mean a
reversal of the current situation where farmworkers are, by and large, at
the 'mercy' of the growers and contractors.

Summary

This chapter has discussed the living and working conditions character-

istic of farm labour in B.C. The cabins of the Fraser Valley are generally
cramped, unsanitary and ill-equipped. The working conditions described con-
tribute to the status of farmwork as the third most dangerous occupation in
Canada. Responsibility for this situation has been attributed partly to the
growers and contractors (who control the immediate conditions) and partly to
the inaction of the provincial government and its ministries.

B.C.'s Provincial Ministries of Housing, Health, Labour, Human Resources
and Agriculture have regulations for health, safety, workers' compensation,
sanitary and safe housing, pesticide use, minimum wages and so forth, which,
however, are not enforced on farms. Farmworkers have been either simply omm-
itted from protection of certain acts, or specifically exempted. In some
cases, laws exist which could be applied to farmworkers, but are not. In
other cases, legislation could be redefined or amended to include farmworkers, but thus far has not been altered.

This lack of enforcement continues in the face of two Royal Commissions' recommendations (in 1952 and 1956); a Coroner's report and recommendations (1980); a C.F.U. brief identifying conditions which could be incorporated into presently unenforced regulations; a Municipal by-law for housing safety and sanitation provisions which requires approval from the Ministry of Health before it can become operative (1982); a C.F.U. recommendation for government housing for farmworkers (1981); and several studies on the effects of pesticides on humans. The government has refrained from enforcing existing pertinent regulations (or instigating new ones) in spite of the fact that its own interministerial committee accepted some responsibility for the non-enforcement of regulations.

All of the above has left the farmworkers to depend on the unreliable 'goodwill' of the farmers and contractors to ensure that farmworkers' living and working conditions meet the basic minimum standards granted by law to all other workers in B.C. It is because farmers and contractors have not ensured safe and equitable conditions of labour that the farmworkers have become increasingly disaffected over the past few years, and this is a partial explanation for the emergence of a union for farmworkers. It is to this subject, the unionization of B.C.'s farm labourers, that we now turn.
Footnotes

1. Andy Sidhu of the Canada Farm Labour Pool at Abbotsford estimated that there are some 6000 farmers in the Fraser Valley. However, most of the white farmers are in dairy farming or cereal crops. Meanwhile, there are about 150 East Indians, most of whom are in fruit and vegetable cultivation. There are almost 300 raspberry farms, and about 100 strawberry farms.

There are several possible explanations for the preponderance of East Indians in the berry/fruit/vegetable business. First, dairy farming is not practised in India, and so East Indian farmers have no tradition or experience of it. Second, most of them have only recently become farmers within the last 15-20 years, having saved money from other occupations. Berry farming has the advantage of being a relatively easy market to break into, with low initial and yearly capital outlays to be made. Third, fruit production is not nearly so time and energy-consuming as other types of farming, so farmers have more time to pursue other interests, and often, other careers.


4. Ibid.


7. Seven farmworkers were interviewed in the Abbotsford/Clearbrook area. However, as with many people interviewed, they wish to remain anonymous - fear of harassment was the reason cited.


9. Ibid., p.18.


11. Ibid., p.4.

12. See By-Law 2261 of the Municipality of Matsqui.


15. Ibid., p.5.


19. Quoted in an interview by the Vancouver Sun, August 31, 1981.


23. "Agricultural Pesticides and Health Survey Results", (Abbotsford-Matsqui Community Services Project, October, 1982), passim. See also "Farmworkers and Pesticides", (unpublished presentation to the Occupational Health Symposium at U.B.C., December 22; 1982).


25. John Warnock, researcher for the "South Okanagan Environmental Coalition", interviewed by The Farmworker, April, 1981.


27. Reasons, Ross and Paterson, op. cit., chapters 8-12.


32. Information provided by Charan Gill. The B.C. Federation of Agriculture's pesticides committee chairman, Dave Hobson, has suggested that an information package be distributed to all B.C. farmers. The package would cover storage of pesticides; labels and warnings on containers; handling and disposal of empty containers; the metric system; recognizing poisoning symptoms; calibration of sprayers and worker re-entry to sprayed areas. The Farm Labour Pool at Abbotsford has begun a course on the use of pesticides and this will hopefully prevent a great deal of unnecessary pain and suffering.

33. Ann Farrell, "The Other Side of the Farm Labour Controversy", in the Vancouver Sun, Sept. 13, 1982. The 15c figure comes from a survey for the Ministry of Labour conducted by economist, Colin Ackroyd, who investigated 40-50 farms in the Fraser Valley in 1981, examining labour contracting procedures and production records. From the season's total production figure, Ackroyd subtracted
the early and late season figure (because of the difference between picking times). An average piece-work rate was established at 15c a pound, to allow the picker on piece-rate "the opportunity to match what would be earned at the minimum hourly rate of $3.65."


37. Interview with Chouhan, Nov. 24, 1982.


41. Labonte, op. cit., p.10.

42. Information supplied by the C.F.U. and corroborated by many newspaper reports - for example, the Financial Post, July 26, 1980.


44. Province, Aug. 22, 1980.

45. These figures represent very conservative estimates of workers' earnings. For example, suppose an average worker picks 2 flats an hour for ten hours a day (most farmworkers work 12-14 hours a day). At $3.15 per flat for 20 flats, that comes to $63.00. 82 workers earning $63.00 a day = $5166.00 30% (the usual average contractor's cut) = $1548.80.

Of course, during the peak the contractor may take more and off-peak may take less. It also depends on how many workers the contractor controls. But even halving the expected profits to average out for slack times, a contractor like Walia would still earn $600-700 a day.

46. The U.I.C. rule 16 was changed on Aug. 16, 1982. Contractors are now considered permanent employers. Note that the 25 day rule never applied to carpenters, electricians, longshoremen or other workers engaging in itinerant employment.

47. Three farmworkers interviewed said they had experienced this themselves, and a further five reported similar experiences of friends or family members.


50. Ibid., p.13.

51. I have heard such rumours from a number of sources, including 2 farmworkers,
(who were very reluctant to discuss the matter), friends returning from India and members of the East Indian community. Of course, it is all hear-say - there is no proof. Significantly, however, two immigration officers I spoke to were somewhat reticent on the point, but they did not deny the practice outright.
CHAPTER FOUR
"UTHAN DA VAILA" - (A TIME TO RISE)

This chapter will trace the formation and progress of the Canadian Farmworkers Union from its birth in 1979, as the Farmworkers Organizing Committee (or FWOC) to the present. Whereas Chapter Three discussed the salient issues which are the basis of the C.F.U.'s platform, the present chapter will focus on the participants in the conflict, their philosophies, their goals and the strategies they have employed in pursuit of them. Finally, the chapter will present a brief chronology of the more significant events which have taken place during the C.F.U.'s struggle for legitimacy.

Everything Is Possible, Nothing Can Be Done

The conditions under which B.C.'s farmworkers labour have been a source of concern within Vancouver's East Indian community for many years. Lively discussions were regularly held in coffee shops, the gurdwaras (Sikh temples), house parties, or any social occasion where concerned individuals found themselves with like-minded individuals. However, while most debates tended to conclude that the situation was atrocious and that something really ought to be done about it, no one seemed keen to assume the responsibilities of the role of leadership. It was generally assumed that action was the responsibility of government, which would, sooner or later, have to deal with the issue. Besides, some people felt that yet another East Indian organization would only further divide an already factionalized community.  

The difficulties of organizing farmworkers were attributed to several factors. Farmwork, being largely a seasonal activity, depends on a labour force drawn from many scattered communities throughout B.C. The migratory labour force is predominantly female, geographically isolated, ethnically segregated and numerically weak. It is also transient, with workers join-
ing and leaving the occupation sporadically. In addition, very few workers depend on their earnings from farm labour as primary income. Since earnings are supplementary to total yearly family incomes, the issue is not one of survival, so that farmworkers may not have sufficient incentive to try to improve their conditions. Farmworkers, particularly those who have had agricultural experience in India, generally have low expectations, and are accustomed to the paternalistic structure of working relations characteristic of "East Indian culture". All of these conditions in combination reinforce the traditionally unorganized and politically powerless situation of farmworkers.

Yet eventually, in 1978, a group of three concerned Indians decided to "brave the odds" and take on a leadership role. Charan Gill (who was to become Secretary of the C.F.U.) describes a "heated 'dare' session, at which three hours of brainstorming and soul-searching took place". As a result, Raj Chouhan, Charan Gill and Harinder Mahill decided to:

...take on an advocacy role that would attempt to organize farmworkers. A primary feeling of ours was that true solidarity with the oppressed meant fighting at their side to transform their objective reality...  

Raj Chouhan's involvement with the farmwork issue has been described in Chapter One. Although he had not been politically active in India, Chouhan had been a member of the Indian People's Association of North America (IPANA) in Vancouver for a year or two. This is where he renewed contact with Mahill, whom he had known previously in India. In the mid-1970's, Mahill was working in the lumber industry, and had become active as a shop-steward with the International Woodworkers of America (IWA). In 1979-80, Mahill was a full-time official of IWA, and was delegated to spend a significant proportion of his time working for the FWOC. Charan Gill, meanwhile, was a social worker who had, and has, affiliations with groups ranging from the B.C. Association of Social Workers (BCASW) to the B.C. Organization to Fight Racism (BCOFR). Of the three, only Chouhan had had no previous organizational experience,
though this was soon to be remedied.

In the Beginning

The group's first task was to gather as much information as possible, in order to make an assessment of the situation, to identify the issues (and prioritize them), and to determine appropriate strategies. The information was to be gleaned primarily from conversations with farmworkers, with a view to finding out what the workers themselves identified as their grievances, who they held responsible for their situation and what they thought could be done.

The group soon discovered the existence of the Labour Advocacy and Research Association (LARA). This was a government-funded project run by a few labour lawyers and including John Borst, formerly of the United Farmworkers of America. LARA's primary purpose was to help farmworkers collect unpaid wages through small claims courts. This task proved difficult, particularly as working terms or records were never written, making it hard to prove that the contractor have even employed the worker, much less withheld wages. In addition, contractors often declared bankruptcy or simply disappeared. Farmworkers themselves, often newly-arrived, illiterate immigrants, were intimidated by the idea of recourse to the courts (with the criminal undertones implied), especially if they were not certain of their status in Canada. In any case, at that time small claims courts represented the only hope for farmworkers who felt that they had been cheated or treated unfairly.

Chouhan, Gill and Mahill worked closely with LARA over the remaining months of 1978, assisting with English-Punjabi translations, as well as cases. Gill reported a case-load of seventy-eight within four weeks. Word spread quickly throughout the Lower Mainland that LARA's services were being made more accessible by the availability of Punjabi-speakers. This experience was a source of education for Chouhan, Gill and Mahill:
The information-gathering was three-pronged: data about workers, contractors and growers was collected. This helped us to understand the interdependence between these three parties. We found out how much acreage was under cultivation at various farms to assess labour and production needs. We discovered that the growers and contractors had exploitative attitudes towards the workers. They did not treat them with respect, and the workers had low morale and feelings of hopelessness.

