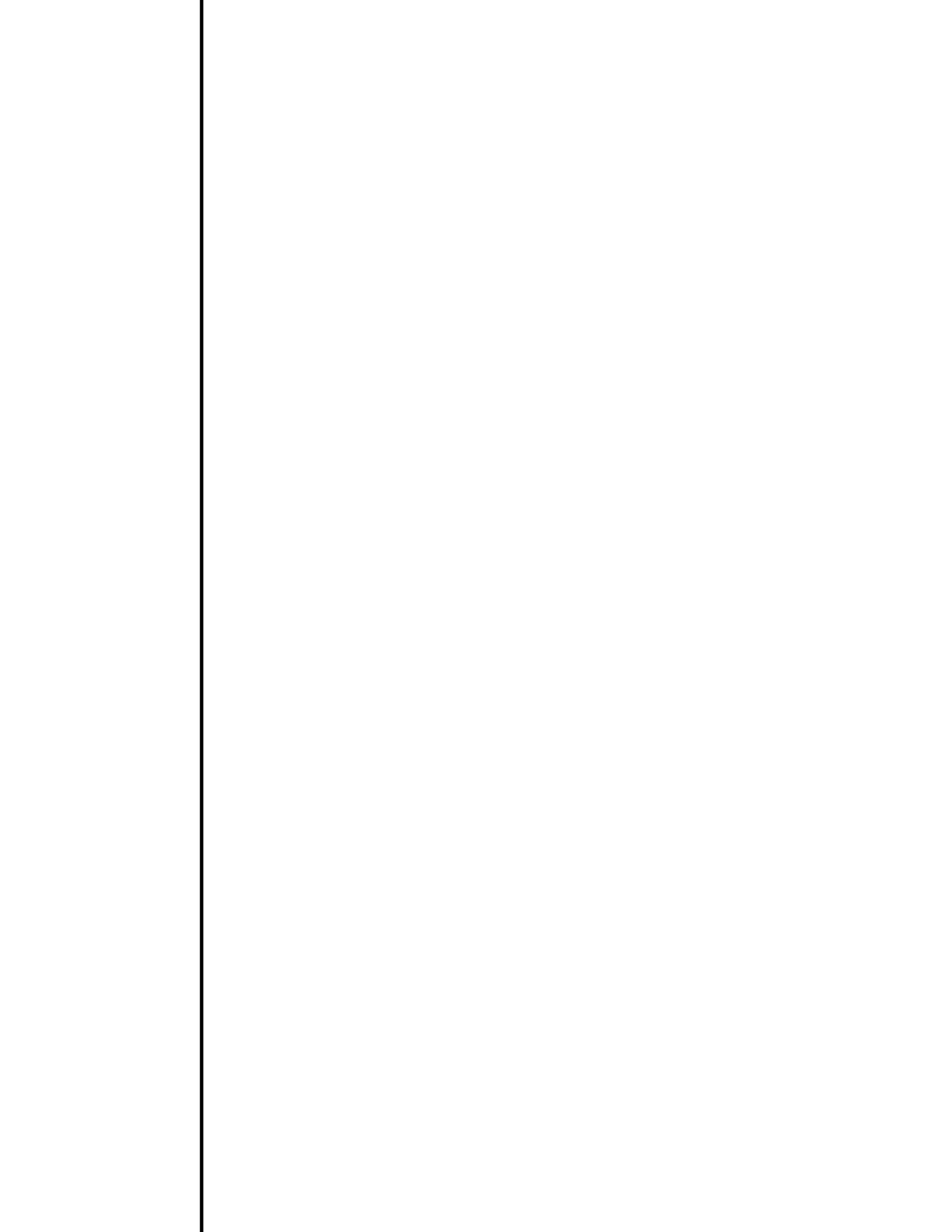


## TABLE OF CONTENTS

<u>OVERVIEW</u>	<u>PAGE NO</u>
1. THOMPSON'S REPORT – IMPROVING PROTECTION FOR HAND-HARVESTERS	4
2. ENFORCEMENT – AGRICULTURE COMPLIANCE TEAM	8
3. RESISTANCE TO ENFORCEMENT	12
4. NEW ERA ENFORCEMENT	16
4.1 Memorandum of Agreement	
4.2 New Era Employer Requirements	
4.3 New Era Entitlements	
5. MEMORANDUM OF UNDERSTANDING – ONE YEAR LATER	23
6. WHAT WENT WRONG	26
6.1 Political solutions not Based on Reality	
6.2 The Failure of Direct Deposit – an Undertaking Breached	
6.3 Informed but Powerless Workforce	
7. HOW HAND-HARVESTERS DIFFER FROM OTHER WORKERS	31
7.1 Lower Employment Standards	
7.2 Calculation of Crop Piece Rate Minimum Wage	
7.3 No Entitlement to Hourly Minimum Wage	
7.4 Semi-Monthly Payment of Wages	
7.5 Other abuses	
7.6 Child Hand-Harvesters	
7.7 Scales	
7.8 Picking Card	
7.9 Sanitation	
7.10 Living Conditions	
7.11 Vehicle Safety	
7.12 PassiRUDr10	





employees work, for, or under, the control or direction of another person, in connection with the planting, cultivating or harvesting of an agricultural product". Farm Labour Contractors have made themselves integral to the harvest of Fraser Valley berry crops. They provide a critical service to growers and hand-harvesters. For growers, they provide the service of recruiting, delivering and supervising hand-harvesters when and where they are needed. They take on the responsibility of recording work performed and paying the hand-harvesters. For hand-harvesters, they find employment, provide transportation to, from, and between workplaces and create a continuity of employment necessary for Employment Insurance applications.

The **Act** requires Farm Labour Contractors to be licensed. Among other requirements, applicants must successfully complete a written examination (with a passing mark of 80 percent) on the requirements of the **Act** and its regulations. Farm Labour Contractors must deposit a bond with the Branch to provide it with a readily accessible source from which to recover unpaid wages. Instead of hand-harvesters waiting for the Branch to garnish accounts receivable, to seize and sell assets, the Branch is able to pay them as soon as the appeal period expires or an appeal is resolved.

Although employment standards were extended to hand-harvesters in the 1970's, this account starts in 1993, when employment standards entitlements, including those for hand-harvesters, were revisited as part of the Thompson Royal Commission. Branch efforts to enforce those provisions of the **Act** pertaining to hand-harvesters were likewise revisited, resulting in revamped enforcement in 1997.

### **THOMPSON'S REPORT – IMPROVING PROTECTION FOR HAND-HARVESTERS**

Mark Thompson, a lawyer and a professor of the Faculty of Commerce at the University of British Columbia, was appointed Royal Commissioner by Moe Sihota, then Minister of Labour and Consumer Services. Thompson's mandate included reviewing BC employment standards and recommending improvements. His inquiry was the most

extensive and exhaustive examination of employment standards in British Columbia in a generation.

