

Is Work Working?

Work Laws that Do a Better Job

Discussion Paper



LAW COMMISSION OF CANADA

Canada

Cover design:

The illustration of the person outside the protection of the umbrella was originally produced by Johnny Endrawis and was then adapted for the front cover of this document. Johnny was one of the second prize winners of the 2003-04 Roderick A. Macdonald High School Contest sponsored by the Law Commission of Canada.

Is everybody protected equally? (Johnny Endrawis)

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Canada



Preface

“Is Work Working?” aims to identify the gaps in our laws and policies that leave some workers unprotected, exposed and vulnerable — outside the “umbrella.”

People experience vulnerability in many ways: through inadequate pay, unhealthy or dangerous working conditions, insufficient hours, exploitative atmospheres, lack of benefits, the inability to effect change, powerlessness and marginalization. In this paper, the Law Commission begins with a study of different types of vulnerability at work and then discusses how ideas about labour regulation have changed. New conceptual approaches are warranted when, as here, a model of regulation is undermined by the reality of working relationships.

The choice of subject emerged from consultations with the public and the Advisory Council of the Law Commission. At issue is the way in which labour law concepts may be outdated and failing to respond to the changing nature of employment relationships. Canadians expressed their concern about the ways in which the inadequacies of our labour laws and policies may have precipitated further vulnerability in the Canadian population.

Work arrangements today are characterized by a greater degree of flexibility and, increasingly, they do not fit the norm of 9 to 5 full-time, long-term employment with the same employer. Advantages to the new arrangements are emerging. However, the idea that flexible labour arrangements are good for everyone must be tempered with the recognition that the costs of such unbridled flexibility are often transferred to individual workers. Ultimately, the Law Commission is interested in looking for new ways of understanding the employment relationship that would respond better to the needs of all Canadians who work.

We have benefited from a fruitful partnership with Canadian Policy Research Networks, which contributed its comments and expertise and those of its wide network of academics, practitioners and concerned citizens. We are very thankful to President Judith Maxwell and to Ron Saunders, the Director of the Work Network, whose insights and advice were invaluable.

Our researchers in residence, professors Michael Smith and Leah Vosko provided the essential research to move this project forward. Their insights were extremely important to the pursuit of a better understanding of employment relationships in the 21st century.

Other researchers and policy experts also contributed to the Law Commission’s project: Judy Fudge, Eric Tucker, Christine Bruckert,



Colette Parent, Pascale Robitaille, Guylaine Vallée, Richard Chaykowski, Gay Stinson and Kerry Rittich.

The illustration on our cover was an entry in the Roderick A. Macdonald Contest to encourage Canadian students to discuss law reform. It represents admirably the many themes of this discussion paper.

The Law Commission of Canada is an independent agency with a large mandate to engage Canadians in the renewal of the law. Thanks to the very dedicated staff of the Law Commission, we are able to fulfill this mandate. The commissioners are grateful for the work performed by all members of the staff at the Law Commission of Canada in producing this discussion paper. In particular, we would like to thank Karen Jensen, Senior Research Officer, the primary author of this paper.

The Law Commission hopes this report generates a thorough examination of how we manage work relationships in our society. The goal is to stimulate innovative thinking about diminishing vulnerability in the workplace. Your feedback will help inform future research and consultations, and assist in the preparation of our final report.

We invite you to reflect on how vulnerability is experienced in the workplace, on the diagnostic posed in this discussion paper and the many ways in which law reform could contribute to enhancing productive, respectful and fair work relationships. We look forward to your comments and reflections.

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Table of Contents

Introduction

PART I WORK AND VULNERABILITY TODAY

Chapter 1 — Self-Employed and Part-Time Workers.....	5
Ginette Leduc — Part-Time Worker and Independent Consultant.....	6
Discussion.....	7
Summary.....	12
Chapter 2 — Temporary Agency Workers	14
Catherine O’Donnell — Temporary Agency Worker.....	14
Discussion.....	15
Summary.....	18
Chapter 3 — Low-Paid and Marginalized Workers	19
Kuc and Samuel Yaul — Young Refugee Workers	19
Discussion.....	20
Summary.....	26
Chapter 4 — Stigmatized Workers.....	27
Safa Peshtar — Exotic Dancer.....	27
Discussion.....	28
Summary.....	32

PART II SOCIETY, LAW AND WORK

Chapter 5 — The Regulatory Framework	33
From Active Regulation to Passive Deregulation	33
Summary.....	40
Chapter 6 — Society’s Interests in Worker Protection ...	41
A Vision of Canada in the 21st Century	41
Summary.....	46



PART III LAWS THAT WORK BETTER

Chapter 7 — Regulation and Enforcement	48
Enhancing Compliance and Enforcement	48
Providing Protection to Temporary Agency Workers	49
Chapter 8 — Modernizing Labour Law Concepts	51
The Living Wage	51
Expanding Labour Laws	52
Chapter 9 — Rethinking the Employee- Employer Relationship.....	54
Canadian Residency	54
Worker/Professional Organizations	54
Social Drawing Rights — The Life Cycle Approach	55
Conclusion	57
Endnotes	60



Introduction

Work is much more than a means to satisfy our physical needs and those of our families. Decent work that makes appropriate use of our abilities, challenges us to live up to our potential, and provides us with an opportunity to contribute is pivotal to our emotional, spiritual and social well-being.

Work may be done for remuneration (paid work), for love (parenting and other forms of care giving) or for the benefit of one's community (volunteer work). All these forms of work contribute, directly or indirectly, to shaping the nature of the society in which we live. And, the way society regards and rewards work has a significant effect on how well we can take care of ourselves and those close to us. It also affects our sense of dignity and pride and the extent to which we participate in, and contribute to, society.

The law plays an important role in determining the kinds of work that are recognized, valued and rewarded and, equally, the kinds that are devalued, ignored or prohibited. The law also plays a role in shaping the balance of power in the workplace, in determining the distribution of rewards and access to rights and benefits on the job. Moreover, labour and employment laws have a significant impact on the costs involved in running a business in this country. In short, the law directly affects the ability of Canadians to achieve personal and economic well-being from the work they do. It also has an impact on the productivity of the nation.

The Law Commission of Canada undertook its examination of Canada's labour and employment laws in response to concerns raised by the Commission's Advisory Council. This group of Canadians expressed the view that Canada's labour and employment laws and social policy, may not be keeping pace with the changes taking place in the world of work. They expressed concern about the number of Canadian workers whose personal and financial well-being is jeopardized by the work they do and who find very little protection and relief in Canada's labour and employment laws and policies.

Specifically, the following concerns were raised about the regulatory framework surrounding work and the reality of Canadian working lives.

- Over a third of the Canadian workforce engages in non-standard work, that is, work that deviates from the standard full-time, permanent employment contract with a single employer. Yet, eligibility for most labour- and employment-related rights, benefits and protections is still based almost exclusively on the standard employment relationship.



- Existing laws and policies may not be achieving a fair distribution of the costs and rewards of participation in the labour force. For example, in 2000, almost two million adult Canadian workers earned less than \$10/hour. Many of these workers and their families are impoverished despite having a full-time, full-year job. About 670,000 workers, most of whom are women, are attempting to sole-support their families on less than \$10/hour.¹ Many have great difficulty moving out of low-paid work.
- The existing regulatory framework may not adequately ensure that workers have a voice in their workplaces. Unionization is declining and alternative forms of employee representation have not expanded to improve workplace democracy.
- Resources dedicated to enforcing existing laws and regulations, and the methods and practices of enforcement may be insufficient to achieve the intended goals. For example, certain groups of workers — young workers, immigrant and refugee workers of colour, some visible minority and stigmatized workers — report that existing laws are not well-enforced, and they experience extremely poor and exploitative work conditions which they feel powerless to change.
- Existing laws and policies dealing with work are still organized around the concept that “someone” (not the worker) provides the child-, elder- and home-care for the worker. In reality, most workers struggle to meet the increasing demands of work and family/home obligations with few resources and supports to assist them. The sacrifices being made may well undermine the short- and long-term well-being of Canadian workers and society as a whole.