The group became aware that, apart from the 'exploitative' relationship between employers and workers, the latter were also the victims of bureaucratic 'red-tape':

...they were caught in the middle of two powerful institutions - the Workers' Compensation Board and I.C.B.C.... The buck was passed from one to the other, without any results or help to the victims [of accidents or occupational illnesses].

Adhering to Paolo Freire's maxim that "rights are never given, they are always acquired by conquest", the original group decided that it was time to form an organization of some kind:

The extent of these oppressive conditions convinced us that they would not end easily. We began to believe that rights for farmworkers would only be achieved through years of struggle through their own organization.

In November 1978, Chouhan, Gill and Mahill held a meeting in Surrey, which was attended by fifty farmworkers. A follow-up meeting was organized in December at the IWA headquarters, which featured a film by the United Farmworkers of America (UFWA). The time seemed ripe for organization, as a significant number of farmworkers had expressed support for the emerging leaders' many hours of effort and obvious dedication. At this point, a fully-fledged union was not planned. The organization was rather meant to be a formal recognition that a group of people existed who had common grievances and goals, and who were willing and able to mobilize support for the achievement of those goals. Eventually, a meeting was held in February 1979, which elected the Executive of the Farmworkers Organizing Committee, which now had eleven members.
The newly-formed FWOC had a number of short-, mid- and long-term goals. According to Gill and Chouhan, the short-term goals were to continue the work they had begun with LARA, helping to collect unpaid wages, resolve U.I.C. problems and co-ordinate the services required by farmworkers. The mid-term goals were to raise consciousness, organize and mobilize farmworkers. An important part of consciousness-raising would be to expose the lack of legislative protection, to create public awareness of the issue and to build support for 'the cause'. It was hoped that this would pressure the government to extend existing legislation to farmworkers. The long-term goals of the FWOC were to "build links with the trade union movement in order to solidify the strength and effectiveness of a union for farmworkers".

Creating a sense of common consciousness and purpose was perhaps one of the more daunting tasks faced by the FWOC. Initially, this was done by talking to farmworkers in the fields, in their homes (or cabins on farms) and in the Sikh temples. It was pointed out to individual workers that thousands of other farmworkers shared their experience, and that they were one of only two groups of workers in B.C. denied workers' compensation and minimum wages. By identifying a group sharing a common language, cultural heritage and employment experience, and by comparing the group's circumstances, wealth and status with those of other groups, the FWOC was able to create a measure of 'consciousness of kind' among farmworkers. Colourful Punjabi cultural programmes were featured at meetings and events, and the Punjabi drum was used at demonstrations, "to give a cultural coding to the militancy".

The main enemy identified by the FWOC was the labour contractor. As a number of farmworkers had had first-hand experience of the vagaries of the contract system (described in Chapter Three), and as many of them had had problems collecting their wages, they were able to recognize the FWOC's
analysis of the situation. Farmers, meanwhile, were not seen so much as en­
emies as mere participants in the system, who had their own problems. Ultim­
ately, however, the FWOC saw that while farmers and contractors could change their individual practices, farmworkers' rights could only be guaranteed by extensions of labour legislation. Therefore, the government was to be the FWOC's ultimate target for pressure.

The third major task faced by the Committee was that of convincing farm­
workers that sufficient power could be mobilized and strategies developed which could effectively produce a change in conditions. To this end, the Committee members described the struggle and achievements of Caesar Chavez and the United Farmworkers of America, which had undertaken collective action and used the tools of strikes and boycotts to great effect in California. Mobilization of the workforce, the enlisting of public support and recogni­
tion as a legitimate body were posited as the pre-requisites of success. In addition, the FWOC tried to convince farmworkers that participation in the struggle was laudable: farmworkers would not just be fighting for their own benefit, they would be fighting 'injustice'.

Strategies of Resistance: Phase 1 - 'Going Public'

We immigrants who till the soil and harvest the crop of Canada came to this country because we believed it would be a land of opportunity, justice and equality. We came here with great dreams. We have seen the seeds of those dreams grow into a bitter bitter harvest. A harvest of discrimination, a harvest of poverty, a harvest of sickness, a harvest of death.  

The immediate strategy of the FWOC was to 'go public', in the hope of achieving some quick results which would inspire the confidence of farmwork­
ers. Because the Committee members felt that "a drastic change in status re­
lationships was required", they decided that "the initial mode of interven­tion had to be a contest or disruption in order to highlight the issues".
In March 1979, the FWOC sponsored and participated in a National Film Board film about farmworking conditions in the Fraser Valley. Entitled "A Time to Rise", the film was intended to be used both as an organizing tool and as a public information vehicle, aimed at winning public sympathy. Its emphasis is on the farmworkers themselves, rather than the leaders. The film also devotes significant time to interviews with farmers and contractors, who are given the opportunity to air their views on farmwork conditions and unionization.

On April 19th 1979, the FWOC held a public meeting, which addressed the issues of long hours, low wages, lack of sanitary facilities, pesticides, the piece-rate system and the contractor system. Gill observed that "the existence of these conditions seemed to startle the general public". The following day, an article entitled "Valley Farmers Practise Slavery" appeared in the *Vancouver Sun*. The government's response was almost instantaneous. The incumbent Minister of Labour, Allan Williams, ordered an investigation into farm labourers' working conditions to "ascertain whether there is any exploitation, and the extent of it". The timing of Williams' move coincided with an upcoming provincial election campaign. However, the eventual results of the investigation are unknown.

Next, the FWOC planned to enlist public support via an extensive press campaign designed to highlight living and working conditions. It was hoped that the government would be 'persuaded' to extend existing laws to cover farmworkers, once the 'unpleasant truth' was exposed and the legitimacy of the FWOC's claims was recognized. The support of the media was essential and easily attained. The archaic conditions of farmwork made good copy, if nothing else. Newspaper articles appeared with increasing regularity, and the FWOC was also featured on several television news reports.

The Committee then made contacts with church groups, community organ-
izations, student groups and the gurdwaras, many of which were to make small donations of funds. Two university professors and several lawyers from the B.C. Law Union joined the FWOC to offer support and legal advice. The FWOC also took out membership of the National Anti-Poverty Organization. Eventually, in May 1979, the Committee set up a modest office.

One of the main hurdles to creating and sustaining public support was the counter-attack posed by farmers, who claimed that unionization would mean higher wages and therefore higher food prices. The FWOC submitted a brief to the Minister of Labour, deploiring low wages and unsatisfactory working conditions. To the Committee's surprise, the incumbent Minister of Manpower and Immigration, the late Mr. Robert Andras, stated in an interview with The Columbian that "the doubling of farmworkers' wages would add only 1.5 cents per pound to the retail cost of tomatoes...". For a time, it seemed as if persuasion might be a sufficient strategy.

The FWOC's first major conflict, and its first victory, came on July 17, 1979. It began with a dispute between labour contractors, Surjit and Ajit Grewall and Mukhtiar Singh, owner of Mukhtiar Growers Ltd. of Clearbrook. Mukhtiar, claiming that the Grewalls had supplied inadequate labour to his operation, withheld payment to the contractors, who then could not pay the $100,000 owed their workers for six weeks' labour. The workers requested assistance from the FWOC and on July 17th, several dozen Committee members joined two hundred workers on the picket lines. At first, Mukhtiar offered only $40,000, but after two hours of negotiations, handed over a cheque for $80,000, which Chouhan cashed and distributed. Mukhtiar also issued a public apology for calling the FWOC leaders "dumb bastards" who "only want to become big-shot union bosses" in an interview with the Vancouver Express.

Raj Chouhan issued the following warning:

If this grower, or any other farmer raises this kind of problem again, we'll be right back out here.........
We're going to keep on educating workers how to use their strength to demand their rights. 23

With the taste of victory still fresh, a meeting was held at Abbotsford Airport Hall at the end of July, attended by two hundred people. Chouhan used the opportunity to expose "a cynical scheme cooked up by the farmers who are frightened by the success of the organizing effort among farmworkers". 24 The farmers had proposed to sponsor Vietnamese refugees to do farmwork, allowing them to live in the cabins "in exchange for a little plucking and tugging". 25 Chouhan replied to threat of replacement by 'boat people':

The proposal uses a humanitarian mask to cover a most contemptible exploitative intention. Given the present atrocious conditions of work for farm labour and the fact that there are no laws to protect them, this proposal amounts to an attempt to reap profit from the misery of people cast away from their own homeland. 26

Two weeks later, the FWOC received its first threats of violence. Despite rumours allegedly spread by farmers and contractors that "if a member of the Organizing Committee got killed, nobody would be talking about a union", 27 forty-two workers marched through the fields of Matsqui. They were hoping to inspire other farmworkers to join the FWOC, as well as make a public statement to the growers and contractors of their intention to organize in defence of their rights. According to some officers of the FWOC, there have been many such threats of violence. Some unidentified parties have been responsible for a number of incidents, including breaking windows, setting fire to union members' cars and making threatening telephone calls. 28

The winter of 1979 was spent signing up members, staging rallies and lobbying the government. In November 1979, the FWOC "helped [farmworkers] channel their anger...over governmental inaction", 29 by organizing a march to the Social Credit Convention. Premier Bennett and Labour Minister, Allan Williams, were presented with a seven thousand name petition, calling for the extension of labour standards legislation to farm and domestic workers. 30
The demonstrators were assured that there would be action during that session of the B.C. Legislature, which would protect farmworkers. Direct confrontation of members of the government in conspicuous places was a tactic designed to force the latter to make public commitments. If action was not then forthcoming, the government could be 'embarrassed' for having reneged on a promise made to a group, whose legitimacy had been sanctioned by the signatures of seven thousand members of the electorate.

The technique of persuasion of the Social Credit government thus far had only succeeded in securing a vague promise that the situation would be investigated and, if warranted, rectified. In fact, the technique was far more effective in gaining support from other groups. The FWOC had already started making overtures to the trade union movement, initially through the IWA, and later the B.C. Federation of Labour (BCFL) and the Canadian Labour Congress (CLC). But ironically, it was not until the formation of the rival Farm Workers Defence Committee (FWDC) that the CLC added $40,000 to the $10,000 donation from the B.C. Government Employees Union. Whether or not the CLC's sudden willingness to back the 'moderate' FWOC was a result of the animosity between the CLC and the more 'extreme' left-wing groups, the entry of the FWDC into the arena had significant effects upon the organizational environment of Chouhan's group. The latter felt, with some justification, that the rival FWDC had 'muscled in' after the original group had laid the foundations of agitation for farmworkers' and the public's support.

The FWDC had been formed on March 23rd 1980, by the East Indian Defence Committee (EIDC), itself an off-shoot of Hardial Bains' Communist Party of Canada, Marxist/Leninist (CPCML). The FWDC was formed, according to its constitution, "to fight to defend the basic interests of farmworkers against all their exploiters and oppressors", and was to be "a militant union... completely free of the corrupt practices and class collaborationist policies..."
of the B.C. Fed. and C.L.C.". The established rivalry between IPANA/BCOFR on one side, and CPC-ML/EIDC on the other, extended to a bitter battle between Chouhan's Farmworkers Organizing Committee and Charles Boylan's Farm Workers Defence Committee. The negative effects of this struggle were fourfold. First, the FWOC diverted a great deal of valuable time and energy to denouncing its rival when it needed to be focusing on the 'real' issues; second, it further polarized the East Indian community into 'camps' (even though the EIDC did not carry mass support among the community); third, it undermined the credibility of Chouhan's group, as confusion increased as to who represented what, how and why; and fourth, it alienated a number of farmworkers who found themselves unwilling prizes in a pitched battle for their allegiance, so that they mistrusted the motives of both sides. The positive effects of the battle, however, were that it identified the FWOC as the more moderate group, and this led to positive support from the trade union movement (in the form of funds) and positive sanctions from the government (in the form of recognition as 'the better of two evils'). However, the FWDC's competition was soon to be dissipated, as it was subsequently de-certified at Cho's Mushroom Farm, after its small membership there became disillusioned.