Thompson and the Advisory Committee held public hearings throughout British Columbia; they received over 600 briefs. He submitted his report, Rights and Responsibilities in a Changing Workplace: A Review of Employment Standards in British Columbia, in 1994, to Dan Miller, the Minister responsible for Labour. What Thompson found in the agricultural sector and what he recommended led to the subsequent improvement in employment standards and in enforcement in the mid-1990s.

Thompson found that, “the current situation is exploitative of workers and leads to violations of this **Act** and other statutes”. Exploitation took many forms, but the most common abuses included:

- Workers being paid less than the minimum fruit and berry crop piece rate wages;
- Workers not being paid any wages; and
- Workers being paid in the form of bogus Records of Employment.

From an enforcement and wage recovery perspective, Thompson found that:

The piece rate records were almost impossible to verify – “the use of tickets or chits by workers, Contractors and growers makes it impossible for the authorities to decide if a particular worker worked in a given location on a specified date”, and;

- Some Farm Labour Contractors were in business for a short period of time and also were asset-less or judgement proof.

Thompson’s findings confirmed the existence of the form 1980 industry that:

- About 80 percent of hand-harvesters advised that they were compelled to return wages paid to their employers after each payday;
- Wages were calculated at the end of the season by multiplying the employer's record of pounds picked by a piece rate lower than that set by government;
- Hand-harvesters paid both employee and employer contributions to Canada Pension Plan and Employment Insurance;
- Some wages were held back until the start of the following season as an inducement for the hand-harvester to return to that employer for the next crop harvest;
- Almost all employers' payroll records showed only hours worked, even though wages are calculated on a piece rate basis;
- Hand-harvesters who resided at their workplace worked 7 days a week but their payroll records showed only 5 days;
- Hand-harvesters worked 10 hours a day, 7 days a week but their payroll records show only 8 hours a day, 5 days a week;
- Hand-harvesters paid a transportation fee, sometimes in an amount equal to vacation pay;
- Older hand-harvesters were paired, often husband and wife, and treated as one employee, and;
- Wages paid in the form of bogus Records of Employment (ROE).

Essentially, hand-harvesters were not paid what they were lawfully entitled to be paid. Instead, for the most part, they were paid in the form of bogus ROEs — bogus in the sense that the wages paid and the weeks worked reflected the conditions necessary for the hand-harvester to obtain

benefits for the off-season. The ROE's did not reflect the actual wages paid or the weeks worked. In effect, contributors to Employment Insurance paid the hand-harvesters' wages.

Thompson concluded that the situation could be remedied by implementing the following recommendations:

- Eliminating the farmworkers' exemption from minimum wage;
- Calculating wage rates on the lesser of the period of employment, or two weeks for seasonal farmworkers hired directly by producers;
- Exempting farmworkers from normal overtime, in consideration of which they would not work more than 10 hours in a day or 60 hours in a week;
- Requiring Farm Labour Contractors to record the number of hours worked each day and to provide their grower clients with payroll records pertaining to the harvesting of their crops;
- Making growers, while Farm Labour Contractors remained the employer of hand-harvesters, liable for unpaid wages owed to hand-harvesters who worked on their farms;
- Expanding the subject matter of the Branch's Farm Labour Contractor examination to include other statutes and regulations pertaining to employment, such as Workers' Compensation Board's health and safety regulations; and
- Enhancing cooperation among representatives of the Branch, other provincial government agencies and the RCMP to improve the system of inspecting Farm Labour Contractors' vehicles.

## **ENFORCEMENT – AGRICULTURE COMPLIANCE TEAM**

Following Thompson's report, the Branch's Regional Manager then responsible for the agricultural sector approached Growers' Associations to discuss accusations of abuse of hand-harvesters. Representatives of the Growers' Associations reacted indignantly, claiming the accusations were unfounded. They demanded proof, noting that there were few complaints. No complaints, they contended, meant no abuse. Certain growers' representatives challenged the Branch to prove the accusations, inspect the sector to confirm that there was no abuse and check for compliance. To test their claims, the Regional Manager revitalized enforcement. Thus, it was the growers who actually invited revamped enforcement.

The Director's enforcement of minimum standards on behalf of hand-harvesters was extraordinary. Unlike other sectors, it was not complaint driven. Unlike other sectors, the Director put together a joint project team. Investigative personnel from the Branch and Human Resources Development Canada (HRDC) came together to investigate compliance of producers and Farm Labour Contractors with their respective statutes. This joint project team, known as the Agriculture Compliance Team (ACT) began its investigations in May 1997. Canada Custom and Revenue Agency (CCRA) investigators joined ACT in 1998.

The Branch's role was critical to ACT. Unlike HRDC, which can only conduct educational talks at workplaces – and only when invited by employers, the Branch has considerable statutory authority to inspect workplaces.

ACT was a sizeable enforcement team. The Branch provided two delegates full-time and three co-op students. HRDC had a team leader with five full-time investigators supported by two administrative support staff. CCRA assigned three rulings officers, two trust examiners and two administrative support staff.

To obtain payroll records, the Branch and HRDC would each prepare a demand for production of payroll records based on their own statutory authority. Both demands would be



served on the grower or Farm Labour Contractors at the

- Identified 82 Farm Labour Contractors who were either without a license or had more employees than their license permitted;
- Suspended or cancelled 78 Farm Labour Contractors licenses; and
- Issued 855 Determinations that found employers in contravention of significant entitlements.

For its part in the program, CCRA recouped \$3.3 million from employers in non-remitted EI premiums and CPP contributions.

From May 1997 to November 2001 ACT achieved the following enforcement results for the Branch.

Farm Labour Contractors without a license or with more employees than licensed:

1997	1998	1999	2000	2001
32	33	14	10	23

Farm Labour Contractors receiving a Determination:

78 of 87	90 of 93	77 of 97	76 of 111	56 of 105
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Child employment permits issued:

5	47	89	(group) 36	139
			(individual) 35	43

Determinations issued for children working without permit:

19	16	11	9	5
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Wage complaints made:

21	22	50	42	52
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The innovative and successful collaboration of government agencies was recognized publicly at the time. ACT won a 'Gold 2000 Public Service Award for Teamwork', and its manager received a Public Service Gold Medal for his role in creating a multi-agency, joint provincial-federal taskforce to better regulate fruit and berry crop hand-harvesting. BC's Public Service Commission concluded that, "ACT has had tremendous success in documenting the extent of abuse and put corrective measures into place to protect this very vulnerable work force".

ACT could interview hand-harvesters at the time and place of its choice.