The Canadians we met expressed concern that deficiencies in Canada’s labour and employment laws and policies might result in the depletion of one of this nation’s most important natural resources — our workforce. Workers who cannot make ends meet, who cannot afford dental and vision care, or adequate child care for their children, will experience long-term adverse health and personal consequences. Their level of retirement planning is likely inadequate, and their health and the well-being of their children may also be affected. This has implications for society in terms of costs and lost productivity. Productive workers must be healthy and able to adapt positively to change.



At the same time, businesses and governments are under a great deal of pressure. Trade liberalization has forced many businesses to reduce costs to be competitive. Concerns over the size of government and public spending have put pressure on governments to downsize. As a result, employers in both the private and public realms feel they have little choice but to reduce labour costs. Work laws requiring employers to assume full responsibility for Canadian workers' well-being are seen as unrealistic and a threat to the survival of many businesses. Innovative changes are needed that are solidly based on the notion of collective or shared responsibility for worker well-being.

With these concerns and issues in mind, it was suggested the Law Commission undertake a project to answer two questions:

- *What gaps and weaknesses in the regulatory framework make some groups of workers particularly vulnerable?*
- *What innovative options for the reform of Canada's labour and employment laws and policies would reduce worker vulnerability, enhance productivity and more equitably distribute the rewards and costs of participation in the labour force?*

The first step was to commission research. The next step was to synthesize the results of this and other existing research to encourage public input.

Part one of this document examines Canada's labour and employment laws in the context of four case studies, based on the composite profiles of individuals whose work or personal characteristics/circumstances put them into one of the following categories: self-employed and part-time workers, temporary agency workers, marginalized workers and stigmatized workers. Research suggests many workers in these categories experience a high degree of vulnerability as a result of the gaps and deficiencies in the regulatory framework identified above.

In the case studies, we look at the impact of the law on the lives of the four vulnerable workers and their families. Following each case study, we discuss the empirical data and examine some of the laws dealing with each category of work and worker.

Three of the four case studies involve female workers. This reflects the fact that a disproportionate number of vulnerable workers are female. Research demonstrates that women accounted for 46 percent of the labour force in 2001, but constituted 63 percent of those in precarious jobs.² Sixty-nine percent of workers earning under \$8 per hour in 2000 were women.³



There are reasons for the gendered nature of precarious work. For the most part, standard employment arrangements are geared toward workers who either have minimal or no child-, elder- and home-care needs, or who have someone (paid or unpaid) to provide these services for them. Typically, those kinds of care and support services have been provided by women and have been undervalued and underpaid. Thus, not only are female workers concentrated in service and care work in the paid labour force where earnings are typically lower than male-dominated work, they often attempt to accommodate participation in the paid labour force with care and support responsibilities in the home, family and community. Many do this through non-standard work arrangements, which are associated with lower levels of protection and benefits.

Following our analysis of the empirical data and our four case studies, we examine the underlying rationale for the current framework of laws and policies relating to work. The protection of workers rests on a series of choices society makes about who should be protected and why. These choices are based on values and beliefs about people, society and the allocation of the costs and benefits of social living. It is worthwhile to reflect on the values and goals underpinning the regulatory framework to determine whether they continue to be relevant and fair, and whether they justify the consequences that flow from the application of the law.

In the final part, we explore options for reforming Canada's labour and employment laws. The choice to provide better protection to vulnerable workers does not necessarily tell us how such protection should be provided. Even if there is agreement that these workers need better protection, there can still be considerable controversy and disagreement over the choice of tools for providing effective protection and the impact such regulatory instruments would have on the competitiveness of the Canadian economy. Thus, we discuss a number of proposals for law reform. The options vary in the degree of change required, from developing better practices of enforcement and extending the scope of existing protections to more workers, to changing the way we regulate work. The point is not to propose solutions, but rather to elicit feedback about the essential ingredients of law reform in this area. The goal is to stimulate a critical examination of the consequences of Canada's work laws as well as the values and assumptions that support these laws.

We ask Canadians to reflect on the changes needed to promote the well-being of all workers and thereby contribute to the productivity and prosperity of the nation.



PART I — WORK AND VULNERABILITY TODAY

Chapter One — Self-Employed and Part-Time Workers

In the past two decades, there has been an increase in non-standard forms of employment: part-time, term, temporary, casual and on-call, work obtained through temporary employment agencies, and self-employment or independent work. Non-standard jobs differ from the standard model of salaried employment that grew out of the industrial revolution and was later enshrined in labour legislation. For a long time, non-standard work was considered marginal, because relatively few individuals were involved in it and it was considered to be just a means of earning extra income. But recently, the number of these jobs has increased, and for many workers they are a long-term reality, a way of participating in the labour market intermittently or permanently for much, if not all, of their working lives.

By most estimates, 33 to 37 percent of the labour force is now engaged in non-standard work.⁴ In many ways, non-standard work fills an important need. It provides flexibility that benefits workers, businesses, families and even communities. Many workers are better able to accommodate the needs and interests of their families and communities while employers benefit from being able to tailor the terms of their labour contracts to the precise needs of the business.

Some non-standard workers combine flexibility with adequate to excellent financial remuneration and work conditions. However, there is growing evidence that many others are not faring as well. Among the problems associated with non-standard work are the following: poor pay, little job security, a lack of access to important statutory benefits and protections (such as Employment Insurance,⁵ employment standards protections, workers' compensation, the right to collective bargaining) and a lack of access to employer-provided benefits such as dental, life and disability insurance. Although the phenomenon of non-standard work has been growing for many years, labour and employment legislation, originally designed to provide conventional employees with a minimum of social protection, has not been updated to reflect these new realities.

The following is a case study of one worker who moved from a standard employment arrangement to several different forms of non-standard employment.

Research indicates many low-paid workers are employed full time, but an increasing number are in temporary, part-time, casual or other non-standard forms of employment characterized by low wages and few benefits.⁶



About one in three low-paid workers across Canada works part time. Another 29 percent are in temporary jobs (seasonal, casual or contract), and about one in four has multiple jobs to get more hours of paid work.⁷

Ginette Leduc — Part-Time Worker and Independent Consultant

Ginette Leduc is a 32 year-old Canadian. After graduating with a communications degree from the Université de Montréal, Ginette worked for eight years with a major telecommunications company as a communications officer. She was responsible, among other things, for the publication of a company newsletter.

Four years into her job, Ginette met Uri. The two decided to get married and had a daughter, Patricia. Ginette took six months of topped-up maternity leave as provided under the collective agreement and Unemployment Insurance (as it was called in 1991).

Shortly after Ginette went on leave, Uri was laid off, and rather than look for another job, he started his own business. He and Ginette had often spoken about the advantages of a home-based business that would allow them the flexibility and autonomy to meet family needs and put their professional skills to profitable use. So, although he pursued some leads for jobs in other businesses, Uri devoted himself to getting his business started while Ginette devoted herself to Patricia.

When she went back to work, Ginette asked if she could work a four-day week in order to spend more time with Patricia. This request was granted and as Patricia grew, the part-time arrangement provided Ginette with time to volunteer in Patricia's preschool. It also gave Ginette one day a week to devote to her sick mother.

Then, in 1994, Ginette received word that her employment was being terminated. Her supervisor explained that the company was facing stiff international competition and all non-essential operations were being reduced or shut down. The news could not have come at a more difficult time. Ginette was three months pregnant with their second child, her mother was seriously ill and although Uri's business was beginning to make money, he was working 50 to 60 hours a week.

The silver lining, if there was one, was that Ginette's supervisor informed her she would be offered a contract to continue to produce the newsletter she had been writing. The supervisor could not guarantee how long this would last, but it looked reasonably secure for another year or two. Ginette could work from home. In essence, she would be doing most of the tasks she had been doing while employed, but she would have more flexibility with respect to work hours.