The entry of another 'enemy' (FWDC) forced members of the original group to re-examine both their analysis of the situation and their strategies. Charan Gill noted that it was important to "empathize with the targeted elements" in order to assess more accurately "where pressure may be applied most tellingly". This was an area in which the FWOC experienced great difficulty, for as Gill pointed out, "identifying with the target might also rob one of the ability to act as assertively as necessary". The retention of emotional commitment and at the same time, objectivity, was made especially difficult by the fact that FWOC members were working three or four hours daily after their regular jobs, as well as during weekends and general holidays.
In order to protect volunteers from 'burn out' and to sustain momentum, it was decided to establish a formal union with a full-time staff.

The Canadian Farmworkers Union: Phase 2 - Recognition and Bargaining

The Canadian Farmworkers Union, Local #1 was founded on April 7th 1980, at the Carpenters' Hall in New Westminister. One hundred and fifty farmworkers attended to elect union officers and to pass the Union's first resolutions. On April 6th, an enthusiastic crowd of five hundred and fifty people attended a rally in Vancouver to celebrate the founding of the first union for farmworkers in Canada. Chouhan said at the rally:

For farmworkers, the achievement of a union will mean an end to the long history of being the most underpaid and exploited section of Canadian workers. For the Canadian labour movement, this achievement will be a landmark because it will mean the entrance of a very significant section of the workforce into the movement of organized labour. 39

Caesar Chavez of the United Farmworkers of America had come from California to offer the CFU his full support and to give B.C. growers a warning:

Farmworkers have been forgotten around the world. Now our duty, our obligation, is to make a common cause, to stand, to work, to struggle, to end poverty and exploitation, and above all, to gain recognition. 40

Chavez also recommended strikes and boycotts and pledged full UFWA support when the time came. He noted that although "they [the growers and government] have the money, we have the time". 41

Recognition was the key to the CFU's next strategy in conflict. Formal recognition as a bona fide trade union would lift the organization from the status of pressure group to that of a legitimate bargaining unit. Thus, on June 26th 1980, the CFU announced that it had made its first application for certification by the Labour Relations Board (LRB), having signed up 55% of the employees of Jensen's Mushroom Farms Ltd. of Langley. Jensen contested the Union's application, arguing that it was not a bona fide union and that
it did not represent 55% of his workforce. But after two days of hearings, the LRB ruled in favour of the Union and granted the CFU the right to serve notice to "bargain in good faith".

Good faith seemed to be the element lacking in the Driediger affair, the CFU's second major struggle. On June 29th 1980, an information picket line was set up outside George Driediger's Fort Langley strawberry farm. The Union claims to have held discussions with Murray Driediger, son of the owner and manager of the farm. The Union claims to have reached an agreement with him in April, setting the piece-rate at $3.00 a flat. Chouhan also claims to have a seven-page document detailing the terms of the agreement. However, Driediger later denied all knowledge of the agreement, maintaining that "this union hasn't been certified to represent anybody". He also stated that although he too dislikes the contract system:

...there's just no bloody way we could afford it...Once we sign a contract we can't use non-union labour, and with a perishable crop like ours, one strike and you can kiss your year goodbye.

Driediger is one of the many Fraser Valley farmers who is threatening "next year mechanization".

The CFU's second certification was at Country Farms Natural Foods Ltd. of Richmond, in August 1980. As at Jensen's, allegations were made of unfair labour practices. The Union claimed that there was a series of lay-offs, suspensions and verbal harrassment soon after the application was made. In early August, the CFU sought and won an LRB ruling against Ron Ferguson, owner of Country Farms. Five employees were laid off after certification, though Ferguson attributed the lay-offs to a slump in business.

The year 1980 ended with the Union's first collective agreement, at Bell Farms Ltd., an eighty-hectare cranberry farm in Richmond. Certification had been granted on September 5th 1980, and the two-year contract signed in November provided a 30% wage increase for twelve regular employees. Increases
of between $1.87 and $2.47 an hour boosted farmworkers' pay to $6.67 an hour in January 1981, and $7.67 in January 1982. Seasonal workers received $5.80 an hour in 1981 and $6.67 in 1982. But the most important feature of the Bell Farms contract was its elimination of the middle-man and the introduction of a union hiring hall. Other highlights of the agreement are: union shop; seniority provisions; a standard eight-hour day; forty-hour week plus overtime; health provisions giving workers full insurance coverage; workers' compensation protection; pay for statutory holidays; equal pay for work of equal value; and a provision that work presently done by bargaining unit members should not be contracted out. 47

The first National Convention of the CFU was held on March 27-29 1981, at Douglas College, New Westminster. Twenty delegates attended, representing workers from the Fraser Valley, the Okanagan and Ontario. The Convention reviewed the Union's past year and passed a number of constitutional and policy resolutions. One of the most important resolutions re-emphasized the Union's intentions of setting up hiring halls and a transportation system. It also adopted a resolution urging the National Executive to begin an organizing drive in the Okanagan and in Ontario, where there were 'branches' of sympathizers, but few members. 48

Less Talk, More Action: Phase 3: Coercion

Although now recognized as a legitimate bargaining agent, the CFU, still bereft of a contract with Jensen, served its first strike notice on April 7th 1981. The goal of the strike was to win equal pay for women farmworkers, who were earning $4.00 per hour, in contrast to the men's $6.50. 49 Meanwhile, picketing began at Country Farms. Chouhan announced that White Spot Ltd. and McDonald's Consolidated Ltd. had both agreed not to handle Country Farms' alfalfa sprouts. 50
As picketing continued at Jensen's, violence once again broke out in a skirmish between Jensen's daughter, Annie Hall, and Raj Chouhan. Each claimed they had been assaulted by the other and both pressed charges, although the R.C.M.P. later decided not to pursue the matter, as the incident had occurred on the picket line. Indeed, the Jensen picket was marred by sporadic outbursts of violence. Scuffles broke out between contractors and non-union 'scabs', members of the Jensen faction and picketers. Bradley Hall, Jensen's son-in-law, accused the CFU of "picking on" white farmers:

Why don't they pick on their own people? All the problems with working conditions are with East Indian farms, yet we're the ones they're after.

In response, Judith Cavanagh, a CFU organizer, claimed that "East Indian farmers have no special spot in our hearts", and wondered how the Union could be accused of pro-East Indian bias when the fight against labour contractors (who are virtually all East Indians) took precedence over the fight against farmers. In any case, accusations were hurled freely at each side from the other. The CFU charged Jensen with reckless driving at pickets. On the other hand, Brad Hall claimed that threats against four non-union East Indians forced him to lay them off "for their own safety". On Sunday, May 16th, the CFU defied a Richmond Council order to remove a picket trailer from Country Farms.

On April 19th, an information picket line was thrown around the "Naam", a vegetarian restaurant and retailers in Vancouver owned by Ron Ferguson (owner of Country Farms). Ferguson had offered the ten full-time workers at Country Farms $5.94 an hour (from $5.25), whereas the Union was asking for $6.67. One month later, the "Naam" was forced to lay off a third of its workers, and Ferguson (who had once admired Chavez) claimed, "It's a personal thing. They're after me".

The CFU's next contract was with Reimer's Nurseries Ltd. of Yarrow.
The contract boosted wages from $6.50 to $8.25 an hour, covering twenty-five full-timers and fifteen seasonal workers. Under this contract, the employer was to pay 80% of the costs of medical and dental insurance, plus extended long-term disability plans and group life insurance. The contract also granted a $75 signing bonus, union security and seniority rights.

In August, the CFU won an important arbitration against Reimers' Nurseries, regarding a case of unfair dismissal. However, its biggest success was the signing of a contract with Jensen's. It has yet to be explained why that particular struggle continued for a year, when under Section 70 of the B.C. Labour Code, the LRB can impose a first collective agreement for one year.

Grappling with the Law

Although the right to unionize is now seldom questioned, there are many ways in which the process of unionization can be hampered. It was to this issue that the CFU now turned its attention. If farmers do not want their workers to unionize, they can prevent union representatives from gaining access to the workers' living quarters. On September 29th 1981, Sarwan Boal (a CFU organizer), told the LRB that he had been refused access to eight Fraser Valley farms. This was the first occasion on which the Board held a hearing under Section 4 (2) of the Labour Code. This section gives the Board the power to grant access for union representatives to employees who reside on the employer's property. Peter Sheen, representing the eight growers, argued that Section 4 (2) was only meant to apply to isolated fishing and logging camps. He argued that the Union had already had "plenty of access", as they had been on the farms several times before. However, the union representatives had been violating the law - they had been trespassing. In effect, the farmers and their counsel were advocating that the CFU continue to break
the law, rather than have legal access. By making organizers resort to surreptitious means of informing the workers of the benefits of joining the Union, the farmers would retain the power to throw them off their land by whatever means they saw fit.

The LRB's decision of March 1982 noted that the Union had tried to reach farmworkers resident on their employers' properties through advertisements in the *Indo-Canadian Times* (a Punjabi language newspaper), on local radio programmes and in the Sikh temple in Abbotsford. However, Stephen Kelleher, (Chairman of the LRB) noted in his decision that farmworkers were isolated by: (a) the low literacy rate among East Indian farmworkers (who therefore could not read leaflets); (b) their lack of transportation to take them off the farmers' land; (c) the unavailability of telephones; (d) the long working hours; and (e) the paternalistic 'protection' of women workers by farmers.

The decision to grant access was based on the issue of whether workers living on farms had less opportunity for contact with the Union than non-residents. Kelleher was careful to point out that it was not a question of whether workers had had adequate exposure to the Union, as farmers had argued. Negotiations were to decide on terms regarding the number of Union representatives to be given access, the amount of time they should be permitted on the property, the area where meetings should take place and whether employers should be notified of visits. However, the access question is by no means settled. A series of appeals was submitted by the growers contesting the terms, and they are still pending.

However, the most important concession to the farmworkers on the legislative front was the *Employment Standards Act* of August 1980. The provisions of the Act (and its shortcomings) have been discussed in Chapter Two. The Act's effects and implications for the CFU are manifold. First, whether the government intended the Act as a positive sanction (or reward) to the efforts
of the Union is debatable, but the Act has certainly had the effect of legit­
imizing the CFU's claims. Employment Standards represents both a recognition
that there is a problem and an acceptance by the government that it is part­
ially responsible for that problem by its legislative discrimination. Second,
although the Act's provisions do not cover all the CFU's demands, it repre­
sents a compromise of sorts. The CFU had in fact demanded more than it could
realistically expect to gain all at once, and in so doing had secured a par­
tial victory by inducing a change in the government's willingness to concede.