Perhaps as important as creating a penalty for denying the Branch access to workers at their workplaces was the message that government signaled to growers and Farm Labour Contractors. By promptly and effectively addressing the challenge of denied access, government assertively expressed its support of the Branch's enforcement initiative. The regulation's language is clear and precise, a product of skilled and thoughtful regulators. Its message is starkly stated – get out of the Branch's way.

Another approach used by employers to limit ACT's effectiveness was to litigate enforcement to a standstill. Some growers and Farm Labour Contractors raised a 'war chest' to fund appeals of Determinations issued by the Branch against them. Their strategy was to so engage ACT in defending its past investigations before the Employment Standards Tribunal (the "Tribunal"); it could not undertake any new investigations. Tony Bhullar, a lawyer, and later a Liberal MLA, was hired to file and argue appeals. Bhullar's self-professed mission was to so preoccupy ACT in preparing submissions in response to appeals and in attending Tribunal hearings that ACT could not get out of its offices.

From 1997 to 2001, the Branch issued 1,136 determinations against Farm Labour Contractors. Of these, 143 were appealed to the Tribunal. Of these 143, the Tribunal confirmed 135, varied 2, and cancelled 2 (four were before the Tribunal at the time this report was produced). The Tribunal dismissed the preponderance of appeals. The enforcement activity was undisturbed. The appeal-them-to-inactivity campaign was woefully unsuccessful.

Discussion of enforcement would be incomplete without an account of the personal attacks made by Farm Labour Contractors and by grower representatives against the Branch's manager responsible for ACT and its enhanced and effective enforcement. The Branch's manager was the target of punishing and persistent personal attacks.

The BC Raspberry Growers' Association and the Raspberry Industry Development Council were quick to attack the Branch's manager. A letter to the Editor of *Fruit and Vegetable Magazine* signed by the Chair of the Development Council and the President of the Association on BC Raspberry Growers' Association letterhead claimed:

The impression [the Branch's manager] gives of Farm Labour Contractors (FLCs) in British Columbia is pathetically slanted to support his own biased views as to the necessity of existence for his enforcement team. It is certainly surprising that a provincial employee would make such inflammatory remarks as a representative of the Ministry of Skills Development and Labour in a public forum and without offering authentication.

[The Branch's manager] is spreading his doctrine of massive, unsolvable problems, hoping to enshrine his position in the face of looming changes in regulation that may ultimately result in the lack of need for this enforcement.

And, in a letter to the Minister of Skills Development and Labour, the same pair wrote:

We cannot continue to tolerate the uncontrolled actions of an employment standards enforcement officer, tarnishing our entire industry by spreading biased information and openly working to disrupt and eliminate a farm contracting system that is depended upon by over a thousand farms throughout British Columbia for their livelihood.

What the Branch's manager said was that some hand-



on medical leave until his premature retirement in June 2004. The sheriff had been run out of town.



number. It would have the same negative impact on the Branch's ability to properly investigate and effectively enforce the ACT as such advance notice in criminal investigations would render meaningless a police raid or execution of a search warrant.

Work, hence offences take place during harvest. The Branch found the most effect





access to 80 hours wages at \$8.00, (\$640.00), for each employee.

At one time the multiplier was 120. In April 1999, it was reduced to 80. Bruce further reduced the multiplier. In 2003, by regulation, the multiplier was reduced for Farm Labour Contractors who had not been found to have contravened the **Act** for specified periods of time. The reductions are significant and initiated after a short period of time. After a year without a finding of a contravention, the multiplier is reduced to 60, after two years to 40 and for three or more years to 20.

In order to qualify for the reduced multiplier, the records for that employer only have to show that the Branch has not issued any Determinations for the qualifying period. The Branch does not issue Determinations against those Farm Labour Contractors who, when found to be in contravention, resolve the matter informally. Instead of having to post a bond worth \$640 for each employee, a Farm Labour Contractor against whom a Determination has not been issued in a three year period has to post only \$160 for each employee - a reduction of \$480.00. Instead of having the equivalent of a week's wages available per employee, the Branch now has about two day's wages.

A multiplier of 20 - \$160.00 for each employee - does not provide financial resources to pay wages owed should the Farm Labour Contractor become insolvent.

### **New Era Entitlements**

While announcing this "new partnership agreement that helps protect farmworkers", Bruce mentioned that the very same workers would the next day lose their entitlement to hours of work, overtime and statutory holiday pay. He also announced a new crop piece rate minimum wage for hand-harvesters.

What Bruce failed to mention was that the new crop piece rate minimum wage was 3.72 percent lower than its predecessor, issued for the 2001 harvest. For example, the 2001 minimum wage for strawberries was \$0.326 a pound,

raspberries, \$0.338 and blueberries, \$0.376. The 2003 minimum wage for strawberries was \$0.314, \$0.012 less; raspberries and blueberries, \$0.326, \$0.014 less.

From 1995 to 2003, hand-harvesters' crop piece rate minimum wage, with the exception of those who pick daffodils, included statutory holiday pay and vacation pay. Statutory holiday pay has a value of 3.6 percent. Vacation pay has a value of 4 percent. When the government eliminated hand-harvesters' entitlement to statutory holiday pay, the amount of statutory holiday pay, 3.6 percent, and the pro-rated vacation pay of 4.0 percent formerly earned on those days, was eliminated from the hand-harvesters' crop piece rate minimum wage.

The inclusion of statutory holiday pay and vacation pay in a wage rate is abnormal and unique to hand-harvesters. Had any other group of employees lost entitlement to statutory holiday pay, their wage rates would have remained the same because statutory holiday pay is calculated in addition to their wage rate. Hand-harvesters, however, because their wage rates include statutory holiday pay, had their wage rates reduced. As it is, hand-harvesters' crop piece rate minimum wages are 4 percent less than they appear to be because they still include vacation pay.

Furthermore, they were no longer entitled to their overtime provisions, which were already significantly less than for other workers. Prior to the changes, hand-harvesters got time and a half after working 120 hours in a two-week period. Other workers get time and a half after working 40 hours in a one-week period. Overtime does not apply to hand-harvesters now, no matter how many hours they work.

In this Memorandum, the following points were presented by the Ministers as 'improvements' gained by hand-harvesters:

- An officer of the Employment Standards Branch liaising with the Council and its member associations;
- The largest employers of hand-harvesters in BC agreeing that they would not condone any core violations, including the non-payment of wages owed;

- The Council and its member organizations supporting the Branch's enforcement activities;
- Delivering a minimum of five annual joint education sessions for growers, Farm Labour Contractors and farmworkers;
- The Ministry and the Council and its member organizations developing educational materials to be used in seminars, industry newsletters and targeted mailouts;
- The Council and its member associations promoting use of the materials and attendance at seminars;
- The 'Partner' web sites describing the partnership, its goals and progress towards meeting the goals;
- The Branch committing to visit every berry field once during the harvest; and
- The 'government' requiring their wages to be paid by direct deposit.