Ginette estimated that the work would take about 15 hours a week and thought this would be ideal as it might give her more time to care for her mother and attend to the demands of a three year old and a newborn. The difficulty, of course, was that all the benefits and advantages of paid employment were now gone. Those benefits had been crucial to the well-being of the family because Uri, as a



self-employed worker, did not have a benefits package. As an independent contractor, Ginette knew she would not have access to the maternity leave provisions of Unemployment Insurance, and she knew the extended health care plan, disability and life insurance, dental care and employer contributions to her pension plan were gone. However, given her circumstances, Ginette felt she had no choice but to accept the contract.

The couple's combined income was about \$35,000/year when their second daughter was born. In spite of their difficult financial circumstances, Ginette felt fortunate to have the time to spend with her children and mother. In fact, she felt that were it not for the financial difficulties they were having, their life style would be quite good.

Discussion

Growth of the Self-Employed Work Force

Ginette and Uri are part of a segment of the workforce that grew significantly during the 1990s and then hit a plateau. In 2000, the self-employed represented 16 percent of all workers, down from a high of 19 percent in 1998, but up from 11 percent in 1976.⁸

Self-Employment and the Law

Once a worker becomes self-employed, he or she is denied a whole series of rights, protections and benefits that have come to be associated with the standard employment contract. This is because the legal status of being an employee is the requirement for most employment-related protections at common law and under legislation, under statutory regimes of collective bargaining, and for a range of social benefits from Employment Insurance to pensions. People who work for pay, but are self-employed, are treated for most legal purposes as independent entrepreneurs or contractors who, unlike most dependent employees, are not seen as being suitable for labour and employment protections.

Numerous tests have been developed for determining whether a worker is an employee or an independent contractor. In a case decided in 2001, the Supreme Court of Canada acknowledged that no one conclusive test can be universally applied to determine whether a person is an employee or an independent contractor.⁹ The central question is whether the person hired to perform the services is performing them as a person in business on his or her own account. In making this determination, the level of control the employer has over the worker's activity is a factor. However, other factors that must be considered include: whether the worker provides his or her own equipment; whether the worker hires his or her own helpers; the degree



of financial risk taken by the worker; the degree of responsibility for investment and management held by the worker; and the worker's opportunity for profit in the performance of his or her tasks.

Over time, tests for determining whether a worker is an employee have embraced a wider range of workers seen by the courts to be in need of protection. The Supreme Court endorsed this purposive approach to the determination of employee status. However, uncertainty regarding employee status is still common as a worker may be considered an employee for some purposes and an independent contractor for other purposes. It is not uncommon for workers to be told they are independent contractors and, therefore, not entitled to various statutory and non-statutory benefits and protections when an analysis of the circumstances of their work arrangement, based on the legal tests, would reveal that they are, in fact, employees.

In Ginette's case, the transformation of her work from employment to self-employment means that if she was a member of a collective bargaining unit while she was an employee, she likely will no longer be included in the bargaining unit. As a result, she will no longer be guaranteed the wages and other work conditions and benefits provided for under the collective agreement that governed her previous employment relationship. Moreover, it is uncertain whether she will be able to avail herself of the protections offered under Part 3 of the *Canada Labour Code* that are intended to benefit workers within the federal jurisdiction (such as telecommunications) who are not covered by a collective agreement. Although adjudicators increasingly attempt to extend employment standards protections to workers who are economically dependent on their "clients" and who do not fit the standard definition of employee, this is by no means certain. Ginette would likely have to engage in a legal battle to establish entitlement to these protections. However, if she does this, her "client" may no longer be willing to renew her contract. This is a powerful disincentive.

Similarly, Ginette would not likely benefit from protections provided to her against workplace health and safety dangers, and would not likely receive compensation for a work-related illness or accident unless she had been paying her own premiums for coverage. To obtain credit toward her eventual receipt of benefits under the Canada Pension Plan, Ginette would need to contribute at the full rate, whereas as an employee, she was only required to pay half with the other half paid by the employer. Finally, as a self-employed person, Ginette would not likely qualify for Employment Insurance or maternity and parental leave unless she was somehow able to convince an adjudicator that she was a disguised employee.



Questions:

- *Are the existing supports and laws for self-employed people adequate?*
- *If not, what do you think workers like Ginette Leduc might need to reduce their vulnerability in self-employed work arrangements and in the labour market generally?*
- *Does the law have a positive or negative impact in other ways on the well-being of self-employed workers?*

Self-Employed Workers: Entrepreneurs?

Self-employed people are commonly understood to be entrepreneurs who have willingly traded the legal protections and benefits of the employment contract for the autonomy, flexibility and likelihood of great financial gain inherent in self-employment. While this is sometimes the case, studies reveal that reality is often more complex.

Self-employed workers range from people like Ginette, who are essentially disguised employees in that they do the same job they did when they were employed, to independent professionals and owners of incorporated businesses. At best, some types of self-employment provide a high degree of autonomy and flexibility as well as financial gain. At worst, self-employed workers are treated as employees without the benefits and rights of that status.

Certainly, with respect to financial remuneration, there would appear to be solid evidence that many self-employed workers experience relatively low levels of economic security. In 2000, 25 percent of the self-employed had incomes of \$20,000 or less, and 22 percent had incomes above \$60,000. Fully 47 percent of all self-employed women had incomes of \$20,000 or less while self-employed men were more evenly distributed across income groups.¹⁰

Self-employed people can be employers who hire other paid employees or they can be own account, which means they do not hire anyone else. Most self-employed people (63 percent) are own account. When data on self-employment are broken down to look specifically at how own account self-employed workers fare, these workers are very poorly remunerated. Sixty percent of unincorporated own account self-employed women had incomes of less than \$20,000 in 2000, a finding magnified by the fact that the majority of self-employed women fall into this category (unincorporated, own account). As the following data underscore, many self-employed workers, like Ginette Leduc, do not reap great financial rewards when they become self-employed.¹¹



Average annual incomes of self-employed workers in Canada:

Men (non-visible minority): \$23,882

Men (visible minority): \$19,941

Women (visible minority): \$15,641

Women (non-visible minority): \$15,314¹²

Evidence also indicates that the level of retirement preparation of the self-employed is inferior to employees. At the rate they are going, Ginette and her husband, are unlikely to be able to prepare adequately for the financial challenges of retirement.

Disguised Employment

Few self-employed workers conform to the stereotype of the entrepreneur. Like most, Ginette Leduc more closely resembles an employee than an entrepreneur. She will continue to work with the same people, using the tools and resources provided by her former employer and will take direction from her former employer or supervisor. Research reveals that 67 percent of self-employed workers with strong ties to former employers report the same degree of control over the content of their work that they had as employees. Indeed, 30 percent of own account self-employed people work in either client locations or locations supplied by the client.¹³

Based on these data, some have concluded that self-employed workers with strong ties to their former employer more closely resemble paid employees. This kind of self-employment arrangement has been termed “disguised employment” by the Organization for Economic Co-operation and Development (OECD) and the International Labour Organization (ILO). Disguised employment occurs when an employer treats a worker as an independent contractor or self-employed person to avoid the responsibilities and costs associated with being an employer. These responsibilities include paying into Employment Insurance, the Canada/Quebec Pension Plan, informing workers of health and safety risks, paying into the workers’ compensation system, making income tax payroll deductions and recognizing and negotiating with the collective bargaining agent chosen by the workers. The costs include paying the employer portion of the benefits and perquisite programs provided to employees of the firm. Analysts increasingly recognize the overlap between paid employees and the self-employed, prompting organizations like the OECD and the ILO to call on countries to scrutinize the growth of nominal or disguised self-employment, and devise policies to extend social protections and benefits to this segment of the self-employed.