From the Union's point of view, the importance of the Act lay in the fact
that it showed the CFU to be an effective pressure group, which could get re­
sults, and get them fairly quickly. On the other hand, the Employment Stan­
dards Act has also, to an extent, pre-empted the need for further large-scale
agitation by the Union. Not only has the public been led to believe (by the
claims of Social Credit Ministers) that the Act has eliminated exploitation
of farmworkers, but farmworkers themselves may see no further point in fight­
ing for minimum wages, now that they have some legislative protection. They
may also calculate that the government has 'given in' quite quickly, but has
now given all it intends to give, considering how small and (still) relative­
ly powerless a group farmworkers are.

Finally, the last important concession for farmworkers was a change, at
the Federal level, in Unemployment Insurance Contributions, Regulation 16.
This egregious regulation excluded farmworkers from U.I.C. coverage if they
did not work for the same employer for at least twenty-five consecutive days,
and if they did not receive from him at least $250 in earnings. Only farm­
workers were subjected to this discrimination, and the only way to get around
the regulation was to "submit to the stranglehold of a contractor". On
August 31st 1982, the Federal Employment and Immigration Minister, Lloyd
Axworthy, announced the revocation of Regulation 16, making thousands of farm-
workers eligible for U.I.C. benefits:

This change makes the U.I. program more equitable and responsive to economic conditions...we felt that the principle of equity demanded that these workers be insurable in the same way as all other Canadian workers. 68

The principle of equity was the basis of the CFU's argument in its recourse to Human Rights legislation. In July 1981, the Union had filed a complaint with the B.C. Human Rights Branch, claiming that the exclusion of farmworkers from hourly minimum wage provisions contravened the equal opportunity clauses of B.C.'s (and Canada's) Human Rights Codes. There was some doubt at the time as to whether an investigation of the claim was within the Branch's jurisdiction. Consequently, it was not until February 1983, that a report was finally released, nearly two years after the previous Commission had determined its authority to conduct an investigation. 69

The Report, entitled "What This Country Did To Us It Did To Itself", criticized the government's inaction:

In failing to act on the previous Commission's recommendations, and allowing more than three months to elapse before naming new Commissioners, the government seemed...to be signalling their indifference. Some people were openly suspicious that the Commission hearings were simply a means of diffusing concern, or merely a sop to reformist groups. 70

The Report also made specific connections between the historical discrimination levelled against East Indians in B.C., and the historical discrimination against farmworkers:

When an argument ties clear and pressing problems of safety and unequal treatment before the law to a Canadian 'tradition of quiet racism', the Human Rights Commission must naturally take notice and respond. It is this kind of climate that feeds indifference to the continuance of inequitable laws. Arguments of farm economics ring false when the workers who consistently bear the brunt are ethnic minorities. 71
The Commission's Report recommended that:

1. All exclusions and exceptions of farmworkers currently in place under the Employment Standards Act be removed, allowing farmworkers to enjoy the same protection as other workers;

2. The Industrial Camp regulations be implemented and applied immediately;

3. Laws should be enacted to guarantee that all Canadian farmworkers have adequate showers, change rooms and laundry facilities. Also, protective clothing and equipment should be required where necessary.

Further recommendations were included to extend Workers' Compensation, health, safety and compensation protection to farmworkers (see Appendix B, page 128).

The importance of the B.C. Human Rights Commission Report lay in the fact that this is the first time that the living and working conditions of farmworkers have been acknowledged as a matter of human rights, enshrined in fundamental law. However, as noted in Chapter Two, the government has been quite adept at ignoring the recommendations of its own investigatory committees, so it is difficult to predict whether any action will be taken on the H.R.C.'s recommendations. In the current climate, one suspects not.

Where Now?

The CFU's current situation raises many questions about its ability to survive in the immediate future. The Union has chosen to pursue public and trade union support and in so doing has neglected to solidify its support base among farmworkers themselves. Its membership now stands at sixteen hundred, out of a farm labour force of some thirteen thousand. In addition, the Union is acutely short of funds and may be forced to vacate its office on Imperial St., New Westminster, for smaller premises. With its attention trained upon the more pressing issue of financial solvency, the Union's organizing ability may well be compromised for the present season (May to September), and its long-term effectiveness may be hampered if the momentum of last summer is lost.
Another problem with which the Union is beleaguered is the 'burn out' syndrome. A number of the original activists have left the organization recently, at least temporarily. Charan Gill, for example, is now taking a degree in Social Work at the University of British Columbia and is no longer active with the Union. Sarwan Boal (another leading CFU organizer) is taking a 'leave of absence'. Harinder Mahill, meanwhile, is now working for the Ministry of Labour as an Industrial Relations Officer and is no longer a member of the 'inner circle' of the Union. However, these problems notwithstanding, it is possible that the Union will emerge from the current morass in fighting form. Fortunately for the CFU, the government has not removed all of the sources of grievances, and as long as there is still a 'cause', the Union may be able to continue mobilizing support, and in the long-run, strengthen itself.

Summary

This chapter has outlined the complex process by which the Canadian Farmworkers Union came into existence, initially as the Farmworkers Organizing Committee. It has discussed the participants of the struggle, the hurdles they have had to overcome and the means by which they have done so. We have seen the Union pass through four distinct phases of development and strategies, and it has been shown how the choice of each strategy has been limited by the objectives of the Union, calculations of the climate of 'public opinion' and whether the government is likely to concede, and ultimately, the power of the organization as its support and resource bases grew.

The first strategy of conflict employed was an attempt to 'persuade' the government to extend protective legislation to farmworkers by preparing factual information, presented in such a way that the justice of 'the cause' would be revealed. In the second stage, when persuasion had proved fruitless,
the Union attempted to 'embarrass' the government through an extensive press campaign, designed to expose the inequities of the system and the compliance of all relevant parties in the maldistribution of economic and 'symbolic' benefits. Government inertia was argued to be partially responsible for the 'archaic' conditions of farmwork. The Union saw itself as offering the government an opportunity to compensate for past ills, an offer which, however, the government consistently refused. As the CFU acquired more public and trade union support, it attained legitimacy through recognition as a certified representative of an aggrieved group. But when cooperation by the growers was not forthcoming and collective bargaining failed, the Union utilized its fourth strategy of conflict, namely coercion, through strikes and pickets.

The chapter has shown that in the initial stages, the Union's lack of resources and power forced it to lobby the government as a pressure group fighting for highly-regarded ideals of social justice and equal opportunity. However, as the Union became more established, it turned its attention to the growers and contractors and the mechanics of collective bargaining as a trade union.

On the other hand, the government's response to pressures from farmworkers has traditionally been to ignore them. If 'embarrassed', the government has set up investigatory committees, although in the event, these bodies have inspired little in the way of legislative innovation. However, the Employment Standards Act represents a compromise. The government has been forced (arguably by its unwillingness to be seen as a discriminator) to make some concessions to the farmworkers. Yet at the same time, Employment Standards has pre-empted, to an extent, the CFU's raison d'être, and was followed by an attempt to persuade farmworkers (not to mention the public) that substantial changes have been made. This, combined with the fact that the Union
still has only sixteen hundred members, seems to put in doubt the Union's immediate survival. However, if it manages to weather its current financial problems, the CFU will start from a better bargaining position (or, according to our model, a higher demand curve) at the beginning of the next round of conflict. The CFU has proved itself to be an effective pressure group, and Employment Standards represents a realization of some of the Union's goals. If it is politically shrewd, the CFU will be able to use the latest reversal of government promises to extend Workers' Compensation to farmworkers to great advantage. It is possible that the Union will return to some of its former strategies which require fewer resources to be effective. Clearly, there is still a long way to go before farmworkers are protected from abuse in employment by legislation in the same way as other B.C. workers are.
Footnotes

1. There are an estimated fifty or so organizations within the East Indian community of the Lower Mainland, ranging from the Punjabi Society to the India Music Society, from the gurdwara committees to India Club. However, there have not been many specifically political groups, apart from the Ghadr Party, which, however, was an extension of the Indian Independence movement and whose focus was always on Indian politics. Traditionally, the Khalsa Diwan Society, which ran the temples, was also the political arm of the community, taking up issues such as immigration policy and discrimination. However, the KDS was split in 1952, and a more traditionalist group, the Akali Singh Society, set up another temple. In 1973, the East Indian Defence Committee (EIDC) was formed as a response to the growing racial tension, and violent attacks against members of the community. The EIDC allied itself with the orthodox faction in the gurdwara dispute, took up the Ghadr gauntlet and added fuel to the conflict. Thus, in the 1970's, other specifically political organizations emerged from the East Indian community. The East Indian Citizens of Canada Welfare Association (EICWA), an organization formed in 1952 to approach government with one voice over immigration policy, had, by the early 1970's, become virtually defunct. Its successor was the National Association of Canadians of Origins in India (NACOI). A nationwide organization, NACOI was set up by the Federal Government (wearing its Multiculturalism hat) in order to centralize political lobbying and to facilitate bargaining with one organization per ethnic group. However, as NACOI's leadership and support came almost exclusively from the Indo-Canadian elite, the organization has never enjoyed widespread community support, although most other groups do affiliate, if only as a gesture, with NACOI. The leadership prefers to take a "low-key" approach to politics, and indeed, has only recently declared its support for the C.F.U. NACOI's rival, meanwhile, is the Indian People's Association of North America (IPANA), which is the only other "pan-East Indian" organization in Canada. IPANA was formed in the early 1970's as a response to Indira Gandhi's Emergency in India, though in the mid-1970's IPANA extended its concerns to Canadian issues. IPANA's approach to political organisation is, like NACOI's, low-key. Because it has a predominantly Marxist bent, the Association prefers to offer help and support to other groups, rather than take a prominent position in the community's political life. Nonetheless, although there are only a few political organizations within the East Indian community, they do represent a number of specific and different political tendencies, which prevent the community from uniting as a cohesive political force. As Ujjal Dosanjh, lawyer and N.D.P. candidate said, the East Indian community of B.C. is "politically hyperactive". For more detailed discussions of these organizations and Sikh politics, see Verne Dusenbery's "Candian Ideology and Public Policy: The Impact on Vancouver Sikh 'Ethnic' and 'Religious'Adaptation", (unpublished, Department of Anthropology, University of Chicago, 1979); Adrian C. Mayer, "A Report on the East Indian Community in Vancouver", (University of British Columbia mimeo, 1959); or Ujjal Dosanjh's unpublished paper, "The East Indian Community of Vancouver: A Look from Within".

2. By "ethnically segregated" I am referring to the 'insulation' technique practised by the governments of British Columbia since the entry of East Indians to Canada. This has been discussed in Chapter Two with respect to legislative discrimination, which barred East Indians from certain
occupations, from the franchise and from effective participation in the political life of the society. Although those statutes have now been repealed, the 'tradition of quiet racism' to which the B.C. Human Rights Commission's Report of 1983 referred, has, to a large extent, perpetuated the isolation of the East Indian community, which has never become fully integrated into white Canadian society.


