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Towards True Food Systems Sustainability: Protecting Food Labourers' Rights in A Food Policy for Canada

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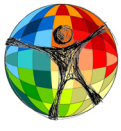

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ABSTRACT

This paper addresses Canada's forthcoming food policy's lack of attention to the human rights abuses perpetrated against food workers at all levels of the food system. As it stands, the Food Policy for Canada is inadequate in addressing human rights abuses within our food system. While much of the literature on food policy and law focuses on food as a commodity, my article examines how the food industry—one of the largest employers in Canada—exploits an essential part of the complex system that feeds our society: the people who grow, package, and serve our food. The article addresses international and national human rights laws which apply to food labourers at three distinct points in the food system: farming, manufacturing, and food service. My argument is that, in order for Canada to create a truly sustainable food system, its food-related legislation cannot ignore labour as a pillar. The people who feed us are some of our most disenfranchised workers, and our current and proposed laws are failing them.

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Introduction

"A code of conduct is not included under the umbrella of ethical eating."

– Leanne Tory-Murphy, an outreach worker at Worker Justice Center of New York

The food industry is one of the largest employers in Canada, employing 289,200[1] agriculture workers[2] and 1.2 million restaurant workers.[3] Restaurant staff alone make up 7 percent of the country's workforce and generate $75 billion in annual sales.[4] Although these people are an essential part of the complex system that feeds our society, they are also some of our most disenfranchised workers. Many are undocumented immigrants or temporary foreign workers. Most are subject to human rights violations, including long hours in dangerous work environments; verbal, physical, and sexual assault; wage theft and underpayment by employers; discrimination and lack of career mobility; and the inability to seek recourse for any of these abuses.

Some of these issues have come to the forefront through direct action by workers' organizations, especially on wage issues; the fight for a $15/hour minimum wage and the push to abolish the tipped minimum wage have recently gained traction in both the United States and Canada. However, while updating wage laws is a big step in the right direction, many of the abuses in the food industry violate already-existing international, national, and provincial covenants, conventions and laws. They happen in rural areas or behind closed doors, perpetrated within

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[1] Statistics Canada, "Employment by Industry", (Ottawa: 6 January 2017) online: <http://www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/econ40-eng.htm>

[2] Statistics Canada, Agriculture, Canada Year Book 11-402-X (Ottawa: 7 October 2016) online: <https://www.statcan.gc.ca/pub/11-402-x/2011000/chap/ag/ag-eng.htm>

[3] UFCW Canada, "By the numbers: Canada's food service industry" (28 March 2017) online: <http://www.ufcw.ca/index.php?option=com_content&view=article&id=31416:by-the-numbers-canada-s-food-service-industry&catid=9830&Itemid=6&lang=en>

[4] *Ibid*.

powerful industries by managerial superiors against vulnerable people. Given this deeply imbalanced reality, food workers' experiences are not included in policymakers' research, which means that labour is not a part of the current discussions about making the Canadian food system more just, productive and sustainable. One has only to look at the top four priorities for A Food Policy for Canada[5] to see that the people who grow, harvest, process, transport, cook and serve our food are invisible for those who shape the national political strategy around food. Often, as this Policy reflects, food laws prioritize the needs of consumers and companies over those of workers.

This gap between reality and discourse in the food movement in Canada has huge implications for over 1.5 million citizens and foreign workers in the food industry and for the sustainability and growth of our food systems. The forthcoming Food Policy for Canada, which was mandated by the Trudeau government and is set to be released in early 2018, means that Canada is on the precipice of a rare moment for enacting significant and coordinated food systems change. In light of this political opportunity, I argue that for this policy to create a truly sustainable food system capable of growth and ethical food production, labour needs to be a central part of the discussion. Canada's policymakers should thus make improving labour conditions one of their key considerations as they revise and implement a Food Policy for Canada.

Influence of My Work and Internship Experience

The complexity and interrelatedness of food systems issues have energized me as both a journalist who reported on the food movement for over five years, and now as an aspiring food lawyer. However, throughout both my reporting career and graduate-level studies of North American food systems,[6] the issue

[5] Government of Canada, "A Food Policy for Canada", (Ottawa: 2 May 2017), online: <https://www.canada.ca/en/campaign/food-policy.html> (The four priorities of Canada's forthcoming National Food Policy are increasing access to affordable food; improving health and food safety; conserving our soil, water, and air; and growing more high-quality food)

[6] Rebecca Jannol, Deborah Meyers, and Maia Jachimowicz, "Immigration Factsheet", *The Migration Policy Institute* (website), (November 2003) online: < https://www.migrationpolicy.org/research/us-canada-mexico-fact-sheet-

of labour was seldom discussed. This summer, I had the opportunity to work on food policy issues including access, nutrition, and waste as an intern with the Harvard Food Law and Policy Clinic, where I noticed the same reluctance to tackle food labour issues. I managed to convince Harvard to include a section on labour in their food law seminar, which is taught to law students who enroll in the Clinic during the academic year. Though they allowed me to draft a proposal for an additional section as well as suggest sources to incorporate into the existing class structure, those materials have yet to be included in their teaching or policy work.

Labour isn't a policy priority for a lot of complex reasons. Shane Martinez, a lawyer whose career has focused on defending farm workers' human rights in Ontario, put it eloquently when he suggested that keeping food workers invisible is in the interest of both our governments and the powerful industry interests who lobby them. As he told me,

The system has lasted for so long because [these workers] don't have the security to have a voice [...] especially when their employment is precarious, and their immigration status is permanently temporary. Many governments [...] have known about these issues, but they operate in the interests of the farmers, who are a very powerful lobby. It is good for them to have people work for them for 6 days a week for less than minimum wage.[7]

There is a lot to unpack in Martinez' statement: issues of inequity, immigration, lack of access to justice, and powerful economic and political interests are all at play. His perspective reflects the unique character of food law and policy issues: Because the food chain is a multi-dimensional system, none of its parts can be considered without a view to the whole.

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trade-and-migration> (I focus on American and Canadian food systems to the exclusion of Mexico because of overwhelmingly one-directional migration patterns from Mexico to Canada and the U.S. Many of these migrants take positions in agriculture, processing, and restaurants)

[7] Interview of Shane Martinez (14 November 2017), over the phone.

Thesis

In response to this systemic complexity, food systems scholars like myself are trained to consider as full a range of inputs and outputs as possible, with a long view in regard to both the needs and externalities of the supply chains that produce our food. This approach informs my argument that in order for a Food Policy for Canada to be truly sustainable and effective, it needs to consider labour conditions in a way that addresses the gaps in protections of workers' human rights.

Yet I do not just aim to make the case for enforcing the existing legal protection of workers' rights. My wider view is that successful food laws and policies rely on a solid, well-rounded understanding that we cannot simply aim to "fix" one (or two, or four) area(s) of our system without considering the impact on other areas. In an attempt to protect Canadians' health, safety, and environments, and give us access to affordable and high-quality food,[8] the Food Policy for Canada has ignored what I see as a crucial fifth focus: food workers. As it currently stands, this Policy excludes a huge sector of the Canadian food system and a large percentage of our population.