Questions:

- *How can we facilitate proper treatment of disguised employees?*
- *Should legislative controls be placed on employers' freedom to dismiss workers and hire them back on contract?*
- *What are the implications of extending labour and employment protections to disguised employees?*

Access to Benefits

Most self-employed people and their families have no access, through their workplace, to the extended benefits that paid employees normally obtain through their employer. This includes hospital, physiotherapy, vision and dental care, prescription drugs, and life and disability insurance. These workers must either purchase the benefits, or acquire them through a spouse. Purchasing a benefits plan on the income Ginette and her husband generate would be impossible. Analysts speculate that self-employment is more common among couples than singles, because a spouse with steady paid employment provides economic support for household members. But sometimes, as in the case of Ginette and her family, obtaining the benefits package through the spouse is not an option. Fully 25 percent of the self-employed have a spouse who is also self-employed, 78 percent of whom are partners in the same business. This lack of coverage has implications for the well-being of the entire family.

Unpaid Work

In a very real sense, Ginette is making a significant immediate and long-term financial sacrifice to provide unpaid care services to her children and mother.

According to a 1998 study, the value of unpaid work in Canada per person was \$12,256. Women spent over 28 hours/week at household work (17 hours for men). With one billion hours in 1998, informal unpaid work outside the household was valued at \$10 billion. Women spent more time, on average, in unpaid work than they did in market work. Only 37 percent of females' productive time occurred in the market and was therefore captured in conventional economic statistics. The remaining two thirds (29.7 hours per person per week) was unpaid and remained hidden. Although it appears to be slowly changing, women still do the largest share of household work, yet they are working in the paid labour force in greater numbers than ever before.¹⁴



Questions:

- *What should be done to better accommodate and value unpaid work?*
- *What are the implications of not valuing unpaid work?*

Part-Time Work

Some Canadians work part time, because they cannot find full-time work. Others work part time to better manage their responsibilities in the paid and unpaid labour forces. Either way, part-time workers often face penalties. For example, although most labour and employment laws in Canada apply equally to full- and part-time employees, in all jurisdictions except Quebec, employers are free to treat part-time employees less advantageously than full-time employees provided they meet the standards provided in those laws. In other words, there is no requirement for equality of treatment between full- and part-time employees. Part-time workers are often ineligible for non-statutory employment benefits, such as dental and extended health care plans and pensions. In addition, they are excluded from the benefits of certain labour and employment laws and policies, either directly or indirectly, through qualifying requirements based on total work time. So, for example, in Newfoundland and Labrador, vacation entitlements depend on having worked a defined number of regular hours in a year, but part-time workers often have insufficient hours to claim vacation leave (although they can still earn vacation pay).¹⁵

Questions:

- *Are there other concerns with respect to the regulation of part-time work?*
- *Should the laws ensure equality of treatment between part- and full-time employees?*
- *What are the consequences of such a change?*

Summary

As a part-time employee in a large federally regulated company, Ginette received employment-related benefits, rights and protections. Once she became self-employed, many of these protections and benefits disappeared. Her choice was not entirely voluntary, yet like many workers, she appreciated the fact that there might be more flexibility and autonomy as a self-employed worker.



Research done for the Law Commission suggests that although some may appreciate the flexibility and autonomy, it comes at a cost both to the individual and to society. There is evidence many self-employed individuals do not have a sufficient degree of financial security to be able to save for retirement or to purchase the benefit plans needed. Moreover, the lack of access to statutory benefits and protections, such as Employment Insurance, maternity benefits, workers' compensation and employment standards protections, can be a serious hardship.

Nonetheless, it must be noted that self-employment allows some workers to realize greater professional and personal satisfaction than would be possible within the confines of the employment relationship. Similarly, engaging the services of self-employed workers may allow employers to obtain the necessary labour at a lower cost and without commitment to long-term employment relationships. This may make an important difference to the financial well-being of the business.

In the same ways, other forms of non-standard employment such as part-time work provide both employers and employees with distinct advantages. However, evidence suggests a significant number of workers do not reap the benefits of non-standard work and, in fact, suffer significant financial and personal hardship.



Chapter Two — Temporary Agency Workers

Temporary work is another form of non-standard employment. It is work that is limited in duration and offers very little, if anything, in the way of security of employment tenure. Many temporary workers are classified as self-employed workers or independent contractors for the purposes of labour and employment rights, benefits and protections. Thus, they share the same concerns and issues as Ginette Leduc.

However, within the category of temporary work, we find workers affiliated with temporary help agencies, which sell the labour of temporary workers. There is evidence this subcategory of temporary workers is particularly vulnerable.

Catherine O'Donnell — Temporary Agency Worker

Catherine O'Donnell is a 30 year-old mother of four children living in St. John's, Newfoundland and Labrador, with her husband and family. Her husband, Hugh, a fisherman, was injured on the job several years ago and has had trouble getting back to full-time work. Catherine has her Grade 12 diploma and has completed one year of a two-year program at a community college in administrative support. She has been working for the same personnel agency for five years and, although she would like to have permanent work, there are few prospects right now. The O'Donnell's fourth child is severely disabled as a result of a birth injury and requires special programs, assistive devices and other supports. This puts quite a strain on the family's personal and financial resources.

Catherine felt fortunate that the manager of her agency was very understanding when she was unable to take an assignment, because of the pressures at home. To Catherine, this was the real advantage of temporary work: she could refuse an assignment if necessary. However, this flexibility comes at a price. Catherine does not receive any supplementary benefits, sick days or vacation pay. Furthermore, Catherine has learned that she is paid less than the permanent staff in the places where she has worked.

Until recently, Catherine was prepared to accept the costs of working with a temporary agency in exchange for the flexibility it provided. However, in the last seven months she has become caught in a legal battle that has made her reconsider the advantages of temporary work. Catherine was on the same assignment for eight months working in a small family-owned business where she was responsible for running



the office. Initially, she loved the feeling of being part of “the family,” sharing the joys and disappointments of contracts won and lost. However, by the fourth month Catherine began to resent the large amounts of unpaid overtime required of her. When she approached the owner of the company to ask that she be paid for at least some of the overtime or receive time off in lieu of pay, she was surprised at his angry response. The owner told her that if she could not handle the job, then he would put in a request for another “girl.” When Catherine spoke with her manager at the temporary agency, she was told that, due to the length of the assignment and the fact that it was the company that was paying her salary, the company was her real employer and therefore, she would have to file a complaint against the company with the Labour Standards Division.

On filing her complaint, Catherine was promptly relieved of her assignment. She has had a few brief jobs, but she suspects the temporary agency is now viewing her as a “whiner” and is reluctant to assign her to any of its major clients. Between dealing with the complaint and the ensuing legal battle over who the real employer is, and her family, Catherine feels she does not have the where with all to work full time. Still, the family finances are in bad shape, and the likelihood of turning to welfare is looking more and more real.

Discussion

Temporary employment agencies play a useful role in the economy, especially in the labour market. They allow businesses to deal efficiently with temporary difficulties by supplying qualified, rapidly available labour for an agreed price, relieving the employer of the need to engage in the time-consuming and costly tasks of screening, interviewing and hiring additional staff. From the worker’s point of view, temporary work may be a useful way of familiarizing oneself with different kinds of work before making a career commitment. It may also offer the flexibility needed when family demands like those of Catherine’s make full-time permanent work difficult to sustain.

The Temporary Agency Industry

The advantages of using temporary agency staff are such that temporary agencies have become a permanent feature of the labour market. It is difficult to estimate the size of the temporary agency workforce, but there is evidence that about 1,300 temporary agencies operated in Canada between 1990 and 1993, and the size of this industry has remained constant, if not grown.¹⁶ Moreover, an increasing number of employers use temporary agency workers on a long-term



basis. Although this three-party relationship may have some advantages for all parties, it creates problems and may easily lead to abuses.