4. Ibid., p.5.

5. This has been briefly discussed in footnote #1. Several people interviewed felt that in fact, the C.F.U. was a 'front' organization of IPANA, which was looking for a way to win widespread community support. However, the membership of Raj Chouhan and Harinder Mahill in IPANA does not prove that the C.F.U. is, or was, IPANA's brainchild. Union officers are understandably reluctant to overplay the importance of their membership of IPANA, as it is known for its contingent of Marxists (of various ilks), whereas the C.F.U. is primarily a trade union in the ordinary sense of the term.

6. Harinder Mahill, now President of IPANA, interviewed on March 16, 1983.

7. B.C.O.F.R. was created in 1975 as a counter-attack on the racial violence of that time. Charan Gill is its President. B.C.O.F.R. has had several 'differences of opinion' with its rival, EIDC, members of which have reportedly attacked B.C.O.F.R. demonstrations (according to Mahill and Gill).


9. Ibid., p.5.


11. Ibid., p.6.


17. Ibid., p.8.


22. The Vancouver Express, June 22, 1979.

23. The Vancouver Free Press, August 3-9, 1979, p.8.

24. The Farmworker, August 1979, p.16.


26. Raj Chouhan, quoted by The Vancouver Sun, August 16, 1979.

27. Raj Chouhan, quoted by The Vancouver Sun, August 27, 1979.

28. Several C.F.U. organizers interviewed reported physical violence and verbal harrassment by telephone calls. In the summer of 1981, Sarwan Boal, a union representative, was attacked in a bar while out celebrating the formation of the Union, and was hospitalized for several days. There is no proof, however, that such attacks are committed by farmers, contractors or their associates. So far, the Police have not managed to detain any suspects.

29. Gill, op. cit., p.11.

30. Karen Sanford referred to this assurance on May 2, 1980. (See B.C. Legislative Assembly Debates, May, 1980: 2245.)

31. Ibid.


33. The Communist Party of Canada/Marxist-Leninist, was founded by Hardial Bains and holds Albania to be the only true communist state in the world. It is difficult to ascertain the size of its membership, and its leaders, such as Charles Boylan, are reluctant to disclose the party's sources of funds, or indeed, support. The Party is generally viewed as an extreme left group, and there is little evidence, despite its claims that it is a mass party, that the C.P.C./M.L. has a significant following.


35. Ibid., p.3.

36. This is not to argue that without the entry of the F.W.D.C., the F.W.O.C. could not and would not have eventually been recognized. But in the long and precarious business of proving a new union's legitimacy and ability
to sustain itself and its support, the existence of a 'fringe' party rivaling the efforts of the more 'moderate' group often secures support for the latter group, if only because of the established trade unions' fear of losing their own relatively conservative support base.

37. Gill, op. cit., p.11.

38. Ibid.


41. The Vancouver Sun, April 28, 1980.

42. Peter Sheen, interviewed October 18, 1982. Sheen had represented eight growers of the Fraser Valley who had contested union access to the farms in 1981/2, but had left the case to take up a position at the Labour Relations Board. According to Sheen, recognition as a bona fide union involves an investigation by the L.R.B. into the applicant's formation, membership, goals and constitutions to determine that the organization is a trade union, as opposed to a purely political organization. According to the B.C. Labour Code, a union, once recognized as such, must have a 55% majority of supporters (ascertained by a vote) in a workplace before a certification can be granted.

43. Under the Labour Code, notice of an intention to bargain must be served to the employers, and the server must also have the intention to bargain "in good faith" and be committed to any agreement that is reached as a result of fair bargaining. Where parties become deadlocked (or where one party is not prepared to negotiate), the Board is empowered to impose a first collective agreement for one year.

44. The Province, June 29, 1980.


46. The Vancouver Sun, August 7, 1980.

47. The Province, November 20, 1980.

48. The Farmworker, April, 1981.

49. Like women in other areas of employment, women farmworkers are still subject to wage differentials on the basis of sex. "Equal pay", the goal of the strike at Jensen's, refers to equal pay for comparable work.

50. The Vancouver Sun, April 15, 1981.


52. The Globe and Mail, April 27, 1981.

53. The Vancouver Sun, April 28, 1981.

60. This has been mentioned in footnote #43. Members of the CFU who were interviewed seem to think that while the Board could not avoid granting certification under the Labour Code's provisions, the L.R.B. was not keen to assist the Union above and beyond the imperatives imposed by the Code. It was thought that because the area was such a controversial one, the Board wished to be seen as impartial, and thus preferred the parties to reach their own agreement. Jensen's was seen more as a test-case than as a normal case of collective bargaining.

61. The Province, September 29, 1981.

62. See Labour Relations Board of B.C. - Decision no. 11/82, p.4.

63. Ibid., p.5.

64. Ibid., p.14.

65. Barry Dong, counsel for the eight growers, was unwilling to disclose the grounds of the growers' appeals, although one of the growers (who preferred to remain anonymous) indicated that he disapproved of the Union's tactics and was intending to make it as difficult as possible for them to gain access to his farm.


69. The B.C. Human Rights Commission was set up by the New Democratic Party Government's only term in office from 1972-5. Its original head was the radical Kathleen Ruff, who was replaced by Hanne Jensen by the next Social Credit government. The incumbent head of the Branch is Dr. Charles Paris. Hanne Jensen had taken legal advice in 1981 to determine whether the Branch was legally qualified to deal with the CFU's complaint. After long deliberation, it was decided that the Branch was entitled to investigate the complaint and a small-scale inquiry was begun in May, 1981. However, government re-shuffles led to changes in the Branch's personnel, so that the final report did not appear until February, 1983.


71. Ibid., pp.10-15.
72. Ibid., p. 23.


74. Information supplied by Harinder Mahill.
Previous chapters have argued that because British Columbia's farmworking population has been politically powerless in the past, there has been no incentive for governments to switch their political coquetry from the growers to the farmworkers. However, the 1980 Employment Standards Act does represent a shift in policy in favour of farmworkers. Thus far, this shift has been explained as being a result of pressure exerted by the CFU upon the Social Credit government. The CFU's publicity campaign succeeded not only in attracting public support, but also in embarrassing the government, which was made to appear, at the least, negligent in its protection of disadvantaged groups. It was argued that the hasty amendments to the laws affecting farmworkers were prompted by the government's anxiousness to avert public censure, as well as to perhaps "take the sting out of the Union's tail".

However, this chapter argues that another explanation for the amendments was the imminence of the passage of the Canadian Charter of Rights and Freedoms, under the Constitution Act of 1981. Undoubtedly, the repercussions of the Charter will be felt for many years to come, as litigation determines the functional definitions of the Charter's provisions. However, the brief discussion presented here will deal only with the Charter as a causal factor in the legislative changes being made in compliance with the non-discrimination clauses of the Charter. Finally, the chapter discusses the notion of discriminatory purpose versus disproportionate impact, with a view to resolving the question of the validity of the 'political expediency' argument.

"The People's Package"

The Canadian Charter of Rights and Freedoms of 1981 is now on its way to becoming 'fundamental law', which means that any legislation proposed by
Federal or Provincial governments which does not conform to its provisions is automatically considered invalid. A preliminary version of the Charter had been offered for public debate in 1980, a draft which, although somewhat altered during the course of the next year, contained the same basic elements as the final version. Given that discussions of the Charter and the Constitution were held between many levels of Federal and Provincial governments (and especially between the provincial Premiers and Prime Minister Trudeau, who had been pressing for such a document for many years), the B.C. government was aware of the anti-discrimination clauses which were bound to be included in the Charter. It also seems likely that the government bore the Charter in mind when it passed the Employment Standards Act, as it appears to have reversed many (though not all) of the discriminatory provisions against farmworkers which have existed since the turn of the century.

Of the "Equality Rights" provisions of the Charter, it can be predicted that Section 15 is the one most likely to be raised in litigation. Section 15 reads:

15 (1) 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.

This section is of particular relevance to farmworkers because, as we have seen in previous chapters, they have never enjoyed either equal protection or equal benefit of the law, and as East Indians, have been discriminated against on the basis of race (as demonstrated in Chapter Two).

Section 15 (1) is particularly important in that it contains the "equality before the law" (from interpretations in English and Canadian constitutional law) with the American Fourteenth Amendment "equal protection of the law" clause. It also introduces two novel clauses affirming both "equality under the law" and "equal benefit of the law". Although these clauses have
still to be legally defined, we have also seen that farmworkers have certain-
ly never enjoyed equal protection of (labour) laws, or equal benefit of the
case that one of the B.C. government's motivations for Employment
Standards was the imperative of the Charter's non-discrimination clause is
verified by Section 32 (2). This section delays the coming into force of
Section 15 for three years. Peter Hogg, in his comparison of the Charter
with the previous Canadian Bill of Rights, identifies the function of the
clause:

   The reason for the delay is apparently to give the two
   levels of government time to review their statute books
   and enact any amendments required to eliminate discrimi-
   narory provisions. Therefore, for three years from
   the coming into force of this Charter there will be no
   effective equality clause in the Charter. 4

The inclusion of Section 32(2) in the Charter indicates that both provincial
and federal levels of government are aware that legislation which discrimi-
ates against minorities (of the categories mentioned in Section 15) is cur-
rently in operation on the statute books. 5

However, the clause which has caused most concern among civil libertar-
ians is the "override" clause. The Charter, by Section 33, expressly permits
the Federal Parliament or any Provincial Legislature to exempt a statute from
compliance with certain provisions of the Charter. Section 33 (1) provides:

33 (1) Parliament or the Legislature of a province may
expressly declare in an Act of Parliament or of
the Legislature, as the case may be, that the
Act or provision thereof shall operate notwith-
standing a provision included in s.2 or ss.7 to
15 of this Charter. 6

The "notwithstanding" clause means that a government wishing to impose
a limit to a guaranteed right or freedom (or wishing to preclude any legal
question under Section 1 of whether or not a particular statute is a "reason-
able limit" which can be "demonstrably justified in a free and democratic society") has the power to do so. It is likely that popular opinion will act as a constraint against the liberal use of Section 33, but its existence nonetheless provides a means of escape from the Charter without the necessity of a constitutional amendment. It remains to be seen whether the inclusion of Section 33 will in fact undermine the meaningfulness and purpose of the Charter altogether. Whatever the case, it is clear that the Charter offers no unassailable guarantee of equality (or other) rights for minorities.

The Burden of Proof

As mentioned above, Section 1 of the Charter is important, not only because it allows limitations to be imposed on certain 'rights', but also because it requires such limits to be justified according to certain principles. Section 1 provides:

1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society. 7

Although the terms of the section are somewhat vague and have yet to be defined by the courts, it is certain that it refers to the burden of proof. There will still be a presumption of the constitutionality of laws as in the past, when the party alleging the invalidity of a statute had to discharge the burden of proof. However, there is a shift in the burden of proof as presented in Section 1. The "reasonable limits" prescribed by law will have to be "demonstrably justified" by the party imposing the limits, namely, the Federal and Provincial governments. Herbert Marx predicts that Section 1:

...will certainly give litigants a fairer chance in contesting enactments that may be inconsistent with the Charter. Statutes, Orders, regulations and by-laws that are on their face offensive to the Charter would apparently be presumed invalid unless ruled otherwise. 8
This shift in the burden of proof in favour of litigants follows recent developments in American constitutional law. With the growth of the Civil Rights movement in the 1960's, the U.S. Supreme Court began to address the problem of discrimination practised under the cover of facially neutral laws or official decisions. The central question was whether the emphasis should be placed on the presence of a racially discriminatory purpose on the part of the decision-maker or on the disproportionate impact of the action taken under a facially neutral law or official decision.