Paper Outline

In order to build the case that food workers belong in Canada's national food policy, **Part I** summarizes the current state of Canadian food policy and the reactionary food movement. This section gives a broad-strokes history of Canada's food industry, which grew from agricultural localization to a massive web of industrialized food production due to a political and legal focus on food as product. Part I then traces the development of the grassroots food movement's growth and response to these economic and political forces, both in Canada and globally.

Part II identifies select human rights violations perpetrated against Canadian food workers, using food- and labour-focused human rights standards and values as a lens. The rest of the section explores working conditions in three distinct parts of the supply chain: agricultural production, manufacturing and

[8] *Supra* note 5.

processing, and restaurants. These three examples were not selected at random; they each represent a distinct part of the food chain and identify different legal and political gaps in protecting food workers' rights.

These three examples can also be viewed on several thematic spectrums. First, there is the issue of regulation: in terms of foreign workers, agriculture is highly regulated by Immigration Canada's Seasonal Agricultural Worker Program (SAWP). However, manufacturing staff are more often immigrants through the Temporary Foreign Worker (TFW) program, and immigrants working in restaurants and kitchens are unregulated. This means that, while immigrants populate our system, they come through different pathways and can thus have markedly different experiences.

There are also the dual concepts of isolation and invisibility at play; agricultural workers are the most isolated from mainstream society, and lack both contact with other Canadians and access to basic services. Manufacturers and processors can be both rural or urban, and their level of isolation varies. Restaurant workers are concentrated in urban areas, interacting frequently with customers who may not be aware of the abuses and difficulties they face. Because of these differences, these three examples work together to give the reader a fuller picture of labour conditions across the food industry.

Part III offers some high-level recommendations[9] for legislators, who have an opportunity in the release of a Food Policy for Canada to ensure workers' rights are protected. These recommendations and concluding thoughts aim to get readers thinking about what can be done at the legislative level to address some of these horrific conditions and to keep them from recurring

[9] This article is a small contribution to the path blazed by organizations like the Restaurant Opportunities Center United (ROC United), The Southern Poverty Law Center (SPLC), The Food Chain Workers Alliance (FWCA), the Canadian Council for Refugees, and others which have all done extensive original research and interviews with food workers across several industries to create a more accurate picture of their experiences, and whose work I have relied on to structure my own arguments in this paper. I am proud to be a member of this group and am confident that our collective efforts to gather information, present stories and facts, and devise solutions will not go ignored for much longer.

in the future. After all, these workers are literally feeding us. Our laws have failed to protect their rights.[10] Canada now has a chance to move in a different direction and offer its food labourers the protection they, like all workers, deserve—but will we take it?

Part I: Food as a Social and Political Movement

> "It might sound odd to say this about something people deal with at least three times a day, but food has been more or less invisible, politically speaking, until very recently."
>
> — *Michael Pollan,* "The Food Movement Rising"[11]

Before we delve into the situation of food workers' human rights, it is important to take a step back and look at food's socio-political ascendency. This summary will situate the current conversation around food in Canada for readers who may not be familiar the food movement. Much like a conversation, the movement is a civilian response to governmental policies, which were a response to our country's perceived needs at given points in history. This conversation has continued for generations, and history and culture have shaped the food movement just as they have other social movements like feminism or civil rights.

This context also helps explain why I am focusing on food workers' rights to the exclusion of other equally deserving workers, and why food is an issue that I predict we will be hearing about more and more in human rights and policy spheres. Though the food *industry* is distinct from the food *movement*, the ways in which the food industry grew and changed over the 19th and 20th centuries (and how the government's policies shaped that growth) deeply inform the food movement. One may ask what exactly food activists are moving *against*, and why their concerns are embedded in a human rights framework. To answer, we need to go back to Northern California in 1971, and to Piedmont, Italy in 1986, and a few other key points at which food became much

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[10] "The Hands that Feed Us: Challenges and Opportunities for Workers Along the Food Chain" (2012) Food Chain Workers Alliance, online: <http://foodchainworkers.org/wp-content/uploads/2012/06/Hands-That-Feed-Us-Report.pdf>

[11] Michael Pollan, "The Food Movement Rising", *The New York Review of Books* (10 June 2010), online: <http://www.nybooks.com/articles/2010/06/10/food-movement-rising/>

more than just something we eat, and instead something many feel must be fought for.

A Cursory History of Food Policy in Canada

In the last hundred years or so, food has gone from being procured at a small scale by individuals, families, and communities to being produced by a complex global supply chain. The way we eat today is drastically different than the way our ancestors did 100 years ago: refrigeration and transportation allow us to ship perishable food around the globe; less people grow and cook their own food[12]; and we spend less money on food than ever before[13] and yet are eating out more frequently[14].

Canadian society has shifted from being agricultural and rural to industrialized and urban-centered, and few industries reflect the motivations for and consequences of this shift more vividly than the food industry. Though many historical flashpoints tell the story of food in Canada, World War II fundamentally changed food production and informed food policy in the country for two reasons. First, there was a need to ration food at home in order to conserve resources and feed soldiers. Second, this need was coupled with the rapid expansion of global trade and technological developments. This meant that while Canadians and Americans were growing Victory Gardens, eating local produce,

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[12] Marc Montgomery, "Canadians Losing Cooking Skills," *Radio Canada International* (14 April 2014) online: <http://www.rcinet.ca/en/2014/04/14/canadians-losing-cooking-skills/>; Statistics Canada, "2016 Census of Agriculture" (Ottawa: 10 May 2017) online: <https://www.statcan.gc.ca/daily-quotidien/170510/dq170510a-eng.htm>

[13] Terrence and Michele Veeman, "Agriculture and Food," The Canadian Encyclopedia (4 March 2015) online: <http://thecanadianencyclopedia.ca/en/article/agriculture-and-food/ (Canadians spend less than 10 per cent of their total household expenditure on food purchased in grocery stores for home consumption – a result of the combined effects of comparatively high levels of average income and relatively inexpensive foods)

[14] Lia Levesque, "Canadian Food Habits, Attitudes Towards Meals Are Shifting: Dalhousie Study", *The Huffington Post* (19 May 2017) online: <http://www.huffingtonpost.ca/2017/05/19/canadian-food-habits_n_16704852.html> (Canadians are increasingly turning to ready-made meals or eating out at restaurants; 41 per cent of respondents reported doing so once or twice a week, while three per cent said they did so every day)

and cutting back on meat[15] (all precursors to the modern-day food movement), food manufacturers were developing ways to keep food shelf-stable for longer so that it could be shipped to Canadians fighting abroad.[16] These scientific advances ultimately drove the processed food industry to become the second largest manufacturing industry in Canada; with shipments worth $105.5 billion, it accounts for 2 percent of the total national Gross Domestic Product (GDP). The food industry is also the country's largest manufacturing employer, employing around 246,000 Canadians.[17]

It wasn't just technology and the economy that changed drastically after the War: the Canadian government actively sought to influence the way citizens were consuming. As Ian Mosby writes in his historical overview of food policy in Canada during WWII,

The ubiquitous ration book would become the most vivid and lasting symbol of these efforts—but rationing was just one part of a much larger set of state interventions into Canada's kitchens. These included a concerted propaganda campaign to promote certain 'patriotic' foods, the wartime launch of an unprecedented national nutrition campaign, and the introduction of thousands of individual controls on the price, production, and distribution of everyday foods.[18]