Under the Memorandum, hand-harvesters lost the following:

- Statutory holiday pay, resulting in crop piece rate minimum wage reduction of 3.72 percent; and
- Overtime pay.

It is impossible to imagine on what basis Bruce can now proclaim that "this agreement will help protect vulnerable workers". In consideration of direct deposit of wages, hand-harvesters absorbed a considerable drop in wages and lost any compensation for working in excess of 120 hours bi-weekly.

The irony is that direct deposit does not prevent employers from recovering wages paid to hand-harvesters. In the real world out in the berry fields, if a hand-harvester wants to work again or get a ROE to obtain off-season benefits, or

both, they are vulnerable to pressure to repay wages, regardless how those wages were paid.

It is unknown if hand-harvesters were consulted in the discussions concluding with the signing of this Memorandum. It is unknown, for example, how many, if any, hand-harvesters appreciate what they lost when statutory holiday pay was given up in return for the development and promotion of educational materials by the Council.

Questionable exchange of benefits aside, the Memorandum of Understanding is based on the faulty assumption that education produces compliance. Enforcement, not education, produces compliance. From the beginning, Farm Labour Contractors have had to sit and pass an examination, which tests and certifies their knowledge of the **Act** and the Employment Standards Regulations. If education was sufficient to secure compliance, then over a decade of educating and testing Farm Labour Contractors should have uncovered no abuse in the industry. The lesson learned from ACT's enhanced enforcement campaign is that Farm Labour Contractors and growers are motivated to voluntary compliance when it is more likely they will be caught and fined if they don't comply.

#### **MEMORANDUM OF UNDERSTANDING – ONE YEAR LATER**

**In February 2004, the Director of Employment Standards (the 'Director'), provided the foll**

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also maintained a full investigat  
caseload.

**has yet to report on any**  
assistance the Council and its member organizati  
provided to the Branch during the 2003 harvest - assistance  
these organizations undertook to supply.

There were seven (7) education sessions. On June 13<sup>th</sup> the Officer met with strawberry producers in Abbotsford, on the 19<sup>th</sup> with producers in Abbotsford and Delta, on the 25<sup>th</sup> with producers in Penticton and Kelowna and on the 27<sup>th</sup> with raspberry producers in Abbotsford. In the autumn, in Abbotsford, he met with blueberry producers on October 29<sup>th</sup> and with raspberry and strawberry producers on November 12<sup>th</sup>. He made a presentation to the BC Agricultural Council on December 8<sup>th</sup>.

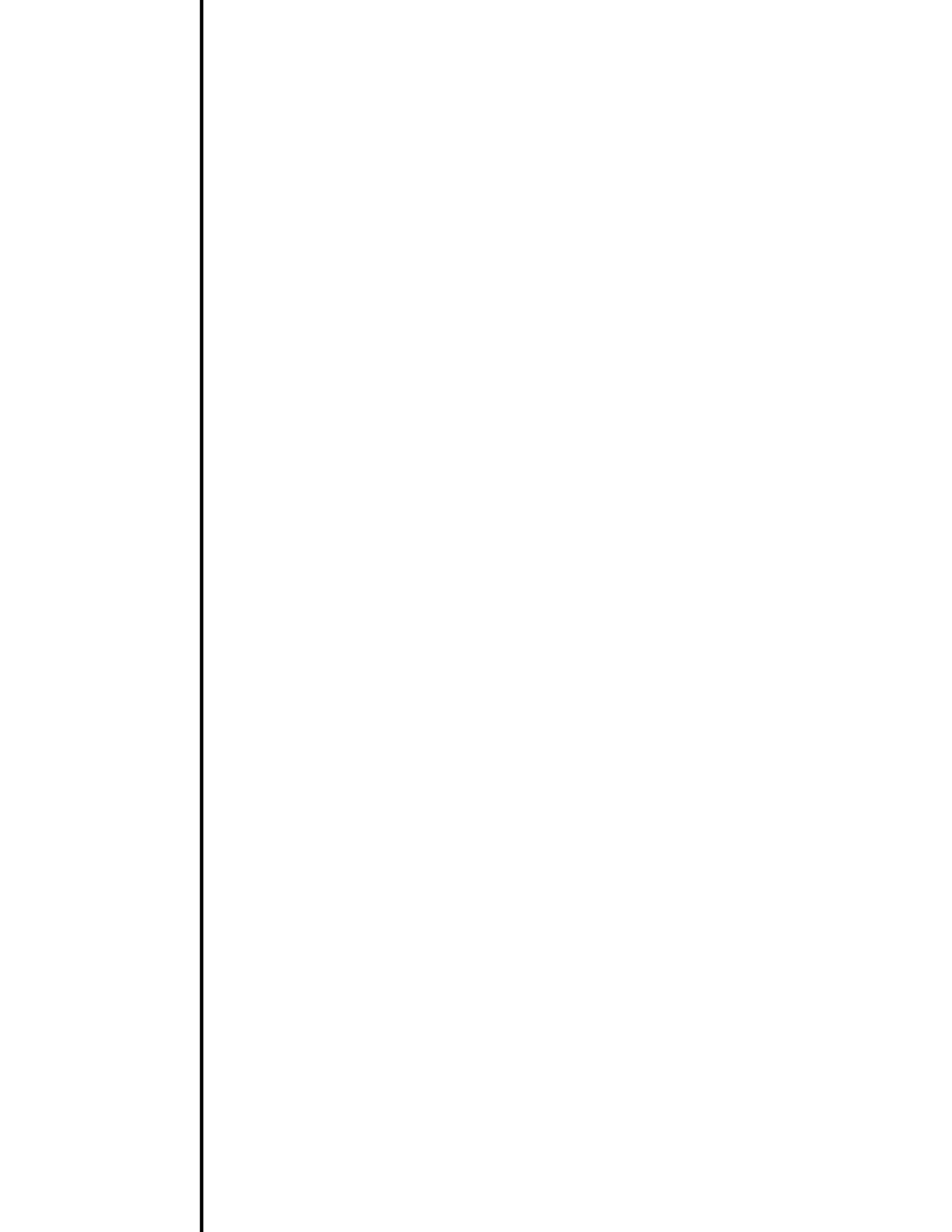
Although asked, the Director has yet to reveal how many producers attended the Branch's education sessions. The information provided by the Branch could only confirm that at one session there were 15 attendees and at another, 70. It appears that the Branch and the Council have yet to deliver any of the promised annual joint education sessions for growers, Farm Labour Contractors and farmworkers.