The case of Washington v. Davis in 1976 was highly significant in that it addressed the question of whether proof of discriminatory purpose is necessary or sufficient. The Justices concluded that a showing of disproportionate impact, standing alone, was sufficient for a constitutional claim of invidious discrimination. However, they did not feel empowered to declare laws unconstitutional unless a discriminatory purpose was established. In advocating reliance on a discriminatory purpose rather than a disproportionate impact, the Court re-affirmed the value of equal treatment, while recognizing that the harmfulness of a disproportionate impact was extremely important.

However, the emphasis on discriminatory purpose is possibly inappropriate on several grounds. First, it is very difficult, if not impossible, to prove intent in the absence of self-confessed statements from the alleged discriminator. John Gates notes that "rarely is a racially discriminatory purpose susceptible to direct proof", and that it is unreasonable "to assume that illicit motives would always be conceded either in testimony or in the decision-making process". Further, Justice Black considered the discriminatory purpose standard to be pointless:

[T]here is an element of futility in a judicial attempt to invalidate a law because of the bad motives of its supporters. If the law is struck down for this reason rather than
because of its facial content or effect, it would presumably be valid as soon as the legislature or other relevant governing body repassed it for different reasons. 12

In other words, if a statute is invalidated for illicit purposes, it can nonetheless be readopted for licit purposes. Such an action would be consistent with governments' common practices of re-enacting laws with different wording, presenting different rationales for essentially the same policies.

There is some debate over the utility of the discriminatory purpose standard, given that it is very difficult to prove intent. A possible remedy to this problem, however, would be to require that the alleged discriminator prove that the discrimination was neither intentional or racially motivated:

By shifting the burden of proof to the defendant, the presumption ensures the presentation of all relevant evidence and places the burden on the party who is best able to gather such evidence. 13

Although some legal scholars have maintained that discriminatory purpose can be proved by inference, it is almost always possible for governments to create rationalizations for policies, arguing that discriminatory impact was neither foreseen nor planned. As Justice Stewart pointed out in 1979:

'Discriminatory purpose'...implies that...the state legislature selected or reaffirmed a particular course of action at least in part 'because of', not merely 'in spite of' its adverse effects on an identifiable group. 14

Concerning minorities in Canada, or in our case, farmworkers, it was possible to prove racialist motivations in the past, when it was freely admitted that certain laws were designed to keep "Asiatic" groups out of Canada, or at least out of potentially powerful economic and political positions. But today, such motivation, if present, can only be 'proved' by inference. At best, it could be argued that policies have been enacted in spite of their adverse effects on farmworkers in recent years.

Such an argument shifts the discussion to the relative weight of adverse effects in determining whether laws are to be invalidated on the grounds that
they are pernicious to the interests of minorities. It is possible for a law to discriminate by intent, while not substantially harming the interests of any particular group. Therefore, the cases that concern us here are those where the impact of discrimination is disproportionate and harmful. As Justice Skelly Wright noted:

[T]he arbitrary quality of thoughtlessness can be as disastrous...to private rights and the public interest as the perversity of a willful scheme. 15

Glenn Manishin has discussed the cumulative effects of discrimination against minorities, suggesting that poverty, poor education and racial isolation are largely a consequence of past discrimination:

...racially disproportionate impact itself is to a large extent a consequence of...the long history of intentional discrimination...since the era of slavery...Facially neutral practices that have a racially differential impact reflect a subtle form of racism in the sense of blindness to minority welfare, a prejudice often perceived as the functional equivalent of intentional discrimination by virtue of the practical harm it causes. 16

Manishin argues that where the harm caused by the disproportionate impact is high, and facially neutral practices therefore conflict substantially with the goal of racial equality, defendants should have to "demonstrate the practice's substantial and immediate relation to neutral ends". 17 Manishin also proposes that in order to measure the degree of harm caused, courts should consider:

(1) the relative degree of racially disproportionate impact;

(2) the absolute number of individuals affected disadvantageously;

(3) whether the group in question is disadvantaged by other procedures in the same field of activity;

(4) whether the racial group/s in question suffers from the continuing effects of past discrimination. 18

In the case of farmworkers, the disproportionate impact is substantial, particularly as they are continually singled out for exemptions from protective
legislation. Farmworkers are, without question, disadvantaged by other procedures in their 'field' of activity (as shown in Chapter Three) and moreover, they are undoubtedly suffering from the effects of past discrimination. With compound discrimination combining past and present negative effects on the living and working conditions of farmworkers, it seems academic to have to prove discriminatory purpose on the part of legislators. Manishin further suggests that where certain interests are served by policies which have disproportionate impacts (that is, where negative impact is admitted but justified on the grounds of 'expediency'), courts should consider:

(1) the extent to which important social objectives, such as an efficient allocation of resources or the delivery of essential services, would in fact be served by continued use of the procedure;

(2) the availability of alternative procedures that could serve the 'neutral' policy aim without resulting in racially disproportionate impact;

(3) the extent to which any racially disproportionate impact was foreseeable. 19

As far as farmworkers are concerned, it is clear that disproportionate impact has been intentional, given that they were chosen from ethnic minorities who could easily be exploited and treated as cheap labour, and given that laws have been enacted specifically to herd certain minorities into the lowest-paying, lowest status jobs. The historical basis of the current situations of such minorities as farmworkers will certainly be of central importance to future litigation, and the morality of discrimination will have to be measured against the economic interests of farmers and agribusiness.

What Use Is Law?

Thus far, it has been implicitly assumed that legislation represents the optimal vehicle for the redress of unjustified discrimination against ethnic minorities. There can be little doubt that while, by and large, the
law is an effective means of controlling behaviour, it is not equal to the task of inducing a change in people's hearts. This limitation is particularly important when one considers ethnic minorities, because the most harmful forms of discrimination they suffer are in areas beyond the reach of the law. Institutionalized and individual racism are two forms of unequal treatment which can prevent ethnic minority members from participating in certain occupations, social activities or the 'normal' life of the larger community - they can deny the means towards making an adequate living and acquiring status.

The B.C. Human Rights Commission Report of February, 1983, addressed this problem of the limitations of the law and concluded that:

[The law deals with the possible; it seeks to change what can be changed. If we do not change people's attitudes, at least let us change their actions.]

If the law "embodies, to some extent, the leading notions of morality in a community", then there is scope for the law to affect morals. On this point, Polier, in "Law, Conscience and Society", concluded:

I believe that the reduction or elimination of discrimination will inevitably lead to the reduction and elimination of bias and prejudice. I submit that external attitudes and behaviour influence internal convictions and emotions...This conclusion rests basically on my conviction that a life of mental reservations, of hypocritical compliances and hidden hostilities is a burden unbearable for the majority of decent human beings.

If it is true that external behaviour influences internal convictions, then the question is, what can more certainly create and perpetuate racism (and thus, discrimination) than state legislation, which not only sanctions but enshrines discrimination?

Summary

This chapter has argued that one explanation of the passage of the B.C. government's 1980 Employment Standards Act is offered by the presence of the
non-discrimination clauses of the Canadian Charter of Rights and Freedoms. This explanation was supported by the existence of Section 32 (2), which postpones the operative date of the Equality Rights clauses for three years, apparently to give both levels of government a chance to revise their discriminatory statutes. Two possible catches to the Charter are the "non-obstante" and the "reasonable limits" clauses (sections 33 and 1 respectively), which allow Parliament or the provincial Legislatures to exempt certain categories of people from certain "rights" under certain circumstances.

Now that the value of equality (of treatment and opportunity, protection and benefit of the law) has been affirmed by the Charter, however, it seems highly likely that racial discrimination will be the subject of much litigation. Apart from individual suits concerning personal discrimination, one can expect a number of cases to challenge legislative discrimination. The question is then bound to arise whether proof of a discriminatory purpose is required, or whether proof of a disproportionately harmful impact is sufficient to invalidate discriminatory laws. In any case, the burden of proof seems to be shifting in favour of litigants contesting the validity of statutes, leaving the onus on alleged discriminators to prove that negative effects are either not intentionally harmful, or are a justified sacrifice to some greater end.

For groups such as farmworkers, victims of both historical and current discrimination, the Charter could be of immense significance, as it will give them recourse to 'fundamental law', and could decide how they are to be treated in the future. It is tempting to believe that the situation of groups like farmworkers is an unfortunate hang-over from the past. In fact, it is an unfortunate consequence of our willingness now to continue to treat some unseen and seldom heard sections of the Canadian community as second class citizens. It is this not-so-benign neglect that the Charter will challenge.
Footnotes


2. See the Canadian Charter of Rights and Freedoms, in The Constitution Act of 1981, Section 15 (1). In fact, during the debates over the equality clauses, one of the main concerns was that facilities could not be provided for the physically disabled in all public places without great expenditures by Federal and provincial governments. The prohibition of discrimination on the basis of race was apparently a foregone conclusion, and disagreements generally concerned the wording of the section.


5. Of course, there may be many laws which inadvertently discriminate against ethnic minorities, in conjunction with other factors, such as poor education, which may deny access to certain jobs etc. The compound effects of discrimination in multiple areas may incapacitate minority group members to a massive extent, so that the sum of discriminatory effects is much greater than each of their separate parts. However, for the purposes of compliance with Section 15, Federal and provincial governments can only try to remove elements of discrimination which can be demonstrated as having direct effects.

6. It is significant that the "notwithstanding" (or "non-obstante") clause applies to the "equality rights" sections (as well as to Sections 2, 7, 8, 9, 10 and 11), which are probably the most important provisions of the Charter.

7. Section 1 clearly suffers from the common inexactitude of many such constitutional documents, presumably to allow for differential interpretations through the courts, until a workable definition is found. Unfortunately, with no definition of "reasonable limits" included in the Charter, and no criteria by which limits must be "demonstrably justified", it may be possible for offending governments to concoct justifications, secure in the knowledge that any state enactment is presumed constitutional unless proven otherwise. It is also interesting to note the unquestioned assumption that Canada is, in fact, a "free and democratic society", and that there will be general agreement on the point. It would be difficult to assume that those minorities who bear the brunt of various forms of discrimination have the same definition of "free and democratic" as is taken as a given in the Charter.

9. John B. Gates, "The Supreme Court and the Debate Over Discriminatory Purpose and Disproportionate Impact", in the Loyola Law Review, Vol. 26, 1980, p. 597. Washington v. Davis (1976) was a case where the plaintiffs, two black men, had failed a written examination for the Washington Police Department, and claimed that the language of the test discriminated against members of ethnic minorities. The court of appeals found that while the test was used throughout the Civil Service to measure verbal ability, it bore no demonstrable relation to job performance. The court therefore ruled that, under the employment provisions of Title VII of the Civil Rights Act of 1964, the disproportionate impact, standing alone, invalidated the test.


16. Ibid., p. 168.

17. Ibid., p. 169.

18. Ibid., p. 169.

19. Ibid., p. 170.


We want justice... We want a fair wage and an end to discrimination. We want the same rights as other people have in Canadian society. No favours, just equality. No special privileges, just recognition under the law. No separate classification, just the right to be workers.