Though wartime was one of the first government forays into food policy, it was certainly not the last. From the 1950s to

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[15] Ian Mosby, *Food Will Win the War: The Politics, Culture, and Science of Food on Canada's Home Front* (British Colombia: UBC Press, 2014) excerpt online: <http://wartimecanada.ca/essay/eating/food-home-front-during-second-world-war>

[16] Veteran Affairs Canada, "Canada's Industries Gear Up for War" (Ottawa: VAC 27 November 2017) online: <http://www.veterans.gc.ca/eng/remembrance/history/historical-sheets/industry> (Out of Canada's population of 11.3 million, approximately 2,100,000 citizens engaged full-time in what was called "essential civilian employment", which included agriculture, communications, and food processing)

[17] Agriculture and Agri-Food Canada, "Overview of the Food and Beverage Processing Industry" (Ottawa: 7 March 2016) online: <http://www.agr.gc.ca/eng/industry-markets-and-trade/market-information-by-sector/processed-food-and-beverages/overview-of-the-food-and-beverage-processing-industry/?id=1174563085690>

[18] *Supra* note 7.

the 1970s, the Canadian government became preoccupied with regulating markets at the national level,[19] using public policy to alter our relationship with the food supply. The Agricultural Prices Stabilization Board, created in 1958, is one example; it subsidized commodities to ensure continued production and low prices for certain foods.[20] The government also created credit programs for farmers so they could grow and mechanize their operations through the Farm Credit Act of 1959.[21] Throughout the 60s and 70s, food policy remained focused on agriculture, with the goal of creating robust economic returns for farmers and an affordable, reliable stream of food for consumers. These policies served national goals such as economic development, rising incomes, full employment, harmonious international and federal-provincial relations, stable and fair producer returns, and adequate supplies of high-quality food at stable and reasonable prices.[22]

Food was thus affordable and plentiful, farmers were able to expand their businesses, and the government had a handle on regulating the food supply. This may sound like an ideal state of affairs, but to many Canadians, this increasingly industrial and government-regulated food system had serious flaws—especially in light of food workers' incomes and employment, which could hardly be described as stable, rising, or fair.

A Financial Crash, and A Backlash: The Food Movement Grows in Canada

Amidst this context, there were rumblings that this political state was not so ideal. In the late 20th century, the hands-on policy approach of the 1950s to 1970s took a backseat to an increasingly international worldview. As globalization became a serious economic force, organizations like the IMF and the World Bank and multilateral trade agreements like NAFTA became part of the new political norm. This shift put Canada in a privatized, deregulated phase "where the state's interventions would be

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[19] Koc et al, "Getting Civil About Food: The Interactions Between Civil Society and the State to Advance Sustainable Food Systems in Canada" (2008) 392:3 J Hunger and Envtl Nutrition at pages 124-25.
[20] *Supra* note 13.
[21] *Ibid*.
[22] *Supra* note 13.

primarily limited to providing basic services and infrastructure of the private sector and maintaining law and order."[23]

The economic recession of the 1980s, which hit Canadians at the same time as their governments scaled back social safety net initiatives like Unemployment Insurance and provincial social assistance[24], was the first test of this new approach. More and more Canadians found themselves food insecure, meaning they didn't know where their next meal was coming from, and one of the most notable consequences of this pull-back was the proliferation of food banks in the 1980s. The lack of government response to this food security crisis necessitated a private and philanthropic response, and the first private food bank opened in Edmonton, Alberta in 1981. As of 2016, there are over 3,000 food banks in Canada serving over 800,000 people[25]—many of whom are the actually the same people that work to put food on our tables, one of the great ironies highlighted *Behind The Kitchen Door*, a book that chronicles abuses faced by restaurant workers.[26]

Societal frustration with the lack of political will to ensure basic human needs is a large reason food came the forefront. The food movement had first gained traction in the late 1960s and early 1970s as a grassroots, citizen-driven initiative, but the explosion of the local food movement is often credited to Alice Waters, a chef and local food advocate who opened Chez Panisse, one of the first "farm-to-table" restaurants in Berkley, California in 1971. Waters also founded Edible Schoolyard, a non-profit which teaches children about food and nutrition through school gardens, and whose model has been emulated across North America.[27] The Slow Food movement, which originated in

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[23] *Supra* note 19.
[24] "Food Assistance Policy (Canada)" in *Encyclopedia of Social Welfare History in North America*, 1st ed by John M. Herrick and Paul H. Stuart (Thousand Oaks California: Sage Publications, 2005) at page 129.
[25] Shawn Pegg and Diana Stapleton, "Hunger Count 2016: A Comprehensive Report on Hunger and Food Bank Use in Canada, and Recommendations for Change" (2016) Food Banks Canada. Online: <https://www.foodbankscanada.ca/getmedia/6173994f-8a25-40d9-acdf-660a28e40f37/HungerCount_2016_final_singlepage.pdf>
[26] Saru Jayaraman, *Behind the Kitchen Door*, (Ithaca and London: ILR Press, an Imprint of Cornell University Press, 2013) at pages 19-42.
[27] "About Alice Waters", *Chez Panisse* (website), online: <http://www.chezpanisse.com/about/alice-waters/>

Italy in 1986 through a protest against a proposed McDonalds franchise in Rome,[28] also planted seeds for a more global push against an increasingly industrialized, consolidated food industry. Today, Slow Food has chapters in countries around the world and boasts at least 100,000 members.[29]

In Canada, the "food movement" manifested in the late 1970s through the People's Food Commission (PFC), a collaboration among diverse stakeholders from across the country founded as a "direct response to the early impacts of neoliberal restructuring, including rising inflation and unemployment, increasing housing prices and declining working conditions in food and farming industries"[30]. In 1980, they released the results of their cross-country roundtables and research in *The Land of Milk and Money*, a report which found that the growing consolidation of power in the food industry was creating negative externalities, including the failure of small farms (as a result of the farm credits, which incentivized large-scale farming), the growing use of herbicides and pesticides as part of the Green Revolution, and yes, poor wages and working conditions for servers, farmers and fishermen.[31] Though the PFC proposed solutions to these issues, they lacked the funding to implement their proposals, and federal and provincial governments did not have the political will to correct some of the injustices the PFC had highlighted.[32]

Yet the PFC's powerful coalition had hit a nerve, and many conferences and conversations around food followed. After a conference about food security in 2001 in Toronto and a Food Assembly in Winnipeg in 2004, a network of over 200 delegates decided there was a need for a national organization to tackle food issues. Thus, Food Secure Canada (FSC), a civil-society NGO dedicated to advocating for food security in Canada, was born.[33] Their work quickly expanded beyond food insecurity to a wide

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[28] "About Us: Our History", *Slow Food* (website) online: <https://www.slowfood.com/about-us/our-history/>

[29] "Our Network", *Slow Food* (website), online: <https://www.slowfood.com/our-network/>

[30] *The Land of Milk and Money* (1980) The People's Food Commission, online: <https://foodshare.net/custom/uploads/2015/11/Land_of_Milk_and_Money.pdf>

[31] *Ibid* at 389.

[32] *Supra* note 19 at 390.