As of April 2004, the Branch and the Council had yet to produce the promised educational materials.

In 2003, the Branch conducted 59 site visits – far from the Minister's stated undertaking to visit every field. These few site visits found an astonishing 69 percent of Farm Labour Contractors in contravention of 'core issues'. Thirty-six percent of producers were found in non-compliance with core issues. Core issues include entitlements to payment of wages, minimum wage, payment of wages on a semi-monthly basis and fraudulent payroll records (two employees on one picking card).

Of the 1,777 hand harvesters interviewed during these site visits and the 52 who filed complaints in 2003, 134 reported failure to receive minimum wage, 182 failures to be paid at least twice a month or at all, 19 not paid vacation pay and 157 victims of payroll record fraud. The 1,777 employees represent about a third of the number of employees 'bonded' by the 110 registered Farm Labour Contractors for 2003. These site visits also found 21 instances of non-compliance with daily log requirements, 16 instances of failure to provide proper vehicle registration, 18 instances of failure to post piece rate notice and four children employed without the







*In respect to Farm Labour Contractors, they are required to be bonded.*

[Farm Labour Contractors have been required to be bonded since the early 1980's – not a NEW ERA initiative.]

*We've also moved very aggressively in respect to making sure that people receive full payment for their wages, which you might think is odd, but in fact, has been occurring for a number of years in which farm labour employees, farm labourers are not getting paid. We've done that by initiating a process of direct deposits so all Farm Labour Contractors have to have direct deposits with employees.*

[Failure of Farm Labour Contractors' voluntary compliance with direct deposit discussed next. Bruce failed to mention that ACT had all but been wound down and consequently enforcement all but eliminated.]

*We've also increased the fines so that, where it is, that they do not adhere to*

*little bit longer in getting everybody fully apprised of what their rights and responsibilities are but we're working through with them in the field and directly through a number of forums that are held beginning each year.*

[Educating hand-harvesters has been a long on-going activity predating the current government, with many more hand-harvesters contacted in past harvests than during the 2003 harvest. 'We're working through with them in the field' does not ring true when only 59 sites were visited, only 1,777 employees interviewed. Knowing one's rights is one thing; getting them, especially with the Branch's 'self-help' program, is another. Vulnerable employees, such as hand-harvesters, need assistance in getting what is lawfully theirs.]

Penalties without subsequent re-investigations are ineffectual. Only with subsequent re-investigation is a non-compliant employer moved up the penalty ladder to the \$10,000 rung. Only with re-investigation is a non-compliant employer pushed to a point where contravention becomes an unacceptable cost of doing business. A chance encounter of a Farm Labour Contractor with the Branch does not bring the full economic weight of penalties to bear.

According to its 2003 report:

The Ministry is committed to protecting vulnerable employees, including garment workers and agricultural workers. As these groups have historically been the most disadvantaged and the least able to advance their own interests, the ministry's challenge is in trying to involve the sectors in achieving employer compliance with employment standards.

It is impossible to see how the Minister has honoured this commitment and met the challenge. The Memorandum of Understanding and the reduction in entitlements has neither protected agricultural workers nor achieved employer compliance.

## **The Failure of Direct Deposit – An Undertaking Breached**

All that the Minister asked of Farm Labour Contractors was that they pay their employees by direct deposit. Farm Labour Contractors have not complied. One measure of their non-compliance is the number of Determinations issued for non-compliance with this requirement – 31. Another is that the Minister persuaded an anti-government regulation Cabinet to issue a regulation requiring Farm Labour Contractors to pay wages by direct deposit. A government committed to reducing regulations by a third, a government that requires Ministers to give up two regulations in order to get one, went ahead and issued a regulation requiring employers in the farm sector to pay wages by direct deposit.

The regulation mandating direct deposit is as follows:

Exclusion from payment options for Farm Labour Contractors;

40.2 (1) In respect of the payment of wages to farm workers, Farm Labour Contractors are excluded from section 20 of the **Act**;

(2) A Farm Labour Contractor must pay all wages to farm workers employed by the Farm Labour Contractor;

(a) in Canadian dollars, and

(b) by deposit to the credit of the farmworker's account in a savings institution.

This regulation may not achieve its objective. There are two problems; one minor, the other, major. Payment should be made in Canadian 'currency' not 'dollars'. More importantly, 'by deposit' should be 'by direct deposit'. *Black's Law Dictionary* distinguishes between 'deposit' and 'direct deposit'; they are distinctly different activities. The Branch may yet discover that it has not been given the tool it needs to compel compliance with the direct deposit payment requirements. It did not get the swift and timely support the



## **HOW HAND-HARVESTERS DIFFER FROM OTHER WORKERS**

### **Lower Employment Standards**

On top of these losses and reductions, hand-harvesters continue to be entitled to lower minimum standards, to lesser basic standards than other employees. The most vulnerable are afforded the least protection. Below is the inventory of how piece rate paid berry and fruit hand-harvesters are short-changed.

### **Calculation of Crop Piece Rate Minimum Wage**

When the berry and fruit hand-harvester piece rates were introduced, the Branch hired an economist to establish what an average hand-harvester could pick in an hour. That result was related to the hourly minimum wage, from which was computed the crop piece rate. In theory, an average hand-harvester picking an average crop at the average pace would earn the equivalent of the hourly minimum wage on the basis of the crop piece rate paid for each half-bin, bin or pound. In reality, it means a hand-harvester has to pick just over 23 pounds an hour of blueberries or raspberries and about 26.5 pounds a hour, every hour, to make the currently minimum wage of \$8.00 an hour.

The problem with the crop piece rate minimum wage rates is that they are predicated on 'average'. No allowance is made for poor crops. No consideration is given to harvesting at the end of the crop, when pickers are more gleaners than harvesters. Fatigue is not factored in, nor is weather. The distance between where the hand-harvester is picking and the weighing station is not factored in. In other words, time spent recording what they have picked works against hand-harvesters. For reasons beyond the hand-harvester's control, the hand-harvester may be physically unable to pick at a rate that approximates the hourly minimum wage.

In 1997, it was determined that an experienced and quick hand-harvester picking a blueberry crop at its height can earn about \$40 a day, however, by the end of the crop, might only earn about \$12 a day. Minimum wage was \$7.00

an hour. A retail employee paid minimum wage earned, in an 8-hour day, \$56. This past harvest season, in order to earn the minimum wage of \$8.00 an hour for an eight hour day, a hand-harvester had to pick about 184 pounds of strawberries (23 pounds/hour), or about 212 pounds of blueberries or raspberries (26.5 pounds/hour).