(Raj Chouhan, President of the CFU)

The notions of 'justice', fairness, equal treatment, 'rights' and recognition have been some of the underlying themes of this thesis. They have also formed the foundations of the Canadian Farmworkers Union's struggle for parity with other workers in British Columbia. It has been shown (in Chapter Two) that discrimination against farmworkers in B.C. has historical roots in discrimination against Asian immigrants, dating from the early 1900's. Racial prejudice against "Asiatics" was manifested in a series of governmental measures which opened and closed immigration of 'non-whites' as the economy warranted. East Indians were at times allowed entry to B.C. specifically to become farm or domestic labour. However, they were denied the franchise (at Federal, provincial and municipal levels) and their access to certain occupations was prohibited by law. In the absence of labour and housing standards for farmworkers, the government further ensured that farmworkers would remain in a subordinate position by passing the Minimum Wage Act of 1925. The purpose of this act was to channel Asians out of well-paying jobs into low-paying, low-status jobs, namely farm and domestic work. In addition, governments were always careful to include 'escape' clauses in all legislation pertaining to Asians in various occupations.

The results of these measures which either omitted or excluded farmworkers from protective labour legislation are manifested in the present living and working conditions of thousands of B.C. farmworkers. With discrimination officially sanctioned by the law, there have been many opportunities for
growers and contractors to exploit workers (though they have not all availed themselves of these opportunities). The results are: demonstrably inadequate living quarters and sanitary facilities on many B.C. farms; the retention of the archaic piece-rate system, which denies hourly minimum wages and penalizes workers at the mercy of inclement weather or sparse crops at the shoulder ends of the harvesting season; the widespread abuse of pesticides in the absence of minimum safety standards; the lack of Workers' Compensation for agricultural labourers, despite the fact that farmwork is the third most dangerous occupation in Canada.

B.C. governments, especially in recent years, have demonstrated an awareness of the conditions prevalent in farmwork today. The issues, or rather, grievances, have been brought to the attention of the Legislature and government by several M.L.A.s, since at least 1972. Social Credit governments have commissioned studies, most of which have affirmed the feasibility of extending the protective coverage of Workers' Compensation, minimum wages and other benefits to farmworkers. However, it was not until 1980 that action was taken, in the form of the Employment Standards Act.

Meanwhile, the force of farmworkers as a pressure group had begun to be felt, as first the Farmworkers Organizing Committee, and then the full-fledged Canadian Farmworkers Union succeeded in attracting public support for "the cause". The purpose of the struggle was to attain justice, equal opportunity and equal treatment before the law for farmworkers. The means of the struggle were to be a set of strategies and tactics, which were modified according to the Union's increasing strength and credibility. These strategies were two-pronged: on one hand, preliminary (and on-going) strategies attempted to recruit Union members and a following of sympathetic 'other' individuals; on the other hand, strategies evolved which were designed for the conflictual battle with the growers, contractors and ultimately, the government.
The Theory Revisited

The discussion has shown that the theory presented in Chapter One accurately predicted the strategies utilized by the CFU. In the initial stages of organization, the would-be Union adopted strategies designed to create a sense of common consciousness and purpose among farmworkers, to convince them that conditions could and should be changed and to offer means by which economic and 'symbolic' benefits (such as 'rights') could be won. The FWOC appealed to the farmworkers' sense of 'righteousness', the feeling that the struggle against racial discriminators was inherently valuable, regardless of the practical benefits to be won.

The Union's strategies of conflict were also consistent with the predictions of the model. In the first stages of relative powerlessness, the FWOC (then CFU) attempted to persuade growers, contractors and government to initiate changes, by pointing out the 'reality' of farmworking conditions, which the leaders considered to be self-evidently unsatisfactory. However, when persuasion failed, attempts to 'embarrass' the government were made through a press campaign highlighting the incongruities between treatment of farm labourers as against other B.C. workers. This publicity campaign accrued the additional benefits of increased public and trade union support, which resulted in an augmentation of the group's pecuniary and human resources. As the group's power increased and the FWOC gained recognition as a bona fide trade union, the range of available strategies likewise expanded, so that bargaining became the predominant means of attempting to secure benefits for farmworkers. Finally, moving into the sphere of legitimate trade union conduct, the CFU utilized 'coercive' tactics, such as strikes and boycotts.

In order to induce a change in the dominant party's willingness to concede benefits, the CFU normally demanded more than it actually expected to gain. Both the quantity and the quality of desired benefits demanded were
kept higher than expectations warranted, so that resultant compromises raised the Union's position ever higher on successive demand curves (see pages 15 to 16). However, it could be argued that the gains represented by the Employment Standards Act in fact overshot the optimal mark of incremental progress required for the purposes of sustaining the support of the membership.

The model presented in Chapter One proved similarly efficacious in its predictions of the strategies of the other major party to the conflict, the B.C. government. Historically (and currently), B.C. governments have availed themselves of the techniques outlined at various points, and the selection of these techniques has varied with the relative power of the dominant group as against the minority, as well as the climate of white public opinion. For the first half of this century, public antipathy against 'visible' ethnic minorities enabled governments to wield their enormous power without restraint. The 'insulation' technique involved denying such minorities access to certain occupations, the vote, and sometimes the means to earn an adequate living. However, as the winds of public opinion changed and became more 'liberalized', governments switched to sanctions (both positive, such as recognition, and negative, such as denying the right to unionize) and 'persuasion' as the appropriate means of control. The most recent Social Credit government, moreover, has, to an extent, pre-empted the CFU by conceding to most of its demands in one fell swoop (though notably not the most important ones, such as minimum wages and Workers' Compensation).

However, the model has failed on two counts. In the first place, there has been no real attempt to co-opt group leaders (with the possible exception of Mr. Mahill, now an Industrial Relations Officer, though he argues to the contrary). In the second place, in concentrating on active strategies for maintaining dominant group control, the model has overlooked passive strategies. The discussion has shown that rather than take positive steps to
subordinate the farmworkers' pressure group, the government has instead simply ignored its demands and interests for many years. This ability to ignore a pressure group such as farmworkers can be attributed to two main factors. First, Social Credit governments owe a significant proportion of their electoral support to the farming community and consequently must pander to the demands of farmers and their powerful representative, the B.C. Federation of Agriculture. Second, it is clear that the CFU, with a limited membership, limited resources and limited influence within government and bureaucratic circles, is simply not a powerful force to be reckoned with, in comparison to its opposite numbers. Therefore, apart from the fact that there has always been a 'special relationship' between governments and farmers, the former can ignore farmworkers, secure in the knowledge that they are not a significant voting bloc. Consequently, in terms of the action-response dynamic, governments can, and have, been able to leave such subordinate minority groups as farmworkers floundering in isolation. Governments have therefore no incentive to try to return to equilibrium points, because they are not threatened significantly by the minority group. The latter's support base then, can easily dwindle away, as the group is not seen to be achieving any substantial gains.

Implications for the Future

A dwindling support base is one of the problems with which the CFU is currently beset. Its membership seems to have reached a plateau at sixteen hundred, or approximately twelve per cent of the total number of farmworkers who work in the Fraser Valley. There is a number of possible explanations for the curtailment of new recruitment. First, the CFU has never made a concerted effort to enlarge grass roots membership, because it has preferred to 'go public', in the hope of achieving speedy results to establish its credib-
ility and efficiency. It was hoped that achievement would be the spur to enlarged support, whereby farmworkers would be able to perceive the immediate benefits of unionization through action rather than words. However, this hope has 'back-fired' to the extent that the immediate benefits secured by the Union have precipitated the "free rider" problem. For example, many farmers and contractors this season are offering what appears to be a minimum hourly rate (although this may in fact mean that farmworkers will not be able to earn above that minimum) and the employers are now certainly more cautious about paying wages regularly and keeping work records. This means that farmworkers in general are experiencing some of the benefits of unionization, without themselves having to participate in 'the struggle'.

A second explanation of the zero-growth of the Union's membership is the problem of 'burn out'. A number of organizers have dropped out of active participation due to the immense pressures involved in organizing under conditions of adversity. Most Union workers operate after their own jobs, in the evenings and at weekends. A further important consideration is that CFU organizers are voluntary (therefore unremunerated for their effort), and it is difficult to sustain morale.

A third explanation for the staticity of numbers is offered by the still prevalent mode of employer-employee relations practised on East Indian-owned farms. Female workers are still operating under the paternalistic 'protection' of their employers, and, according to farmworkers interviewed, are intimidated by threats of mechanization, should they attempt to unionize. A fourth explanation is that the Employment Standards Act has obviated the incentives of many farmworkers to undertake the arduous and potentially dangerous task of unionizing.

In addition to the problem of sustaining its support base, the CFU currently faces severe monetary difficulties. Although the Canadian Labour Con-
gress is donating approximately $3,000 per month for the upkeep of the New Westminster office, no money is available for full-time paid officials, while many members are unhappy about having to pay $5.00 a month in dues. The two other CFU offices, in Ontario and the Okanagan, have been closed and are no longer viable or active. Although C.L.C. support is forthcoming at present, there is no guarantee that sufficient funds can and will be channelled to the CFU indefinitely. It is possible that if the Union is not seen to be making substantial progress towards becoming financially viable and self-sustaining, the costs of keeping it alive may become too difficult for the C.L.C. to justify to its membership.

The CFU still has only six certifications (out of several hundred farms amenable to unionization in the Fraser Valley) and only four contracts. The largest, most protracted battle for certification was at Jensen's, but the Union has not managed to win at Driediger's, which is one of the largest farms in the Valley. The contracts won only cover about one hundred workers, which is only seven per cent of the CFU's total membership. The relative scarcity of certifications and contracts then, is another factor which detracts from the Union's credibility as an effective pressure group.

However, according to Raj Chouhan, this season there are some ten organizers at work in the Valley, and the Union hopes to win at least two certifications in the coming months. Chouhan appears confident that the Union will be able to survive its present difficulties, although he realizes that it could take several years before the CFU can claim to be a strong organization. Certainly, it would be unrealistic at this point to believe otherwise.

Some Tentative Solutions

There are two categories of solutions which seem imperative at present. On the one hand, there are plausible solutions to the 'problems' which are
at the root of the CFU's grievances. On the other hand, solutions to the Union's immediate problems of survival are urgently needed.

The four outstanding areas which must be resolved in the first category are (1) living conditions on the farms; (2) minimum wages and piece-rates; (3) safety and health standards, especially those directed at the safe use of pesticides; and (4) Workers' Compensation.

The two most likely remedies to the problem of unsafe and unsanitary living conditions are: (a) government-subsidized housing on Crown lands (Charan Gill's suggestion - see pages 48 to 49); or (b) government subsidies to farmers to upgrade present 'accommodation' or to build new units. Of the two, the first seems less practical, if only because it would be more costly. The second solution appears to be more feasible. Grants could take the form of lump-sum payments, where the government contributed a percentage of the total costs of renovation or new construction. Alternatively, subsidies could take the form of tax deductions. Certainly, if government is prepared to provide tax deductions or outright grants to private home-owners for modernization, it could similarly be done for farmers. The government would also stand to make some 'political capital' from a benevolent step designed to rectify the archaic and unsavoury nature of agricultural exploitation.