[33] *Supra* note 19 at 122-23.

range of food issues, and their mandate now includes promoting food sovereignty, sustainability, and health and safety for all Canadians.[34] In 2012, FSC assisted UN Special Rapporteur Olivier De Schutter during his 11-day mission to investigate the state of food security in Canada, the first developed country he visited as part of a rights-based assessment of global food systems. De Schutter's report was scathing, and his assessment that over 900,000 households and 2.5 million people identified as being food insecure[35] put food on the map as a policy problem that Canada couldn't ignore. In response to the then Conservative government's dismissive response to his findings, De Schutter replied that "it's not because the country is a wealthy country that there are no problems. In fact, the problems are very significant and, frankly, this sort of self-righteousness about the situation being good in Canada is not corresponding to what I saw on the ground, not at all."[36]

Citizens as a Driving Force of Food Systems Change

After the U.N. report, food issues certainly became more politically significant in Canada. However, we still haven't explained why food is such a powerful citizen-driven movement.

Food activists have certainly taken up the environmental movement's calls for sustainability, given the increased pressure on our natural resources to produce food for a growing global population. Because of this, some speculate that the food movement has caught on faster and captured more hearts and minds than the larger environmental movement because, quite simply, food tastes good—and it tastes even better when it's ethically produced and locally grown.[37] After all, "before the political games, before worries about dead zones and manure lagoons, before concerns about obesity and trans-fat, the food

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[34] "What We Do", *Food Secure Canada* (website), online: <https://foodsecurecanada.org/who-we-are/what-we-do>

[35] Olivier De Schutter, "Report of the Special Rapporteur on the right to food" (2012) GA 22nd Sess. (UN Human Rights Council) page 4 at 6-8.

[36] Sean Kilpatrick, "UN envoy blasts Canada for 'self-righteous' attitude over hunger, poverty", *The National Post* (15 May 2012) online: <http://nationalpost.com/news/canada/un-envoy-blasts-canada-for-self-righteous-attitude-over-hunger-poverty>

[37] Bryan Walsh, "Why the Food Movement is Becoming an Environmental Force", *TIME Magazine* (15 February 2011) online: < http://content.time.com/time/health/article/0,8599,2049255,00.html>

movement arose around a simple principle: food should taste better."[38]

Additionally, for an increasingly urban population, food is something that–unlike the world's natural reserves and endangered species–Canadians connect with daily, whether they eat fast food or shop at the farmers' market and cook at home.[39] The tangibility of the experience of eating has taken on more significance as our lives have become increasingly digital; food has the power to connect people to others, their lands, histories, and cultures in a way not many political topics can. Consumption is a choice, and in an increasingly unpredictable world, people seek to have as much power over that choice as possible. This idea is the root of the manta "vote with your fork" first coined by food reporter Michael Pollan in 2006 and used widely by food movement advocates.[40] "Far from being a new or temporary trend, food networks are part of a long process of mobilization around food system issues that crosses sectors, scales and places. Together, these collaborative efforts may be illustrative of a new wave in food activism that is represented by the emergence of a multi-scaled and cross-sectoral 'food movement'–a network of networks."[41]

Part II: How Human Rights Standards Define the Working Conditions of Food System Labourers

"Farm workers don't have a voice. Yes, they're brought here to Canada to work, but they're invisible. People only see the product of their work, but they don't see the work itself."

–Shane Martinez, human rights lawyer

"Officials mentioned an incident in which a supervisor covered the eyes of a worker with duct tape and then struck the worker with a meat hook. The undocumented worker did not report the incident because 'it would not do any good' and could jeopardize his job."

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[38] *Ibid*.
[39] *Ibid*.
[40] Michael Pollan, "Voting With Your Fork", *The New York Times* (7 May 2006) online: <https://pollan.blogs.nytimes.com/2006/05/07/voting-with-your-fork>
[41] Charles Z. Levkoe, "The food movement in Canada: A social movement network perspective" (2014) 41:3 J of Peasant Studies 399.

Now that we have some context for how food became a political, social, and economic focus for both the Canadian government and its citizens, we can to turn to the question of how food fits into existing human rights frameworks, and how these policies do—or don't—protect the human rights of the people who make our food. Principles articulated by international organizations like the United Nations and its Food and Agriculture Organization enshrine several central values including the right to food,[42] environmental sustainability,[43] indigenous sovereignty[44] and the right to health.[45] However, our national food policies have largely ignored these values in favour of responding to issues like over-production and over-consumption of food, which result in waste, obesity, and diet-related diseases. There has still not been enough of a response to the issues of food sovereignty for indigenous peoples and disadvantaged communities, the reduction and elimination of hunger and malnutrition, or the quality of life for workers in the food chain, and that lack of attention has had dire consequences for vast swaths of the Canadian population, from 1,409,1000 Indigenous citizens[46] to 1.5 million+ food workers.

In terms of identifying the barriers to workers' socio-economic rights, the problem is often rooted in economic disparity between food labourers and their managers and CEOs. De Schutter's report on Canadian food insecurity cites the Organisation for Economic Co-operation and Development's (OECD) statistics about inequality in Canada,[47] noting "widening disparities in labour earnings and a lack of redistributional

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[42] *Supra* note 35.
[43] "UN Sustainable Development Goals", *The United Nations* (website) online: <https://sustainabledevelopment.un.org/sdgs>
[44] United Nations Declaration on the Rights of Indigenous Peoples, UN General Assembly, 2 October 2007, A/RES/61/295.
[45] *The Right to Health Factsheet No. 31*, UNHCHR and WHO (Geneva: 2008) online: <http://www.ohchr.org/Documents/Publications/Factsheet31.pdf>
[46] Statistics Canada, "Aboriginal Peoples: Factsheet for Canada" (Ottawa: 30 November 2015) online: <http://www.statcan.gc.ca/pub/89-656-x/89-656-x2015001-eng.htm>
[47] *Supra* note 35 at 5 (The average income of Canada's top 10 percent ($103,500) was 10 times higher than that of the bottom 10 per cent ($10,260)).

mechanisms."[48] Canada's politicians were certainly not oblivious to this gap, and at the time were engaged in promoting citizens' participation in the workforce. Though De Schutter commended this approach,[49] he also referenced articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)[50] as a reminder to the federal government that "that the minimum wage set in legislation should be, at least, a 'living wage,' that 'provides an income allowing workers to support themselves and their families'".[51] These provisions also ensure that work conditions are "favourable" and provide fair wages, safe working conditions, opportunities for promotion, time to rest, and paid holidays. For our purposes, is worth looking at these two Articles in full:

Article 6(1): The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

(2) The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual;

Article 7: The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

> *(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in*

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[48] *Ibid*.
[49] *Ibid* at 38.
[50] *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, 2200A XXI at Articles 6, 7 (entered into force 3 January 1976 in accordance with article 27).
[51] *Supra* note 35 at 38.