In spite of case law that has attempted to clarify the law, workers are often uncertain about the identity of their real employer. Is the agency responsible for ensuring that Catherine is paid for the overtime or is it the owner of the business where she has been performing her duties? The contract is between the temporary agency and the temporary worker and, as such, the client business would not appear to have any contractual responsibility toward the worker. However, decisions such as *Pointe Claire v. Quebec (Minister of Labour)*¹⁷ call this point into question. In that case, the Supreme Court of Canada held that the client business and not the temporary agency was to be treated as the employer for the purpose of labour relations legislation in Quebec.

In general, a determination of who the real employer is will depend on the purpose of the law in question. It will also depend, to some extent, on the length of the assignment. Unfortunately, uncertainty regarding the identity of the real employer may be to the disadvantage of workers like Catherine. Although temporary agency workers are employees and, as such, are generally covered by employment standards legislation guaranteeing certain minimum working conditions (although not in all cases), they must often engage in time-consuming and sometimes costly litigation to determine their real employer. As in the case of Catherine O'Donnell, this may have a very negative impact on their relationship with both employers and further increase their vulnerability in the workplace.

The second difficulty with the temporary agency employment arrangement relates to wage discrepancies between equally qualified workers who perform similar or equivalent work within the same establishment. Research reveals permanent workers enjoy higher average hourly wages than temporary help in every occupational grouping surveyed.¹⁸ A big part of the difference relates to the “mark-up,” that is, the portion of the service fee that goes to the temporary help agency. Temporary help workers also have limited access to extended benefits, compared to their counterparts engaged in permanent employment and other temporary (non-agency) work. Only 8.2 percent of temporary help workers, versus 64.3 percent of permanent workers reported having extended health coverage in 1995. Very few have paid sick leave or dental coverage.¹⁹

Moreover, although the flexibility of the temporary assignment is, for some workers like Catherine, of great benefit in permitting them to balance family and work demands, in reality, many temporary help workers are pressured to accept each and every assignment that comes their way.



Most temporary workers are unable to find permanent work. However, the temporary employment agreement usually prohibits them from taking a position with a client company even if offered one. In reality, provided the client firm pays the agency a “buy-out” fee, they may hire a worker permanently. However, the buy-out fee is an effective disincentive to hiring temporary workers on a permanent basis. Moreover, agencies use other kinds of mechanisms to restrain client firms from hiring temporary workers on a permanent basis. This is particularly significant for immigrants who will work for temporary agencies to gain the required “Canadian experience,” but are then thwarted from using this Canadian experience to obtain permanent employment.

Since temporary workers are dispatched to different and multiple work sites, it is nearly impossible for them to organize collectively. Some temporary workers are covered under collective agreements when they are placed on assignment in a unionized workplace, and these workers tend to have higher wages than their counterparts who are not covered by collective agreements. However, most temporary workers in Canada are not covered by a collective agreement, and the barriers to organizing these workers are significant.

Finally, certain employment standards and benefits have eligibility requirements based on length of employment that many temporary agency employees are not able to meet. These include general holidays with pay, vacation leave, notice of termination and rights to severance pay. Pension benefit laws require private pension plans to vest benefits in employee plan members only after a stipulated time, usually two years. As a result, many temporary employees are not legally protected against the loss of pension benefits on termination of their employment.²⁰ In addition, qualifying requirements under public retirement and disability plans and the national Employment Insurance program effectively exclude many temporary workers.

Questions:

- *Does the law respond adequately to the problems associated with temporary agency work?*
- *If not, what needs to change?*
- *Are there other problems with temporary agency work that have not been identified?*



Summary

Temporary agency work provides numerous advantages to employers and workers. However, it also creates conditions for workers that cause hardship and a high degree of vulnerability. The triangular employment relationship between the agency, client firm and worker leads to uncertainty with regard to the employment responsibilities of each party. Wages for temporary agency workers tend to be lower than for permanent employees, benefits and access to unionization are often non-existent, and work conditions less than favourable. In addition, temporary agency workers are prevented from obtaining permanent work in many client firms. Thus, while not all temporary agency workers are vulnerable, many do need enhanced protective measures.



Chapter Three — Low-paid and Marginalized Workers

There are certain characteristics and circumstances that make some workers more likely to be marginalized within the labour force than others. Marginalized workers are more likely to experience low pay, poor or dangerous work conditions, insufficient hours, limited career mobility, little job security and few or no benefits than others. Workers most likely to be marginalized are young, from visible minority groups, single mothers, poorly educated and those with a disability. Many are in standard employment relationships and, in theory, should have access to statutory benefits, rights and protections. In reality, this is often not the case.

Kuc and Samuel Yaul — Young Refugee Workers

Samuel and Kuc Yaul, aged 20 and 17 respectively, are from Sudan. In 1999, their father, mother and sister were killed by government troops. Samuel, Kuc and their younger brother and sister fled to a refugee camp in Kenya. Samuel and Kuc were given the opportunity to come to Lethbridge, Alberta as refugees in 2002, but their brother and sister remained in Kenya.

Because of the extent of the conflict and poverty in Sudan, neither had extensive formal education. However, the brothers are both hardworking and extremely interested in advancing their education. They would like to receive education and training in computer technology. They began by attending English as a second language classes.

At present, both Samuel and Kuc have two jobs. During the day, they work as shelf stockers at a major retail chain in Lethbridge. They earn \$5.90/hour, the minimum wage. During the evening, they work as office cleaners where they earn \$6.90/hour.

Although their jobs are demanding and physically exhausting, the men feel lucky to have employment. A year ago, Samuel was nearly fired for agreeing to meet with a union representative to discuss an organizing campaign. At the time, he thought it would be a good idea to have someone who could speak up for the workers. He knows in Canada it's illegal to work overtime and not be paid for it, yet the stock associates regularly stay late to compact boxes and work on special requests for management without being paid. So, when someone stopped him outside the store last year to talk about his work and the possibility of getting help, he agreed to talk. For that incident, he was called into his supervisor's office and told that if he took the matter any



further both he and his brother would be fired. For several weeks after the encounter, Kuc and Samuel's shift hours were reduced.

After a year and a half of working all sorts of shifts and long hours, Samuel and Kuc finally managed to secure regular work hours during the day. This permitted them to take part-time jobs with an office-cleaning company. Although the jobs pay only a dollar per hour more than the retail jobs, Kuc and Samuel consider it a great stride forward to be able to accommodate the two jobs within their schedules, as now they are sometimes able to send money to their brother and sister in Kenya.

The cleaning work is sporadic. Kuc and Samuel only work when a regular worker is sick or can't make it to work for some reason. They receive very little notice and are expected to respond immediately to a call to come to work. As a result, Kuc and Samuel never plan to do anything in the evenings so they can be free to work if called.

Like the work at the store, cleaning is physically demanding. The two men work at a blistering pace for five hours, arriving home to their one-bedroom apartment after having put in a 13 to 15 hour day. Lately, the owner of the company has been making life more difficult for them and this has Kuc and Samuel worried. On several occasions, he has said their work is not good enough. Last month he docked \$100 from each of their pay cheques saying they didn't complete their work properly.

Samuel has been having trouble with his back and wonders if he can continue with the heavy physical work. He and Kuc have discussed the possibility of sharing one cleaning position so they can each have every other night off work. However, this would mean less money. So, for the time being, they continue to work both jobs, but are increasingly anxious to get an education and find alternative employment.

Discussion

Kuc and Samuel face the same challenges many other youth experience in entering the labour force. However, added to this are the challenges of the language barrier, their membership in a racial minority, Samuel's back problem and their lack of education. Samuel and Kuc were also prevented from becoming involved in a union drive. All these factors marginalize their position in the labour force.