As far as minimum wages are concerned, the government has seen fit to prescribe minimum rates per pound of produce, and farmers and contractors themselves are beginning to offer the equivalent of hourly rates. There is no reason why a minimum hourly rate could not be implemented, with a supplementary piece-rate to reward faster workers. As labour accounts for only 9% of the total costs of production (and pesticides account for 60%), and as the former Minister of Manpower and Immigration (the late Robert Andras) admitted that the doubling of farmworkers' wages would add only 1.5 cents per pound to the retail cost of tomatoes (see page 77), for example, there seems
to be no reason why minimum hourly rates would be prohibitively costly.

Health and safety standards on B.C. farms are long overdue. In the face of several deaths due to pesticide abuse, many pesticide-related diseases and hundreds of accidents on farms due to unsafe farm machinery and inadequate training, the government has, until very recently, maintained a "laissez-faire" approach to the welfare of farmworkers. Although the government has recently announced the creation of a "farm safety agency", education alone will not be sufficient to ensure that farmworkers can now look forward to a reasonably safe working environment. As well as an education programme, strict regulations are required, along with insurance of enforcement through an inspectorate with the power to impose penalties for non-compliance with the regulations.

Finally, for those cases where injuries occur regardless of safety regulations, farmworkers can and ought to be covered by Workers' Compensation in the same way as workers in less dangerous industries are covered. The B.C. government had considered extension of coverage to farmworkers feasible just one year ago, and has offered no explanation for its failure to honour its promises. The explanation put forward in this thesis is that the reversal was a timely election ploy, designed to woo the farm vote. If this is the case, then extension of coverage is economically, if not politically, feasible. Given that farmworkers suffer the highest rate of occupational disease and injury in Canada, justice alone dictates that their inclusion in the Workers' Compensation is a necessity in a "free and democratic society", as the Charter of Rights and Freedoms proclaims Canada to be.

Indeed, it is possible for the CFU to use the W.C.B. reversal to highlight the government's apparent unwillingness to fend for the rights and interests of minorities. The three-year delay of the operative date of the Equality Rights clauses of the Charter expires in 1984. These clauses affect
groups like the farmworkers, who have suffered historical and contemporary discrimination, and who have never enjoyed equal protection or benefit of, under or before the law. However, it is unlikely that the Social Credit government will be unduly upset by charges of neglect of minorities, given that it has a recently renewed mandate and a huge majority in the B.C. Legislature. Indeed, another development which is disturbing to civil libertarians, is the abolition of both the Human Rights Commission and the B.C. Human Rights Branch. According to the terms of the Budget released on July 8th, 1983, the Human Rights Commission and Branch are to be replaced by an informal agency, which has the right to refuse to investigate complaints if it considers them "trivial". At present, it appears that the Canadian Charter of Rights and Freedoms will have a negligible effect on British Columbians.

In my opinion, the CFU's continued survival will depend upon its ability to carry out several important tasks. First, the Union must develop its grass roots support base among farmworkers, if, that is, it is true that there is strength in numbers. One of the Union's problems is that it has relied from the outset upon the support of individuals other than farmworkers. Indeed, a significant proportion of its actual members are "white liberals" (social workers, teachers, civil libertarians, lawyers and so forth), a fact which may well be more of a hindrance than a help to the Union, as it damages the Union's claim to be a "farmworkers union". One reason why the CFU has enjoyed more success at organizing B.C. (and specifically, Fraser Valley) farmworkers, is the ethnic (that is, East Indian) composition of the farm labour force, and the predominantly East Indian leadership of the Union. If the CFU hopes to use ethnicity as a spur to in-group solidarity, then it may be necessary to discard its white middle-class membership altogether.

Second, the CFU must develop its own resource base and loosen its dependence on other trade unions for monetary support (and this may involve leaving
its large office). Third, the Union will have to decide whether it is to be an external pressure group, which can win concessions by virtue of its own power, as opposed to the influence of powerful 'others' (such as other unions, politicians, etc). Fourth, the CFU might have to revert to some of its former strategies, such as persuasion and bargaining, and will certainly have to look for new and innovative strategies by which to create and sustain group support, and to induce desired changes at the structural and legislative levels. What is certain is that there are no simple answers to the complex process of attempting to organize such a scattered group of traditionally subordinated workers. Likewise, there is no simple winning formula for making privileged others share resources more equitably. The Canadian Farmworkers Union will undoubtedly rely upon the strengths provided by its dedicated, hard-working organizers. It is to be hoped that those organizers will be able to tap the inspiration and creativity demanded by the powerless.

Epilogue

Political developments of the last week raise further doubts about the ability of the Canadian Farmworkers Union to survive in the immediate future. It has already been mentioned that the Social Credit government announced a Budget on July 8th, 1983. The abolition of the B.C. Human Rights Branch (a department of the Ministry of Labour) and the Human Rights Commission is only one of a series of measures taken by the government in violation of its own legislation. The B.C. Human Rights Code is still on the statute books. It is still, therefore, legally required. However, the Commission's officers have been suspended from their duties, although they are being paid until October, when their contract expires. The government has offered no explanation as to why the Commissioners have been so summarily dismissed from service, a fact which does not square well with the government's claim of trying
crub public spending. The suspensions are in direct contravention of both B.C.'s and Canada's Human Rights provisions.

Meanwhile, Bill 3, the "Public Sector Restraint Act", is part of the government's preparations to fire 250,000 civil servants, and the new laws will enable the government to "terminate" public service employees without explanation. Apart from massive cuts in health care, education and other services, the Social Credit government plans to pass a series of twenty-six enabling acts which will in effect take away the hard-won rights of many of B.C.'s citizens from renters to university professors.

The main focus of the multiple-pronged attack, however, is arguably aimed at the trade union movement. The government is trying to make it more difficult to get unions certified, and much easier to get unions decertified. Furthermore, contrary to the common practice of extending old contracts while new ones are being negotiated, the government is now ruling that old contracts will expire on their formal dates. This means that employers will be able to pay their employees anything they like until a new agreement is reached, and this will obviously put more pressure on unions to make hasty agreements. But perhaps the most daring move by the Socreds is an attempt to abolish the idea of minimum wages altogether, for all workers. This would mean that no person offering their skills on the labour market could count on making adequate returns for their efforts.

The cavalier attitude of the Social Credit government in defying their own (and every other government's) laws is remarkable. The utter contempt for human, civil and employment rights displayed by the Socreds leaves little hope for subordinated groups like the farmworkers. Indeed, the question of raising farmworkers up to the status and standards of everyone else in B.C. is now an academic one. The Socreds clearly intend to achieve equality by bringing everyone else down to the level of the farmworkers.
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Appendix A.

Key Findings of the Agricultural Pesticides and Health Survey, (a project of the Matsqui Abbotsford Community Services, October, 1982).

A. Characteristics of the Farmworker Sample (272 farmworkers)

- the majority (69.4%) have worked three years or more in farmwork
- the majority (71.7%) work more than four months per year in the fields
- over half work more than 11 hours per day in the peak season
- 51% make less than $3,000 per year from farmwork
- almost one quarter were over 50 years of age
- the majority do not read or speak English
- 17% have children and three-quarters of those children aged 7-14 are working in the fields with their parents.

B. Pesticide Exposure and Health

- almost one-fifth often breathe pesticide fumes while working
- 8 out of 10 regularly suffer from direct contact with pesticides and a majority (55%) have been directly sprayed
- 79.5% have had to work immediately after a spraying
- more than 25% have had their living quarters sprayed
- 7 out of 10 became physically ill after a direct spraying, yet only 3.3% of growers got medical help for their workers.

C. Pesticide-related Symptoms

- only 7.4% of the sample experienced no symptoms
- 44% had suffered from skin rashes, 47% from itching
- over 50% reported headaches, 35% had experienced dizziness
- 32-52% reported various central nervous system disorders
- 17% suffered from gastro-intestinal problems
- 95% felt that at least some of these symptoms were related to farmwork
- almost 60% of the children farmworking had the same symptoms
- 22% of the light-exposure group had over three symptoms and 44% of the heavy-exposure group, showing a high correlation of exposure to symptoms but also a high level of general exposure for all farmworkers.
D. General

- only 14% were sure that first-aid was available
- almost 70% have no proper wash-up facilities
- almost 80% have no choice but to eat lunch in sprayed field areas
- the vast majority are not always provided with clean drinking water
- 1 out of 5 had missed work due to work-related health problems
- only 8.7% had access to information on what pesticide they had been exposed to
- 88% had been given no instruction as to pesticide hazards.
Appendix B

The B.C. Human Rights Commission fully endorses the following recommendations:

1) All exclusions and exceptions of farmworkers currently in place under the Employment Standards Act be removed, allowing farmworkers to enjoy the same protection as all other workers.

2) That the Industrial Camp Regulations be implemented and applied immediately.

3) Laws should be enacted to guarantee that all Canadian farmworkers have adequate showers, change rooms and laundry facilities. Also, protective clothing and equipment should be required where necessary.

Further, with regard to protection of farmworkers from pesticides, we fully endorse the recommendations made by the B.C. Medical Association (Environmental Health Committee) to the Workers' Compensation Board of B.C. (October 1982). These are:

1) Laws should be enacted to guarantee that Canadian farmworkers have adequate protective facilities as specified by the Workers' Compensation Board.

2) Specific standards should be legislated to govern the specifications, maintenance and inspection of pesticide equipment.

3) The Workers' Compensation Board should undertake to ensure that pesticide applicators and users on farms under W.C.B. jurisdiction are subject to the same certification provisions as those for applicators and users of pesticides on public lands.

4) Farmworkers who enter fields after spraying should be given necessary safety information in a manner understood by them. Safety information should include the identification and hazards of chemicals being used and should be provided to the worker on information sheets. Applicators should ensure that adequate notice is given to high-risk individuals (e.g. pregnant women and young children) on the farm prior to spraying.

5) The Workers' Compensation Board should urge the establishment of legislated minimum re-entry periods and mandatory posting of warning signs after application of certain pesticides. Warning signs should be placed in English and in a form understandable by the majority of workers. A comprehensive list of those pesticides should be drawn up by Health and Welfare Canada in co-operation with Environment Canada and the Federal Ministry of Agriculture.

6) Pre-harvest entry periods should be established, based on residue dynamics, mode of action and the toxicity of each pesticide for both adults and children.
7) Maximum exposure levels should be sought for all pesticides.

8) The W.C.B.'s general provisions concerning first-aid standards should apply to farms based on size and other factors, as they have done for other industries, taking particular note of exposure to pesticides.

9) Suspected cases of pesticide poisoning should be reportable to the W.C.B. and included as a separate category of accident in the accident statistics.

10) The W.C.B. should be encouraged to undertake regular selective monitoring of the environment and work force to ensure compliance with the regulations. The W.C.B. should fund epidemiological studies of workers at risk, in co-operation with other jurisdictions, to avoid duplication of effort.

11) To ensure the ability to conduct meaningful epidemiologic studies, the W.C.B. should require farm operators to keep records of all pesticide applications.

(From "What This Country Did To Us It Did To Itself", A Report of the B.C. Human Rights Commission on the Farmworkers and Domestic Workers, February, 1983, pp. 23-25.)