> *particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;*
>
> *(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;*
>
> *(b) Safe and healthy working conditions;*
>
> *(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;*
>
> *(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays (emphasis added).*

Though Canada ratified the ICESCR in 1976,[52] these conditions are disrespected at all points in the food economy; as I will detail below, workers on farms, in processing plants, and in restaurants are paid low wages to do dangerous work. Olivier De Schutter noted as much back in 2012, when he called Canada's general approach to implementing international human rights obligations "ineffective" and said our country faces "a notable lack of meaningful remedies for violations of economic, social and cultural rights."[53]

Given food workers are migrants, it is also important to consider the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted by the UN General Assembly in 1990 and also ratified by Canada. The Convention protects migrant workers and their families from "cruel, inhuman or degrading treatment or punishment"[54] as well as "violence, physical injury, threats and

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[52] UNOHCHR, "Status of Ratification Interactive Dashboard", online: <http://indicators.ohchr.org/>

[53] Alex Neve, "Canada and the right to food at the UN: A disappointing and missed opportunity for leadership", *Human Rights Now: Amnesty Canada* (blog), (4 March 2013) online: <http://www.amnesty.ca/blog/canada-and-the-right-to-food-at-the-un-a-disappointing-and-missed-opportunity-for-leadership>

[54] *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, 18 December 1990, GA Res45.158

intimidation, whether by public officials or by private individuals, groups or institutions,"[55] and similarly to the ICESCR guarantees safe, fair working conditions.[56]

These two examples are far from the only international human rights instruments that prioritize food and health and guarantee fair working conditions. The FAO created the PANTHER framework in 2006 as a "process that should be followed in addressing the right to adequate food"[57]. More recently, the United Nations developed the Sustainable Development Goals (SDGs) to set global priorities such as the elimination of poverty and hunger, the promotion of good health and wellbeing, decent work and economic growth, the reduction of inequalities, and the creation of more sustainable cities and communities[58]—none of which are being achieved for workers in the food industry today. Even Canada's own Charter of Rights and Freedoms protects the right to life, liberty and security of the person[59]; what guarantees the life and security of a person more than shelter, clothing, food, and a decent wage to provide these things? The Charter also promises citizens that they have "the right not to be subjected to any cruel and unusual treatment or punishment"[60] and that every individual has the right to "the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination."[61] Unfortunately, the reality for food workers is so far removed from

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at Article 10 (entered into force 3 January 1976 in accordance with article 27) [*Rights of All Migrant Workers*].

[55] *Rights of All Migrant Workers*, *supra* note 54 at Article 16.

[56] *Ibid* at Article 25.

[57] "Human Rights Principles: PANTHER", *FAO: Right to Food* (website) (2017) online: <http://www.fao.org/righttofood/about-right-to-food/human-right-principles-panther/en/> (The PANTHER principles include Participation, which requires that everyone have the right to subscribe to decisions that affect them; Accountability, which requires that politicians and government officials be held accountable for their actions; Human dignity, which requires that people be treated in a dignified way; Empowerment, which requires that they are in a position to exert control over decisions affecting their lives; and Rule of law, which requires that every member of society, including decision-makers, comply with the law).

[58] *Supra* note 43.

[59] *The Canadian Charter of Rights and Freedoms*, art 7, being Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act* 1982 (UK), 1982, c 11.

[60] *Ibid* at art 12.

[61] *Ibid* at art 15(1).

these lofty human rights guaranties that it is shocking that the Canadian government has not included them in their national food policy—which for many is already arriving far too late.

National Food Policies Largely Ignore Labourers

The food we eat is a result of human labour, and yet food policies in both the United States and Canada largely focus instead on the rights and needs of consumers, business owners and industries; agriculture, food safety, labelling, and fraud are among the most commonly legislated elements of our food chain.[62] One has only to look at America's two major pieces of national food-related legislation to see where political priorities lie. The Farm Bill—an omnibus piece of legislation that covers a dizzying array of food-related questions, from farm subsidies and crop insurance to Supplemental Nutrition Assistance and school lunches—makes no mention of labour, either as Title[63] or within the bill. In fact, the only mention of agricultural worker safety is found under Title VII: Miscellaneous. The next Farm Bill is set to be signed in 2018, although heated debates have often delayed it from being passed in previous years. Another U.S. example is The Food Safety Modernization Act, which was passed in 2011 and touted as "the most sweeping reform of [U.S.] food safety laws in more than 70 years…[which] aims to ensure the U.S. food supply is safe by shifting the focus from responding to contamination to preventing it."[64] Though keeping people safe from foodborne illness is a crucial part of a government's responsibilities, the statute fails to mention anything about the health and safety conditions provided to workers who harvest, produce, and cook food. This omission is especially egregious when one considers

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[62] Multiple lectures delivered at The 2nd Annual Canadian Food Law and Policy Conference, St. Paul University, Ottawa (2-4 November 2017), [unpublished].

[63] *The Agricultural Act of 2014*, The 113th Congress, United States of America, 2014 (signed into law by President Barack Obama on 7 February 2014). (The Farm Bill's Titles are, in order: Title 1: Commodities; Title 2: Conservation; Title 3: Trade; Title 4: Nutrition; Title 5: Credit; Title 6: Rural Development; Title 7: Research; Title 8: Forestry; Title 9: Energy; Title 10: Specialty Crops & Horticulture; Title 11: Crop Insurance; and Title 12: Miscellaneous).

[64] *The FDA Food Safety Modernization Act*, 111th Congress, United States of America, 2011 (as signed into law by President Barack Obama on 4 January 2011).

that some of these gaps in labour and workplace safety laws are actually responsible for foodborne illnesses.[65]

Canada's federal food laws don't fare much better in terms of addressing the myriad issues food workers face. The Canadian Food Inspection Agency Act[66], which governs food safety in Canada, is similarly consumer- and industry-facing. As for labour standards, food workers are not covered under the federal Labour Standards Provisions, so provinces step in to create their own labour regulations. Many, including Ontario and Alberta, excluded agricultural workers from certain protections including the right to the minimum wage or to collective bargaining, until this past year.[67]

Though the Food Policy for Canada aims to rectify many issues in our food system, the rights of food systems workers are currently not one of the policy's targets, despite these large-scale abuses experienced at every step of our food chain. To emphasize the need for this focus, I am taking a cross-industry and interdisciplinary approach to examining how our laws (or lack thereof) create human rights violations which reverberate throughout our entire population. In service of this aim, the following three sections will survey labour conditions across three sub-industries: farming, processing, and restaurants.

1. Agricultural Workers

If you're interested in eating healthily and locally, most of the food you want to consume takes root in Canadian soil—where it is planted, tended to, and harvested by foreign workers. Of

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[65] Craig W. Hedberg et al., "Systematic Environmental Evaluations To Identify Food Safety Differences Between Outbreak and Nonoutbreak Restaurants" (2006) 69:11 J of Food Protection 2697 at Abstract, online: <https://www.cdc.gov/nceh/ehs/ehsnet/docs/jfp_sys_env_eval_id_food_safety_bw_ob_nob_rest.pdf> (Norovirus accounted for 42 percent of all confirmed foodborne outbreaks during the study period. Handling of food by an infected person or carrier (65 percent) and bare-hand contact with food (35 percent) were the most commonly identified contributing factors)

[66] Canadian Food Inspection Agency Act, SC 1997 c.6.

