



INCOME SECURITY ADVOCACY CENTRE  
Centre d'action pour la sécurité du revenu



NIAGARA NORTH COMMUNITY LEGAL ASSISTANCE  
"Providing Access to Justice to Niagara for more than 30 years"

## **Update: Migrant workers win Employment Insurance case at Federal Court of Appeal**

On November 19, 2013, the Federal Court of Appeal granted 102 court applications brought by over one hundred seasonal agricultural workers who argued that they were wrongly denied Employment Insurance parental benefits. The workers were represented by the Income Security Advocacy Centre and Niagara North Community Legal Assistance.

### **The Case: Cruz De Jesus v. Canada**

The case of *Cruz De Jesus* arose from 102 denials of migrant worker applications for parental benefits, on the grounds that they had applied "too late." The denials were upheld by an EI Umpire. But there is no deadline for applying for EI, as long as the worker can show that they had a good reason for not applying earlier. All of these workers made EI contributions – for over 15 years in some cases – and are otherwise entitled to the parental benefit.

The Federal Court of Appeal has now agreed that the EI Umpire was wrong, because the Umpire refused to consider the multiple barriers that migrant workers face when considering whether they had a good reason for applying when they did.

The Court stated that migrant workers face "unique disadvantages in the Canadian labour market," including ineligibility for many social benefits, denial of statutory protections enjoyed by other workers, social isolation and fear of employer reprisal and deportation. The Court has ordered the Office of the Umpire to re-hear each of the 102 cases, and to keep these vulnerabilities in mind in assessing them.

"This case is important because it confirms that the vulnerable circumstances of migrant workers must be considered in determining their eligibility for the parental benefit," said Jackie Esmonde, co-counsel for the applicants and staff lawyer at the Income Security Advocacy Centre. "This gives these migrant workers a fair chance to access a program that they contribute to, just like other workers."

"EI was approving migrant worker parental benefits for years, without questioning the length of delay," said Jennifer Pothier, co-counsel at Niagara North Community Legal Assistance. "The barriers migrant workers faced in applying were accepted by the Commission. But in 2008, they started denying all the applications. So what changed at EI? Now the Court has recognized the barriers and so must any future decision-maker."

"I am happy and excited about how the case went," said Glendon Sanchez, one of the migrant worker applicants in the case. "But this is not simply about me. I hope that this can help the people coming after me. I also want to help my daughter. This money would greatly help towards her college fund."

## **The exclusion of Seasonal Agricultural Workers from EI**

The Seasonal Agricultural Workers Program was created in 1966. Since that time, workers from the Caribbean and Mexico have been coming to Canada to plant and harvest the food that Canadians need. Many seasonal agricultural workers have been working in Canada for decades, and spend more of their life in Canada than they do in their home countries. They are an essential part of Canada's work force. But the contracts they must sign result in them being unemployed for 4-6 months out of every year.

Like other Canadian workers, these workers make contributions to EI with every paycheque and have paid tens of millions of dollars into the EI fund. But because they are required to leave the country at the end of their work contract each year, they cannot qualify for most EI benefits. To qualify for regular EI benefits, workers generally have to be living in Canada during the period of their unemployment in order to be "ready and available" for work.

"Special benefits", like maternal, parental and compassionate benefits are the only exceptions. Parents caring for newborn children do not have to be in Canada to be eligible for EI parental benefits, as they are not expected to be "ready and available" for work. Seasonal agricultural workers who returned to their home countries at the end of their contracts and were caring for newborn children were eligible for parental benefits.

This was not known until around 2002 due to the numerous barriers that prevent these vulnerable workers from accessing EI: they work in rural and remote locations; they work long hours with difficult working and living conditions; they are under constant threat of deportation if they try to enforce their rights; many face language and literacy barriers. Most seasonal agricultural workers were not aware they qualified for parental benefits until allied groups like the Agricultural Workers' Alliance (AWA), the United Food and Commercial Workers (UFCW), and Justicia for Migrant Workers (J4MW) began outreach efforts to help workers to apply.

### **The recent clawback: Shutting the door to EI for migrant workers**

Unfortunately, this case will only help those migrant workers who applied before December 9, 2012. On that date, the government of Canada changed the law to make it even harder for migrant workers to access EI special benefits. Now migrant workers can only access parental, maternity and compassionate benefits during the period covered by their work permit. In other words, they cannot access the parental benefit when they most need it: when they are unemployed and caring for a newborn child.

Canada is more and more reliant on the work of temporary migrant workers. In fact, more permits are now granted for temporary workers like these than for permanent immigrants. These workers are an essential part of the Canadian labour force. These workers deserve the same protections as any other workers in Canada. The continuing erosion of Canada's social safety net threatens the economic and social security of us all.

ISAC and Niagara North Community Legal Assistance jointly represent all of the workers in *Cruz De Jesus v. Canada*. More information about the case can be found at ISAC's website at <http://www.incomesecurity.org/challenges/index.html> or by contacting Jackie Esmonde at 416-597-5820 (extension 5153) or [esmondja@lao.on.ca](mailto:esmondja@lao.on.ca) or Jennifer Pothier at 905-682-6635 ext.227 or [j\\_pothier@lao.on.ca](mailto:j_pothier@lao.on.ca).