The inability of a hand-harvester to pick at a rate that approximates the hourly minimum wage would not be devastating to the hand-harvester if they were entitled to the hourly minimum wage.

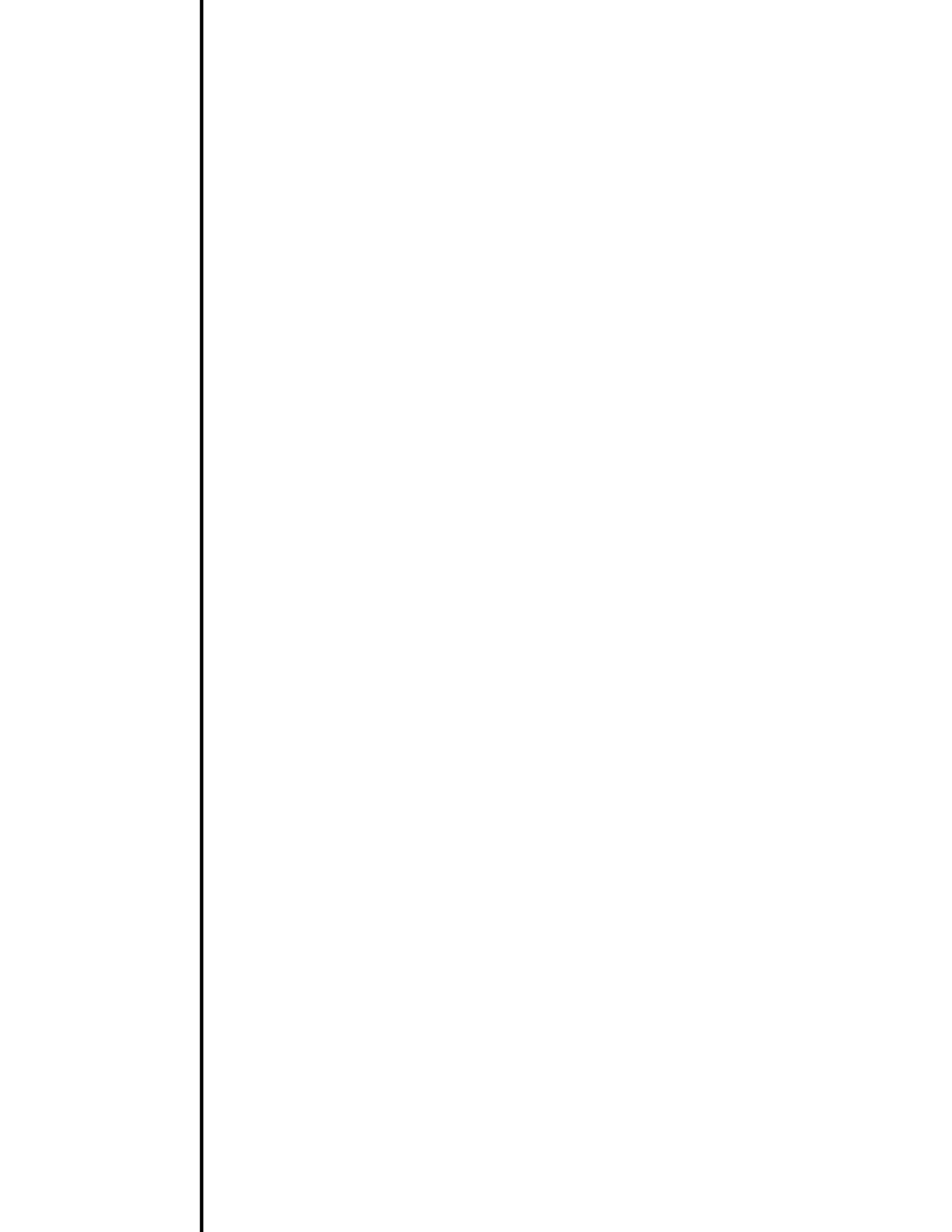
### **No Entitlement to Hourly Minimum Wage**

Hand-harvesters are not entitled to the hourly minimum wage, currently, \$8.00 an hour. Other employees paid on a piece rate or other incentive-based wages are entitled to the hourly minimum wage. A telemarketer paid \$4.00 for each subscription sold, a form of piece rate, is entitled to the hourly minimum wage; they must be paid at least \$8.00 an hour regardless of the number of subscriptions sold during her or his shift. A sales person paid on a straight commission basis is entitled to \$8.00 an hour for each hour worked. Even when a commissioned sales person sells nothing in a pay-period, that sales person has earned minimum wage for each hour worked. Not so for hand-harvesters.

Hand-harvesters are entitled to the crop piece rate minimum wage regardless of the time-spent picking. If a hand-harvester works eight hours and picks one pound of raspberries, for example, earns only \$0.326. A piece rate telemarketer, however, who worked eight hours and sells one subscription, earns \$64.00.

The other sectors that rely on incentive-based wage rates to induce employees to work to their fullest potential must pay at least the hourly minimum wage. Commissioned salespersons paid in whole or in part by commission are entitled to the hourly minimum wage. They are also entitled to overtime at the hourly minimum wage when their commission earnings are less than the hourly minimum





## **Scales**

After filling picking buckets or pails, hand-harvesters walk to weigh stations. At the weigh stations, they transfer berries from picking buckets or pails into flats. Berries are weighted in flats.

ACT rarely found scales used to measure poundage picked to be of the lawful type. Fewer still were certified to be accurately calibrated. All too often, inappropriate scales were used. Bathroom scales were commonly found as the device to measure poundage picked. Hand-harvesters were denied fair measure because of their employer's use of inaccurate and inappropriate scales.

Besides using inaccurate and inappropriate scales, the manner of weighing has an adverse effect on hand-harvesters. Weighing is often done in such a way that the hand-harvester cannot question or verify the employer's announcement that the pail is under-weight or acceptable. There is no opportunity for a second opinion and no way to monitor the process of weighing the produce closely. There is no scrutineer.

Weighing is done by the party whose interest is in paying the least amount for berries harvested – the grower or the grower's surrogate, the Farm Labour Contractor. The picking pail is never overweight. Unlike buying produce at a retail outlet, where the process of weighing the produce is clearly visible to both the buyer and the seller, hand-harvesters usually have no visual or physical access to the scale.

ACT did not have authority to address weighing scale issues.

## **Picking Card**

Picking cards record the weight of berries picked. Here again, hand-harvesters are vulnerable. At the weigh scale, hand-harvesters turn in their picking card to the supervisor weighing the flats. All too often, the amount recorded is not

accurate. Hand-harvesters have to accept the amount as recorded.

Without field inspections, the Director does not know if Farm Labour Contractors are complying with the provisions pertaining recording work performed.