[67] "Labour Relations: Farm and Ranch Legislation", Government of Alberta (website), online: <https://www.alberta.ca/farm-and-ranch-labour-relations.aspx>; "Agricultural Employees", Ontario Ministry of Labour (website) (20 November 2015) online: <https://www.labour.gov.on.ca/english/es/pubs/factsheets/fs_agri.php>

Canada's estimated 289,200 agriculture workers, 34,045 arrived through the Seasonal Agricultural Worker Program (SAWP)[68] established by the Ontario government in 1966 to help farmers meet market demands for labourers during intensive harvesting periods. It has since grown to a national program responsible for bringing over 135,000 migrant agricultural workers to work in Canada's fields.[69] Over half of the program's participants migrate from the Caribbean and Mexico, and around 90 percent still work in Ontario, though Quebec, Alberta, and British Colombia and others also receive Temporary Foreign Workers (TFWs).[70] Many of these workers come to Canada to provide for their families back home; SAWP program participants sent $174.1 million in remittances to their home countries in 2014.[71] However, though "remittances reduce poverty and precarity... at the same time [they] reproduce precarity in different forms"[72]. Some of these new forms of precarity, as Joseph Stieglitz articulates, manifest through an under-investment in infrastructure, education and healthcare systems and social safety nets; he posits that "rising inequality reinforces itself by corroding our political system and our democratic governance."[73]

At the root of much of this political corrosion and subsequent worker abuse is the fact that, though these migrants often return to Canada year after year to grow our food,[74] they have no pathway to becoming permanent residents through either federal or Quebec immigration programs, since seasonal workers are not eligible for Provincial Nominee Programs.[75] A study of

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[68] "Migrant Workers: Precarious and Unsupported: A Canada-wide Study on Access to Services for Migrant Workers" (2016) Canadian Council for Refugees, online: <http://ccrweb.ca/sites/ccrweb.ca/files/migrant-workers-2016.pdf>

[69] Wells et al, "Sustaining Precarious Transnational Families: The Significance of Remittances from Canada's Seasonal Agricultural Workers Program" (2014) 22 Just Labour: A Canadian Journal of Work and Society at page 145.

[70] "The Seasonal Agriculture Workers Program", Justicia/Justice for Migrant Workers (factsheet) online: <http://www.justicia4migrantworkers.org/bc/pdf/sawp.pdf>

[71] *Supra* note 69.

[72] *Ibid* at page 46.

[73] Joseph E. Stieglitz, "Inequality is a Choice", *The New York Times: The Opinionator, The Great Divide Series* (blog) (13 October 2013) online: <https://opinionator.blogs.nytimes.com/2013/10/13/inequality-is-a-choice/>

[74] *Supra* note 69 (Most workers return to Canada year after year, sometimes for more than 20 years).

[75] *Supra* note 68.

remittances sent by SAWP workers describes the program as one that recruits "impoverished, racialized workers from historically colonized countries [to] come to Canada for six weeks to eight months annually before they are required to return home," adding that "this circular labour migration is a pattern of repetitive family fragmentation and reunification embedded in selection processes designed to preclude permanent settlement by recruiting those who are married and/or have children."[76]

The TFW programs in Canada thus place workers in deeply vulnerable positions. Not only are they separated from their families and friends, living in rural locations where their access to social, medical, and other services are restricted,[77] but both they and their families depend heavily on their Canadian paychecks, no matter how meager they might be. These workers also rely on their employers for housing and food, which are often subpar. "Because of their isolation, precarious status and lack of support, workers are afraid to complain of abuse or to miss work if they become sick or injured. These circumstances create a huge power imbalance between the employer and the worker, creating opportunity for abuse."[78] Violations of workers' human rights are commonly observed by organizations around the country who work to provide farm workers with basic services,[79] and cases of mistreatment of farm workers are well-documented.[80] These abuses include frequent sexual assault of female farm workers by supervisors[81] (one survey found that 80 percent of farm workers had experienced some form of sexual harassment)[82]; wage theft and underpayment; exclusion from employment insurance benefits despite the fact they pay into the system automatically[83]; repeated exposure to dangerous chemicals and pesticides[84]; and

[76] *Supra* note 69.
[77] *Supra* note 70.
[78] *Supra* note 69 at page 11.
[79] *Ibid* at page 9.
[80] *Ibid*.
[81] "Injustice on our Plates: Immigrant Women in the U.S. Food Industry", The Southern Poverty Law Center (2010) at pages 41-48.
[82] *Supra* note 80 at page 46.
[83] *Supra* note 7.
[84] *Supra* note 80 at page 32.

racial profiling and illegal search and seizure by police, including DNA swabbing.[85]

There is currently no method for farm workers to file claims against their employers for these violations. The SAWP has no appeal or monitoring mechanisms. "Some workers never return to the program due to mistreatment. Others attempt to relocate to other farms. But most of the time workers are not granted transfers because it requires approval from the employer in question and consulate liaison officers. Many workers remain silent out of fear from being expelled from the program."[86] Though the federal government made changes to the TFWP in 2014, none of their alternations were aimed at stopping this multi-faceted abuse of farm workers.[87] Some provinces have also attempted to improve migrant workers' conditions through protective legislation, but these laws have been inconsistently enforced for many of the same reasons that the abuses happen in the first place.[88]

As rural and isolated as these workers are, they come through a government-controlled immigration program, which means that there are several places in the system that can be improved with legislative changes or additions. Some of these potential changes will be highlighted in Part III. However, as lawyer Shane Martinez told me, "It doesn't help [the government] to provide a pathway to permanent residency, or to create an appeals process, or create an equitable employee insurance situation. Unless the Canadian government has a bona fide interest in social justice, this isn't going to change."[89]

2. Food Manufacturing and Processing Workers

Though politicians and pundits often argue that food systems and other low-wage workers are taking jobs away from Canadians,[90] several studies have found that "[m]igrant workers

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[85] *Supra* note 7.
[86] *Supra* note 70.
[87] *Supra* note 79.
[88] *Ibid*.
[89] *Supra* note 8.
[90] Jordan Press, "Foreign Workers Taking Jobs Canadians Could Fill: Auditor General", *The Canadian Press* (16 May 2017), online: <http://www.huffingtonpost.ca/2017/05/16/temporary-foreign-worker-program-canada_n_16644834.html>

perform rigorous and often dangerous rural labour that few Canadians choose to do."[91] At no point in the food chain is this more true than in manufacturing and processing, where workers deal with heavy machinery, dangerous tools, and chemicals and viruses daily, often at a breakneck pace in sub-optimal environments. All of the food in our grocery stores had to be processed, packaged and shipped by workers, many of whom are foreign-born and subject to the same vulnerabilities as agricultural workers who come to Canada under SAWP or TFW. Unlike in the agricultural industry, it is difficult to find the numbers of how many workers help to process, package, and ship our food, and The Food Processing Human Resources Council (FPHRC) is one of the only organizations tracking this industry. According to their estimates, 75 percent of Canada's food is supplied by around 6,500 food processing establishments staffed by around 246,000 Canadians, including a large contingent of immigrants.[92] These labourers are responsible for a range of tasks, from operating heavy factory machinery to ensuring quality control and health and safety requirements are being met to be shipping and receiving products.[93]

Though many abuses like sexual assault, underpayment and wage theft are pervasive throughout the food industry, some violations are more egregious in manufacturing, especially those that relate to health and safety laws. According to one report, "more than half of all workers surveyed reported that they did not receive health and safety training from their employers. Almost one-third of all food systems workers reported that their employers did not always provide necessary equipment."[94] In addition, nearly 6 percent of respondents said that they were never provided with the equipment needed to do their jobs, and 1 in 10 workers said they were asked to do something at work that put their own safety at risk.[95]

No employee should have to risk their life to earn a living, and yet many of the jobs in the food industry threaten just that: the manufacturing and transport/equipment operations industries

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[91] *Supra* note 80.
[92] "Food and Beverage Industry", *The Food Processing Human Resources Council* (website), online: <http://www.fphrc.com/food-beverage-industry/>
[93] *Ibid*.
[94] *Supra* note 10 at page 29.
[95] *Ibid*.

rank as two of the most dangerous in Canada, surpassed only by sales and service occupations.[96] Because of this, the life, liberty and security of these workers are regularly at risk, in direct violation of the Canadian Charter of Rights and Freedoms and several of the international instruments outlined above.