Low Pay

One key characteristic of marginalized work is low pay. By law, employers must pay employees minimum wage, which varies from province to province. At any given time, about 4.6 percent of Canadian



employees work for minimum wage. Most (60 percent) minimum wage earners work part time. But 2.4 percent of Canadian employees are full-time minimum wage workers. Although this is a small percentage, it represents almost a quarter of a million workers. Whether full-time wage earnings indicate hardship depends on the other income sources of the individual, along with the income of other family members. About 15 percent of minimum wage earners are unattached or lone family heads (i.e., about 126,000 Canadians).²¹

The number of workers earning minimum wage is small compared to the number of workers classified as low-wage workers. An estimated two million adult Canadian workers earn less than \$10 an hour.²² Almost two thirds of low-wage earners are women. About one third are the only wage earner in their family. This would mean that about 667,000 workers, most of whom are women, are attempting to support their families on less than \$10 an hour.²³ These people likely live in extremely impoverished circumstances.

Making Work Pay

Incentives to continue struggling in low-wage and marginal work instead of seeking social assistance are weak. Individuals receiving social assistance are eligible for supplementary health insurance, which provides assistance with dental and prescription drug costs. With the exception of Quebec, this is not the case for most low-wage and marginalized workers. As has been noted, in many ways the policy cards are stacked against an exit from low-wage work. For example, increases in earnings are taxed back in ways that discourage the extra effort. Moreover, when a second wage earner in the family enters the labour market, costs are incurred for necessities like child care, which may well absorb all the income earned by the second wage earner.²⁴

Questions:

- *Are the supports provided to low-income workers (with and without children) adequate?*
- *If not, what else is needed?*
- *What other options could be considered?*
- *Are there adequate supports to help low-wage workers train for, find and remain in decent employment?*
- *If not, what else is needed?*



Poor Work Conditions

Poor work conditions range from non-payment of overtime and statutory holidays, to harassment and abuse on the job. Marginalized workers are distinguished by their powerlessness to effect changes with respect to poor work conditions. Although many are in standard employment relationships and should, therefore, have access to a range of labour and employment protections and benefits, many lack de facto access as a result of a lack of control in the workplace, lack of awareness of their rights, and models and practices of enforcement and compliance that may be outdated and ineffective.

The effectiveness of complaint-driven enforcement mechanisms depends on the ability of individual workers or their bargaining agent to take action. Unrepresented workers have a very limited ability to take action against violations of labour standards. Moreover, many workers are unaware of the protections they do have. Most complaints are made once the employee leaves the workplace, a fact that demonstrates the real and perceived threat of reprisal against employees who complain about their employment while on the job. As in the case of Samuel Yaul, it is not uncommon for workers to be told that any kind of resistance to or complaint about work conditions will be met with dismissal. Few workers are willing to take the risk. Many also find the complaint procedure confusing and intimidating.

Added to this is the problem of reduced spending on enforcement and compliance. Budget cuts at all levels of government mean that even where there is a willingness and desire to assist vulnerable workers, the resources are insufficient for timely investigation and resolution of complaints. The result is inconsistent and sporadic enforcement practises which effectively penalize those conscientious employers who voluntarily conform to legal requirements.

Excerpt from the work diary of a young worker:

Initially I thought that having a part-time job would be an excellent learning experience. To my surprise, it was nothing like I expected. By the age of 16, I was working two jobs to make enough money for school, bills, pets, etc. I was working every day, sometimes up to 12-hour shifts with no breaks. I was only being paid \$6.40 with no raise in sight. Many part-time jobs today are no longer part-time. Teenagers are losing their prime socialization years, becoming ill, stressed and in many cases, seriously injured. I believe that the time has come to enforce youth and human rights more thoroughly. Why is it that because we're young we are stripped of being human? We are not slaves, we are people and it's time we start being treated with some respect.²⁵

Questions:

- *How can we ensure current labour laws are fully enforced?*
- *Are there other systems of compliance and enforcement that might be more effective with marginalized workers?*

Young Workers

Young workers express a high degree of anxiety over their work situations. Many feel exploited and powerless to speak out against abuses of their rights and pressures from employers. They feel unsafe on the job and many have had workplace accidents or know someone



who has. They are often unaware of their rights and when they are aware, they feel unable to ensure these rights are enforced.

Human rights legislation in some provinces does not protect workers under 18. In some provinces, minimum-wage laws permit student workers to receive lower wages than non-student workers. There are arguments for and against a lower wage for youth. However, as Samuel and Kuc experienced, it is not uncommon that young workers will not be paid at all for the work they have done. Many youth also face long working hours, lack of paid and unpaid time off and other violations of basic employment standards. Even though they may be covered by protective legislation, many young workers lack the knowledge and power to do anything when faced with the kind of discriminatory and illegal behaviour demonstrated by Kuc and Samuel's employer. These issues are particularly acute for youth with multiple forms of disadvantage such as poverty, lack of family support, language barriers or a disability.

Some provinces have launched extensive campaigns to educate young workers about their right to safe work. However, as one young worker noted, the solution to the problem is not just the education of young workers; extensive outreach to employers is also required as well as more rigorous enforcement of occupational health and safety standards.²⁶

Questions:

- *What can be done to address the poor and dangerous working conditions that young workers face?*
- *What are the best ways of preventing accidents and worker injuries?*
- *What would need to change to improve the work world for youth?*

Visible Minority Immigrants/Refugees

Samuel and Kuc are members of another group that often experiences a high degree of vulnerability in the workforce — immigrants and refugees from visible-minority groups. Studies have shown that, over the 1980s and 1990s, immigrant workers of colour faced increasing difficulties closing the employment gap with native-born Canadians compared to earlier generations of immigrants.²⁸

One issue is likely the language barrier. Another issue may be discrimination on the basis of ethnic origin or race. Human rights statutes prohibit discrimination generally, whereas pay and

*"Last year a friend of mine, Jen was threatened on the job. She worked at a grocery store as a cashier and was only sixteen years old. During one of her regular shifts, about eight o'clock at night a man came in, of course to buy some food. He came to her cash isle, put his hand in his pocket and told Jen that he had a gun and would shoot her if she did not give him the money from the cash register. Jen of course obeyed and emptied all the money from the register into grocery bags and gave it to him. He then just walked out. The grocery store called the police, but the man was never found. [...] What made me really confused about this was that Jen had to return to work two days later. Yes she had people ask her if she was all right, but it didn't make sense that she returned to work so early. Jen should have been given a few weeks off. If it were me, I would still be so freaked out. Who knows that this couldn't happen again? The guy might have come back because he got away with it before. You would at least think there could have been more security around the store. I have always wondered why there was nothing done about Jen's safety and why she was not given some help or someone to talk to after this horrifying experience."*²⁷



In 1996, the average income from employment for immigrants coming to Canada between 1986 and 1990 was 18 percent lower than the earnings of non-immigrants. For those arriving after 1990, earnings were 36 percent lower.²⁹

The poverty rate among recent immigrants and refugees was more than twice the rate among Canadian-born residents.³⁰

According to Statistics Canada, in 2000, new immigrants had a low-income rate of 35 percent, nearly twice the average rate for metropolitan areas overall.³¹

Full-time, full-year visible minority workers earned 14 percent less on average than all other workers.³² Visible minority immigrants to Canada in the 1990s earned much less, averaging just over \$15,000.³³

“From a broad, socio-economic perspective, there can be no doubt that it is better for the Canadian economy as a whole to help people off social security and into gainful employment[...]. Both experience and research suggest that a diverse workforce in which qualified individuals with various experience, skills and cultural backgrounds interact, often outperforms a homogenous workforce (Canadian Bankers’ Association).”³⁴

employment equity legislation provide specific rights and obligations only with respect to employment. Federal and provincial human rights legislation require workers like Samuel and Kuc to lay complaints against their employers when they believe they have been victims of discrimination. This kind of complaints-driven system has been criticized for its ineffectiveness. The obstacles to making complaints are particularly felt by workers in Samuel and Kuc’s position.

Employment equity was designed to address the issue of systemic discrimination and the representation of four historically disadvantaged groups in the workforce: Aboriginal people, women, those with disabilities and members of visible minority groups. It requires the employer to identify and eliminate employment barriers and to take steps to ensure the adequate representation of qualified members of the designated groups in the workforce. The only employment equity statute in Canada is in the federal jurisdiction and it applies only to Crown corporations and federally regulated firms employing 100 people or more. Therefore, the *Employment Equity Act* would not apply to either of the companies for which the Yaul brothers work.