### **Sanitation**

While some Farm Labour Contractors and growers provide field toilets, usually in the form of portable toilets, many do not. Working from dawn to dusk necessitates hand-harvesters to relieve themselves in the field. That patch of field that was an outdoor latrine becomes a workplace, later in the day or in the harvest. Branch personnel sometimes saw hand-harvesters relieve themselves where they were working.

Besides the general lack of toilets, there are fewer hand-washing facilities. Hand-harvesters have no employer provided means to wash the dirt and berry juice off their hands or to wash their hands after relieving themselves. It is inconceivable that employees who work in offices or stores would tolerate workplaces without toilets or wash basins. For hand-harvesters, however, it is the norm.

Branch personnel saw very few hand-harvesters wearing hand protection. Generally, berries are picked by hand-harvesters without cotton or latex gloves.

A sector whose product essentially goes untouched from hand-harvester to consumer would want to assure its consumers that the product was picked in the most sanitary way possible. Product picked by unclean hands does not lend itself to a positive public image. Given the requirements for food handlers in restaurants and other food service businesses to work with clean hands, it is remarkable that growers and Farm Labour Contractors do not universally provide toilets and hand washing facilities. Farm Labour Contractors in the USA provide both toilets and hand washing facilities in the fields.



The requirement to affix an unexpired inspection certificate to the vehicle is no substitute for a vehicle inspection conducted by a government enforcement agency.

Roadside hand-harvester vehicle inspections were discontinued in the early 1990's. It was discontinued in part because hand-harvesters often lost a day's wages when the vehicle they were riding in failed inspection. It is unclear as to why hand-harvester vehicles cannot be inspected in the field while the hand-harvesters are picking.

The Compliance and Consumer Services Branch of the



Canadians who wanted to do the work and concluded that Mexicans are needed to fill the void.

Industry claims that the exit or retirement of hand-harvesters must be addressed by importing workers is not supported by information collected by the Branch. The number of employees bonded by Farm Labour Contractors is virtually the same in 2003 (5915) as it was in 1999 (6000), only 857 fewer than in 2000, 396 fewer than in 2001 and 527 fewer than in 2002. There has not been a significant decline in the number of bonded employees in the past five years. The number of bonded employees in 2003 is over 2,000 more than in 1997. From this perspective, it is difficult to appreciate why this year the shortage of hand-harvesters is so great that Mexicans are needed.

Judging by a comment made by

season. Croener observed that, “If people can’t find pickers, I would ask first how they’re treating their pickers.”

It has been observed that the family reunification program is no longer bringing as many people to Canada as it once did. The family reunification program is the chief source of hand-harvesters. There is not a present crisis, certainly not one to the extent claimed, however, in time, with the present hand-harvesters aging and not being replaced by younger Indo-Canadians or people newly-arrived from India, there will be a severe shortage of hand-harvesters.

## **ANALYSIS**

### **No Future for Low Wage-No Wage Harvesters**

Government is pandering to berry growers and to Farm Labour Contractors. It pandered to them when it lowered the already low employment standards for hand-harvesters. It pandered to them when it reduced enforcement. These actions will not do growers any long-term good.

Good wages and working conditions attract employees. Hand-harvesters’ present poor wages and unpleasant or sub-standard working conditions do not attract people to the industry. People become hand-harvesters out of desperation, often while searching for something better and often while acquiring the English language skills to obtain better employment. Youth will not choose the discomfort of hand-harvesting in the heat of a Fraser Valley summer over the comfort of working in an air-conditioned restaurant, store or office. Youth will not choose the uncertainty of hand-harvester wages over the certainty of wages from employers in other sectors.

The consequence of crops being harvested by the cheapest means is the continued exploitation of harvesters. Continued exploitation deters people from becoming hand-harvesters and drives them to other employment opportunities.

If growers want their crops



wages and poor working conditions for hand-harvesters make it a sunset employment occupation. Continued dependence on importing workers willing to tolerate such conditions until better employment is available provides only short-term relief and perpetuates an abusive employment environment. Policy that relies on continued immigration to address worker shortages for the industry is unlikely, in the long-term, to enjoy public support.

### **Unconscionable Subsidy**

Currently, growers receive a subsidy in the form of low wages and of wages paid in the form of ROE. The low wage subsidy is paid for by hand-harvesters and the bogus ROE is a cost borne by contributors to Employment Insurance.

It may be that the growers need a subsidy to ensure the viability of the industry. Recent studies have found that even as the price paid by consumers of fruits and berries has increased in the past few years, the farm gate price has decreased. Consumers are paying more but growers are getting less.

If a subsidy is needed, it ought not to be paid by hand-harvesters or by contributors to Employment Insurance. A subsidy, if needed to ensure an adequate supply of local resident workers, must be provided honestly.

An honest subsidy would be one that makes it economically possible for growers to adhere to all employment standards, including the normal minimum wage and to provide acceptable sanitary and safe workplaces. An honest subsidy would end exploitation of harvesters. It would allow, at the same time, for growers to get a fair return on their crops and for Farm Labour Contractors to get a reasonable price for the services they provide growers and hand-harvesters. Perhaps government should pay the difference between what growers can afford to pay to have their crops harvested and what harvesters should be paid for the beneficial work they perform.

It may be that growers and Farm Labour Contractors are taking advantage of a vulnerable workforce, elderly Indo-



## **RECOMMENDATIONS**

That the Government of British Columbia:

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- Restore bonding requirements to a multiplier of 120.
- Ensure that vehicles used to transport hand-harvesters are safe and roadworthy by reinstating frequent, focussed inspection campaigns.
- Ensure hand-harvesters have access to toilets and hand washing basins, thereby providing comfort to hand-harvesters and improving the cleanliness of the crop for its consumers.
- Establish a limit on the amount an employer can charge an employee for lodging, comparable to those limits for domestic workers and for tree planters.
- Establish requisite lodging conditions for those farm workers who reside in employer-provided accommodation; such as access to indoor plumbing, hot and cold running water, and electrical supply.