3. Restaurants and Hotel Workers

There are 1.2 million people directly employed by the Canadian restaurant industry, which accounts for about 7 percent of our total workforce[97]—making it by far the largest employment sector in the food industry.[98] It also contributes $68 billion a year to the Canadian economy and serves over 18 million customers a day.[99] Restaurants Canada estimates that only about 2 percept of the industry's employees are Temporary Foreign Workers;[100] thus, while restaurant work is some the most visible food labour to Canadian consumers, a large percentage of immigrants in the industry are unregulated and unseen by the government. They are often not in Canada or working legally, making them especially vulnerable to being taken advantage of by both managers and customers and unwilling or unable to speak up when they experience violations of their rights.[101] For this reason, many workers don't come forward with their complaints out of fears of being fired or deported. As one expert says, "To the extent that any of these processes depend on individual migrant workers

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[96] "2015 Injury Statistics Across Canada", *Association of Workers Compensation Boards Across Canada* (website), online: <http://awcbc.org/?page_id=14>

[97] *Supra* note 3.

[98] *Ibid*.

[99] Restaurants Canada, Press Release, "Restaurants Canada Statement of Temporary Foreign Worker Program Suspension" (25 April 2014), online: <https://www.restaurantscanada.org/restaurants-canada-statement-on-temporary-foreign-worker-program-suspension/>

[100] *Ibid*.

[101] Geoff Leo, "Complaint-based systems failing abused foreign workers: expert", *CBC News* (27 May 2014), online: <http://www.cbc.ca/news/canada/saskatchewan/complaint-based-systems-failing-abused-foreign-workers-expert>; Daniel Tencer, "Widespread TFW Abuses Revealed As Industry Group makes Stunning Assertion", *Huffington Post Canada* (28 May 2014), online: < http://www.huffingtonpost.ca/2014/05/28/restaurants-canada-100-hour-wage>

coming forward and filing complaints, you're dreaming in Technicolor if you think there's going to be enforcement."[102]

One of the most pervasive issues in the restaurant industry is wage theft and underpayment. This is common in both the back of the house (where chefs, cooks, and dishwashers work) and in the front of the house (those employees who work directly with customers, like bartenders, waiters, and bussers). According to Bruce McAdams, a long-time restaurant worker and professor who studies labour shortages in the industry, chefs often subsist at or below the poverty line,[103] earning an average hourly wage of $13 and sometimes going years without a raise. "Unsurprisingly, most chefs become disillusioned with an industry that puts them below the poverty line," Foodservice and Hospitality magazine reports. "They soon abandon the kitchen and earnest new hires replace them, with the same aspirations the departed chefs once had. The cycle repeats itself, which is half the problem."[104]

Those that don't abandon their careers face brutal working conditions that often create or exacerbate mental health issues and substance abuse problems. "In the kitchen [...] we work in the heat, long hours, a lot of time, no breaks, long stretches at a time without eating," says Edmonton Chef Dan Letourneau, who along with two other chefs started an organization to address their industry's mental health issues. "There's a level of perfectionism that's expected of us."[105]

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[102] Terry Pedwell, "Brothers Classic Grill Under Investigation After Waitresses Lose Jobs to Foreign Workers", The Candian Press (21 April 2014), online: <http://www.cbc.ca/news/canada/saskatchewan/complaint-based-systems-failing-abused-foreign-workers-expert> (A special investigation unit in Manitoba's Labour and Immigration department has been carrying out surprise inspections of businesses using TFWs, and found that 80 per cent of restaurants in Manitoba using TFWs were violating the program's rules in some way. Among sushi restaurants, which are often known to rely heavily on foreign labour, the violation rate was 95 per cent, special investigations manager Jay Short told the CBC.)

[103] Eric Allister, "The Canadian Restaurant Industry is Facing a Labour Crisis", Foodservice and Hospitality Magazine (1 March 2017), online: <http://www.foodserviceandhospitality.com/the-canadian-restaurant-industry-if-facing-a-labour-crisis/>

[104] *Ibid*.

[105] "Chefs aim to fight depression, anxiety, substance abuse in the restaurant industry", *CBC News* (6 November 2016), online:

These chefs also have to compare their meager hourly salaries and long, physically demanding shifts with waiters and bartenders, who make the minimum wage but also collect tips from customers; front-of-house waiters and servers can earn up to $25 or $30/hour once tips are factored in.[106] However, because such a large portion of their incomes is paid by customers and redistributed by the restaurant's managers, servers are often victims of wage theft, which means that their employers will skim off some portion of their earnings. Sometimes, these thefts are so small that workers don't notice them at first; one of the most notorious such violations was perpetrated by Mario Batali and his partner Joe Bastianich, who deducted four to five percent of each shift's wine and alcohol sales from the tip pool and denied overtime pay to workers who worked more than 10 hours a day[107] at their high-end New York City restaurant. Batali was forced to pay over $5 million in 2012 to repay his workers, but has since been hit bit other wage theft, discrimination, and sexual assault lawsuits.[108]

Many restaurant workers across Canada and the United States are still waiting for their payouts. On June 10, 2016, the Protecting Employees' Tips Act went into force in Ontario; it forbids employers from tampering with employees' tips.[109] However, only 0.2 per cent of bosses guilty of monetary violations are ever prosecuted[110] and many violators have not been forced to pay back the stolen wages, according to an investigation by the Toronto Star. Food service establishments were also found most likely to break the law. As a result, "victims of wage theft

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<http://www.cbc.ca/news/canada/edmonton/chefs-aim-to-fight-depression-anxiety-substance-abuse-in-restaurant-industry-1.3839378>

[106] *Supra* note 104.

[107] Amanda Kludt, "Mario Batali Settles $5 Million Class Action Lawsuit", *Eater New York* (7 March 2012), online: <https://ny.eater.com/2012/3/7/6607651/mario-batali-settles-5-million-class-action-lawsuit>

[108] Irene Plagianos, "Mario Batali Hit With Another Wage Lawsuit at Babbo", *Eater New York* (29 November 2017) online: <https://ny.eater.com/2017/11/29/16716398/mario-batali-wage-lawsuit-babbo-nyc>

[109] Protecting Employees' Tips Act S.O. 2015 c.32.