Questions:

- *Do current programs, laws and policies assist immigrants and refugees to train for and obtain decent work?*
- *What changes might be needed?*

Workers with a Disability

During the working-age years of 15 to 64, persons with disabilities are almost twice as likely as other workers to experience low income (26.6 versus 13.9 percent).³⁵ Obtaining and remaining in employment is also a great challenge, with employment rates ranging from 45.7 percent for youth with disabilities to 51.2 percent among the core working ages, to 27.3 percent among older workers with disabilities. These rates are all substantially lower than those of persons without disabilities.³⁶

Once they have secured employment, people with disabilities often face an uphill battle to ensure that the appropriate accommodations are made to allow them to work properly. While all human rights statutes require that employers take steps to provide reasonable accommodations for workers with disabilities, in reality, there is still a long way to go to ensure that all workplaces are truly accessible.



Questions:

- *Are there adequate supports to help people with disabilities train for, find and remain in decent employment?*
- *Should ongoing training be linked with employment opportunities?*

Poorly Educated Workers

Samuel and Kuc are justified in their determination to further their education and gain specific skills in an area like computer technology. Someone with a high school education or less is three times more likely to be low paid than someone with a university education.³⁷ The problem for Samuel and Kuc will be to obtain the education and training they need, and then make the transition to work in this area. They will need a very high level of social support if they are to move out of the low-income trap.

Policy shifts and the withdrawal of funding for skills-development programs throughout the 1990s resulted in a significant decrease in the support available to low-wage workers who wish to train for better-paying work. There have been similar reductions in language-training opportunities. Most training and support for education is tied to unemployment. Some bursaries are available for post-secondary training, but most people must take out loans to undertake training of the kind Samuel and Kuc want. In an uncertain labour market, the prospect of repaying a substantial loan for education is daunting.

According to a 2004 study by Statistics Canada, less than one half of Canadian workers who had a low-wage job in 1996 had managed to climb out of it by 2001.³⁸ One of the deciding factors in escaping the low-income trap is education. Those with a university degree are almost twice as likely to move up (69 percent) as those with high school or less (38 percent).³⁹

Questions:

- *What can be done to assist poorly educated workers to train for decent work?*
- *How are schools, colleges and universities responding to the needs of immigrants and refugees?*

Non-Unionized Workers

Samuel's suspicion that the workers in the store would be better off if they were unionized is borne out by research. Unionized jobs are associated with higher wages, better benefits coverage and more career mobility.⁴⁰ Unionized employees are also typically better protected from employer reprisal when they complain about violations of their rights on the job.



Research demonstrates that only 20 percent of unionized workers are low paid compared to 38 percent of those who are not unionized.⁴¹ Furthermore, unionized workers in 1996 were significantly more likely to move up than their non-unionized counterparts (62 versus 41 percent). Workers who became unionized between 1996 and 2001, had a 64 percent probability of moving out of low-paid work.⁴² As well, workers in unionized jobs are almost twice as likely as their non-unionized counterparts to be covered by extended benefits packages.⁴³

Yet, in spite of the apparent advantages, unionization levels have declined in Canada and the United States in the past 20 years. Reasons include the decline in the manufacturing sector (where trade unionism has been traditionally strong), the concomitant expansion of the services sector (where unionization is low) and changes in attitudes toward unions. Some employers complain that unions elevate the cost of labour and make the decision-making process more cumbersome and inefficient while some workers complain that unions do not do enough for them in return for the dues they demand. New personnel management techniques and increased global competition are other factors. There have also been accounts of the anti-union activities of certain retail giants and fast food companies that are of a more aggressive nature than that experienced by Samuel Yaul.

Questions:

- *Are unions or some kind of employee participation scheme essential to the improvement of the work conditions of vulnerable workers?*
- *If so, what needs to change? What are the implications of such changes?*

Summary

Samuel and Kuc Yaul are examples of workers who experience multiple dimensions of vulnerability. As young workers, they face a higher-than-average likelihood of poor and dangerous work conditions, low wages, and abusive and discriminatory treatment on the job. The likelihood of these unfavourable conditions is further increased by their status as refugees and as members of a visible minority group. When the language barrier, their low educational achievements and the lack of unionization in the sectors where they work are factored in, the Yaul brothers are in a very weak position in the labour market.



Chapter Four — Stigmatized Workers

Those whose work is seen to be of minimal moral or social value would appear to be among the most vulnerable workers. Their work often puts their well-being at extreme risk. For example, sex and skin trade workers (prostitutes and exotic dancers) often experience a high degree of exploitation and violence in their work. However, because of the legal framework surrounding their work and the attitudes of society, many of these workers are powerless to do anything about their working conditions. This situation cries out for attention. Moreover, the choice to engage in stigmatized work raises fundamental questions about the adequacy of alternatives in the low-wage economy. Nonetheless, although the choice to become an exotic dancer or to engage in any other kind of stigmatized work may be influenced by limited options in the labour market, it is by no means determined by these conditions. Some individuals choose to work as strippers simply because they like the work.

Safa Peshtar — Exotic Dancer

Safa is a 26 year-old single mother of two children. A severe learning disability made it a struggle for her to complete her education. She dropped out of school after Grade 10 and moved to Winnipeg where she worked at a series of waitress, sales and cleaning jobs. She married Roger when she was 20 and had two children. Safa was looking forward to staying at home with the two children until they were in school. However, when she and Roger split up, Safa had to rethink her plan. After a month of unsuccessful efforts to find better work, Safa returned to her job as a waitress at a local restaurant and bar. There, she earned minimum wage, but even with tips, the money was not enough to support herself and her two children.

Just as she was considering turning to social assistance, Safa met an old high school friend named Pascale. Pascale and her two-year-old daughter needed a place to live and so, to reduce the cost of her rent, Safa agreed to let Pascale and her daughter share her townhouse. Pascale worked as an exotic dancer at an upscale club in Winnipeg. She offered to help Safa get started dancing at the same club. Although initially reluctant to do a job she was sure her parents would disapprove of, Safa was surprised to find that it was not so bad. In fact, she really enjoyed some aspects of the work and the extra money really helped to make ends meet. Safa and Pascale worked out an



arrangement so one was always available to be with the three children while the other was working at the club. The two women were pleased with the arrangement and trusted each other's ability to deal with their children.

Then, one day, Safa slipped on some water while on stage and broke her leg. It required surgery and a long recovery. That was when the wheels fell off the smoothly running operation Safa and Pascale had created. Safa was no longer able to dance and required a lot of help to look after the children, take care of the house and get to and from appointments with the lawyer, doctors, teachers, etc. She was in a great deal of pain, short-tempered and irritable. She resented looking after Pascale's daughter while Pascale worked and found it extremely difficult to cope with all three children. Finally, Pascale and her daughter moved out. As she struggled to deal with the financial stress of not having a roommate or partner, the words of the emergency-room nurse dragged her down even further: "Well, if you hadn't decided to go prancing around on a wet stage with only your high heels on you wouldn't be in this kind of pain would you!"

Discussion

The Challenges of Lone Parenthood and Low-Wage Work

Safa, like many single mothers, found caring for and supporting a family while working in a low-wage job difficult to manage with the available resources. Many single mothers have difficulty finding stable jobs and, once they do find a job, they are exposed to unsuitable work conditions, low wages, long commutes and a lack of benefits. In addition, finding adequate child care for work hours that do not fit the nine to five model and may involve split shifts, on-call work, night work and overtime is difficult. The absence of a second earner poses a severe problem in those families, and the single mother is often forced to work shorter hours or to work close to schools. As a lone parent with a disability, Safa's work options were limited. Even with tips, she did not make enough money as a waitress to provide for her family.