## APPENDIX "A"

### 2003 Crop Piece Rate Minimum Wage

The minimum wage for farmworkers who are employed on a piece work basis and hand-harvest the following crops is as follows (rates include vacation pay of four percent of earnings):

Apples	\$ 15.60/ bin (27.1 cu. ft.)
Apricots	\$ 17.94/ 1/2 bin (13.7 cu. ft.)
Beans	\$ 0.214/ pound
Blueberries	\$ 0.362/ pound
Brussels sprouts	\$ 0.149/ pound
Cherries	\$ 0.205/ pound
Grapes	\$ 16.58/ 1/2 bin (13.7 cu. ft.)
Mushrooms	\$ 0.215/ pound
Peaches	\$ 16.58/ 1/2 bin (12.6 cu. ft.)
Pears	\$ 17.56/ bin (27.1 cu. ft.)
Peas	\$ 0.267/ pound
Prune plums	\$ 17.56/ 1/2 bin (13.7 cu. ft.)
Raspberries	\$ 0.326/ pound
Strawberries	\$ 0.314/ pound
Daffodils**	\$0.125/ bunch (10 stems)

**\*\*Note: the rate for daffodils does not include vacation pay.**

## APPENDIX "B"

### 2001 Crop Piece Rate Minimum Wage

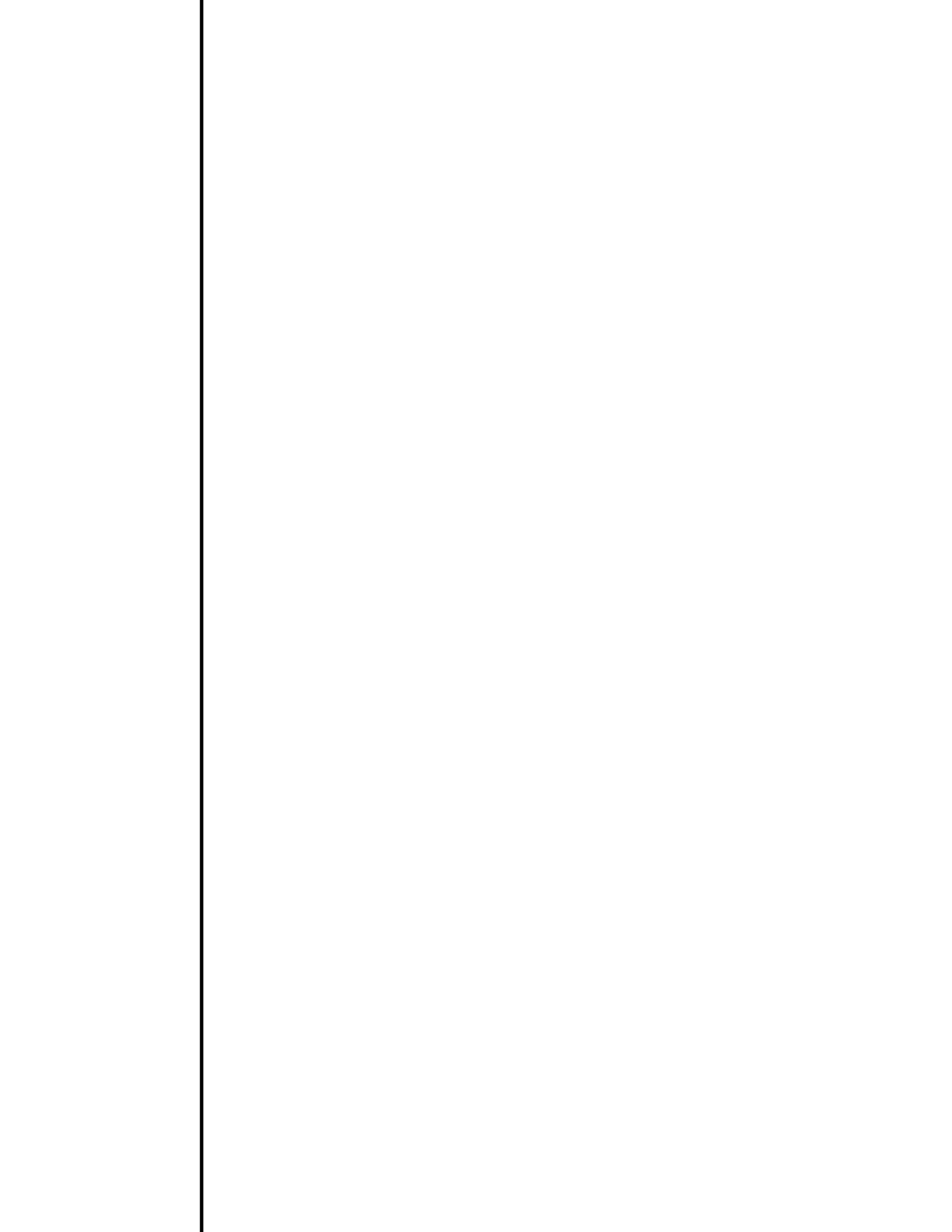
The minimum wage for farmworkers who are employed on a piece work basis and hand-harvest the following crops (rates include 3.6 percent statutory holiday pay and 4 percent vacation pay):

(a) raspberries	\$ .338 per pound;
(b) strawberries	\$ .326 per pound;
(c) blueberries	\$ .376 per pound;
(d) cherries	\$ .213 per pound;
(e) apples	\$16.18 per bin (27.1 cu. ft.);
(f) pears	\$18.22 per bin (27.1 cu. ft.);
(g) apricots	\$18.61 per 1/2 bin (13.7 cu. ft.);

(h) peaches	\$17.20 per 1/2 bin (13.7 cu. ft.);
(i) prune plums	\$18.22 per 1/2 bin (13.7 cu. ft.);
(j) grapes	\$17.20 per 1/2 bin (12.6 cu. ft.);
(k) brussels sprouts	\$0.154 per pound;
(l) beans	\$0.222 per pound;
(m) peas	\$0.277 per pound;
(n) mushrooms	\$0.223 per pound.

(1.1) The minimum wage for farmworkers who are employed on a piece work basis and hand-harvest the following crops is, for gross volume or weight picked, as follows:

(a) daffodils..... \$.125 a bunch (10 stems)



## COMPONENTS OF THE PROGRAM

- Improving compliance in the hand-harvesting sector with a particular focus on the berry industry. Every berry site will be visited at least once during the 2003/04 season.
- The BC Agriculture Council and its member organizations agree that they will not support or condone the utilization of unlicensed Farm Labour Contractors including the exclusive use of licensed Farm Labour Contractors.
- An Officer of the Employment Standards Branch would be assigned to liaise with the council and its member associations with initial priority on education with the hand-harvest sector. These liaisons would include visiting producer operations to further both the goals of the Memorandum of Understanding and industry compliance with the legislation.
- As the largest employers of hand harvest Labour in BC, the blueberry, raspberry, strawberry, field-vegetable and tree fruit associations have not and will not condone any core violations, including the non-payment of wages  
excl



- The Council and its member associations would promote use of the materials and attendance at seminars.
- Partner web sites to include a description of the partnership, its goals and progress towards meeting the goals.
- The Council will seek to provide a resource to support the partnership through the Skills Development and Labour component of the Agri-Food Futures Fund.
- The signatories will link to the Agriculture Labour Partnership Committee for input, advice and recommendations in regard to trends, potential priorities and activities of the partnership.

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