[110] Sara Mojtehedzadeh, "Wage-theft victims lost $28M to poor enforcement, statistics show", *The Toronto Star*, (2 August 2016), online: <https://www.thestar.com/news/gta/2016/08/02/wage-theft-victims-lost-28m-to-poor-enforcement-statistics-show.html>

across Ontario have lost out on $28 million over the past six years because the Ministry of Labour failed to collect the pay owed to them by law-breaking bosses. [...] Just $19 million of the $47.5 million stolen from out-of-pocket workers since 2009 has ever been recovered."

Sexual assault and discrimination also flow naturally from the tipping structure.[111] Because many diners see tipping as a reward for a job well done, servers often feel pressured to acquiesce to customers, even when their advances are inappropriate or unsolicited.[112] Skin colour and age have also been found to dictate tipping:

Studies have shown that different ethnicities, genders and age groups tip differently. [...] In many cases, servers go to the table with a predetermined tip amount that they think they're going to receive, and they adjust their service accordingly, focusing on the guests who they believe will give the largest tips. Tipping, therefore, promotes inequality not just among staff members but also towards guests, causing restaurants across North America to question the efficacy of the practice.[113]

Sexual harassment is also rampant in kitchens, especially for female back-of-house workers. In the wave of #metoo sexual harassment accusations, New Orleans restaurateur John Besh was publicly outed by 25 of his employees for fostering unsafe work environments where women were frequently the subjects of "vulgar and offensive comments, aggressive unwelcomed touching and sexual advances were condoned and sometimes even encouraged by managers and supervisors."[114] Many high-profile food professionals, including Toronto restaurateur and

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[111] Jen Agg, "A Harvey Weinstein Moment for the Restaurant Industry?", *The New Yorker* (26 October 2016), online: <https://www.newyorker.com/culture/annals-of-gastronomy/a-harvey-weinstein-moment-for-the-restaurant-industry>

[112] *Supra* note 26 at pages 142-144.

[113] *Supra* note 102.

[114] Brett Anderson, "John Besh restaurants fostered culture of sexual harassment, 25 women say", *NOLA.com | The Times-Picayune* (26 October 2017), online: <http://www.nola.com/business/index.ssf/2017/10/john_besh_restaurants_fostered.html>

author Jen Agg, have pointed out that this type of abuse has long been par for the course in the restaurant industry.[115]

Part III: Towards a New Definition of Sustainability

> "If we are to create a hospitality industry that's ...effective...we need to analyze the foundation that it currently rests upon and...answer some very difficult questions. We need to ask ourselves, 'what are the causes of this continuous problem that has been an anchor around our industry and around our own individual businesses?' They're holding us back. It's time to move forward."
>
> *– Professor and former restaurant industry employee Bruce McAdams*

Though these abuses are certainly egregious, one might not necessarily equate them with sustainability, a subject usually at the forefront of politicians' minds as they draft food policy. Sustainability is defined as "capable of being sustained; of, relating to, or being a method of harvesting or using a resource so that the resource is not depleted or permanently damaged."[116] Though it is most commonly used in reference to environmental or agricultural practices, sustainability is applicable to all environments. The situations food workers are experiencing are the opposite of sustainable; we are already seeing labour shortages throughout the food industry as a result of increased immigration raids on restaurants, physical and verbal abuses against workers, and inadequate pay.[117] As our population grows and our climate changes rapidly, ensuring that we have enough people to plant, harvest, process and serve our food is only becoming more important. To leave workers out of the national conversation on food is a huge and potentially devastating omission on the part of the Federal government.

In light of this, I would like to conclude this paper by highlighting five concrete steps Canada could take within the National Food Policy or through separate legislation to correct and prevent these human rights abuses from occurring in one of our country's most vital industries.

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[115] *Supra* note 109.
[116] The Merriam-Webster Dictionary, online, sub verbo, "sustainable".
[117] *Supra* note 102.

1. *Create a pathway to permanent residency for TFWs and SAWP participants.*

As mentioned, agricultural workers are brought in seasonally for work. However, no matter how many years they return to Canada, they are never granted a path to permanent residency or citizenship. This has consequences for their ability to change jobs or support themselves should they get laid off. Additionally, though they pay into the country's Employment Insurance, foreign workers are not eligible for its benefits.[118] This situation is unsustainable for all parties involved and could be rectified through a pathway to Permanent Residency for TFWs and SAWP participants who meet certain criteria.

2. *Include human rights and wage abuses in food safety inspections.*

While health inspections are an important means of enforcing food safety laws, they do not consider worker violations. If inspectors were responsible for ensuring not just the safety of the food being produced but the well-being of the workers producing the food, violators would be more likely to change their ways. In fact, reports show that inspections by the Ministry of Labour would be an effective deterrent to some of these abuses.

3. *Create a complaints system and tribunal for food workers.*

The same report that recommends expanding workplace inspections "also suggests making the complaints process safer and more accessible, for example, by allowing workers to make anonymous or third-party complaints."[119] There is currently no way for workers to report abuses; this means that we still don't have a sense of how widespread these human rights violations are, nor any way of offering restitution or retribution to workers who have experienced these wrongs. This is in direct violation of

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[118] *Supra* note 7.
[119] *Supra* note 108; Sarah Mojtehedzadeh, "Victims left exposed in wage-theft war", *The Toronto Star* (17 February 2016), online: <https://www.thestar.com/news/gta/2016/02/17/victims-left-exposed-in-wage-theft-war.html>

several human rights guarantees and allows abuses to continue unabated and unpunished.

4. *Create and disseminate an education campaign about food workers' rights and the regulations in place to protect them.*

Many consumers remain unaware of the pervasive human rights abuses that occur in the process that gets their food on the table. In light of this, the Food Policy for Canada team and Employment and Social Development Canada should collaborate on a cross-agency campaign to make consumers aware of the potential abuses in the industry; teach workers about their rights and how to seek recourse for violation of those rights; and clarify to companies what their legal responsibilities to their workers are, and what the punishments are if those responsibilities are not met.

5. *Levy steeper fines to industries and businesses that fail to comply with these regulations and standards.*

Companies who do not respect their workers' basic human rights should be punished accordingly. Levying high punitive fines for these types of violations could send a signal to the industries as a whole that this treatment of workers is unacceptable and will not be tolerated in Canada. It will also alert consumers about companies who mistreat their workers.

Conclusion

In this paper, I have tried to highlight the disproportionate amount of abuse food workers across Canada face, no matter their position in the industry. These abuses are flagrant violations of several human rights protections that have been ratified by Canada, as well as our own Charter of Rights and Freedoms. Be it underpayment and wage theft, verbal and physical sexual harassment, systemic roadblocks for hard-working immigrants, or a lack of mobility for farmworkers in rural areas or restaurant workers due to discrimination and exploitation, the lack of ability that workers have to seek effective recourse for these violations compounds these problems and makes them harder to address.

It is thus crucial that this conversation continues, not just among policymakers, but in the media, between CEOs, chefs, law enforcement, and non-profit organizations. Our culture is

currently in the midst of a deep excavation of some of these pervasive abuses, including sexual harassment and racism. The highly gendered and racialized nature of food work means these conversations reverberate throughout the food industry and should not stop there. The violence and fear that pulses through our fields, factories, kitchens and restaurant dining rooms has no place in a democratic, free, and just society.

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