As has been noted, not all people who choose to work as exotic dancers do so under such constrained conditions. For many, the choice to become an exotic dancer is not as heavily influenced by economic factors as it may have been for Safa. However, given that limited employment options confine many women to job choices they might not have otherwise made, it is worthwhile considering whether there are adequate supports and programs to assist women like Safa to train for other career options. Certainly, all workers who depend on their physical strength and youthfulness to earn their livelihood are in need of such programs at some point in their careers.



Training and Skill Development Programs

As government-funded programs changed or disappeared in the market-driven economy of the 1990s, training options for women virtually disappeared.⁴⁴ As a result, many low-income women now lack the assistance and support needed to train for better-paying work.

There is a wealth of knowledge and experience about training and skills development. However, putting this into practise would require a significant policy shift.

The Work Conditions of Exotic Dancers

Many exotic dancers experience a variety of work conditions that would seem, by most standards, to be barely tolerable. In addition to the various fees dancers pay, many clubs fine dancers (usually \$10 to \$20 per “offence”) for just about everything, including loitering in the change room, leaving the club during the shift, bringing in outside food, using drugs and refusing to perform a “super-special” or a free dance. There would appear to be no limits to the reasons for imposing a fine. If the fine is not paid, the dancer is not allowed to work in that club.⁴⁵

Dancers are exposed to numerous health and safety hazards. The unsanitary conditions of the change rooms, washrooms and other areas of the club can lead to a variety of health problems including rashes, infections and diseases. One of the biggest concerns is the stage area. A dancer’s common fear is falling while on stage as did Safa. As well, other apparatus on the stage are often not properly secured or hygienic.

With the advent of lap dancing in the 1990s, interaction with clientele has become a more serious health and safety issue. Some argue that the physical contact that occurs during lap dances blurs the boundaries between stripping and prostitution giving rise to assertions that this form of exotic dance is harmful and should be banned. Others disagree. Nonetheless, although lap dancing has been banned in some municipalities, it is still performed in numerous clubs.

Aside from the specific issue of lap dancing, dancers endure constant sexual and racial harassment in their work environment. The introduction of table and lap dancing has meant that dancers are in close proximity to patrons and this has led to increased physical contact. Patrons will pinch, poke and grab dancers. Dancers will attempt to impose limits on what is and is not acceptable. However, this is sometimes difficult to do without alienating customers.⁴⁶ In addition, dancers are often harassed and propositioned by club staff members and owners.



Possibly, for moral reasons, the distaste for exotic dancing has contributed to an unwillingness to address the many labour protection issues illustrated by cases such as that of Safa. It may be that we worry that by making exotic dancing a safer occupation through appropriate regulation and enforcement, we are condoning it and making it a more attractive occupational option. Would we be participating then, in the oppression of women? On the other hand, is it an effective mechanism to constrain choice by ensuring the work remains unsafe and exploitative? If exotic dance work is going to be done regardless of whether one is in agreement with it or not, is it not more just to address the labour issues?

The question then is why not treat exotic dancing as a form of work and provide dancers with the same protections as other workers? Such a policy change would shift the emphasis to regulating the exotic dance industry, rather than the dancers themselves using employment standards, human rights, occupational health and safety, and workers' compensation laws to help improve conditions and protect rights.

Employees or Independent Contractors?

Exotic dancing, as an occupation, has undergone some of the same changes over the last two decades as experienced in other occupational areas. During the second half of the 1970s, strippers were employees of a particular establishment. For between \$300 and \$600 per week, they had to provide five striptease sets lasting four songs each during a six-hour shift.⁴⁷ However, the recession of the 1990s, with its high rates of unemployment, destabilized employment relations. Many women, especially those with limited professional qualifications, found themselves in the services sector, working in non-standard labour arrangements with low salaries, limited job security and poor conditions. Exotic dance workers were no exception. Since the 1970s, many workers have moved from being salaried performance artists with a guaranteed income to freelance dancers whose only source of income comes from performing for individual customers.⁴⁸

Most exotic dancers now apparently work as freelancers, which entitles them to make verbal agreements with the club. For a bar fee of between \$10 and \$20, they can work in the club, but must abide by house rules, stay in the bar for a minimum of four hours and perform between one and five three-song sets onstage. Some clubs also require dancers to pay a portion of their earnings from private dancing. A club may also oblige dancers to participate in occasional special events, wet T-shirt contests or beauty pageants.

Most club owners and managers characterize exotic dancers as independent contractors and not employees. If taken at face value, this



means exotic dancers have the same kinds of limitations with respect to access to labour protections, rights and benefits as other self-employed workers. By classifying dancers as independent contractors, club owners avoid numerous expenses, such as CPP/QPP and Employment Insurance contributions, workers' compensation premiums, and various other payroll taxes and services. This means Safa would have difficulty accessing benefits under workers' compensation legislation in Manitoba and income support during her recovery from her accident unless she had previously paid full premiums as an independent contractor. However, as in the case of some self-employed workers, there may be good reason to challenge the classification of all exotic dancers as independent contractors.

Many freelance dancers could meet the test for employee status, because of the high degree of control exerted by club owners. However, an exotic dancer, like any other worker with minimal bargaining power, risks losing her status as a dancer at a particular club if she complains about work conditions. She also risks being labelled a troublemaker and thus, being banned from other clubs as well. Moreover, given the stigmatized nature of the work exotic dancers do, many would be unwilling to risk public exposure by complaining about their work conditions.

While strip clubs are, in fact, highly regulated work sites, the regulations often increase the vulnerability of the workers. Dancers, newly designated as “exotic entertainment parlour attendants,” can face fines or even imprisonment for not purchasing the required licence. Zoning regulations often intensify the competition among workers and further stigmatize the work they do, preventing them from challenging the imposed work conditions.⁴⁹

Questions:

- *Should exotic dancers receive the same kinds of labour protections, rights and benefits to which other employees are entitled?*
- *Are there adequate supports for dancers wanting to find other work that pays a living wage?*
- *What can be done to improve the work conditions of exotic dancers?*



Summary

For some individuals, exotic dancing may be the best option among relatively unattractive choices. However, like most occupations, some dancers have more options, but have chosen dancing because the work appeals to them and matches their skill set. They find the work rewarding and interesting. Still others find it oppressive and dangerous.

Generally, exotic dancers put up with very difficult work conditions. They are subjected to a wide range of occupational health and safety risks, and endure violations of employment and human rights standards. The argument could be made that many, if not all exotic dancers, should have access to the full range of labour and employment protections available to other employees. However, in reality, the uncertainty of dancers' employment status, their lack of power in the workplace and the stigmatized nature of their labour means real access to these protections and benefits is almost non-existent.



PART II — SOCIETY, LAW AND WORK

Chapter 5 — The Regulatory Framework

The four case studies illustrate a number of ways in which the current regulatory framework fails to provide adequate protection and support to vulnerable workers:

- (1) It has not kept pace with changes in the ways employers have structured the work relationship and with the changing reality of people's lives;
- (2) Existing laws and regulations are not enforced to the extent necessary to provide workers with adequate protections;
- (3) Supports provided to workers (especially the low skilled) are inadequate to make the transition out of non-standard or low-paid work arrangements;
- (4) Existing laws and policies fail to accommodate unpaid work obligations adequately.

Why has this happened? Why is the law failing to provide adequate support and protection to vulnerable workers? This chapter traces developments in the regulatory framework that have resulted in an overall trend toward the deregulation of the labour market. This trend may be a significant factor in weakening the protection and support for vulnerable workers.

From Active Regulation to Passive Deregulation

To understand why certain categories of workers lack adequate legal protections, we need to put the regulation of work in historical context. From the end of World War II until the mid-1970s, the scope of labour-market regulation expanded with economic growth.⁵⁰ The growth of unions and collective bargaining as well as the growth of well-paying public sector work all helped increase the incomes and economic security of millions of workers. Legislation extended the gains made by unions to unrepresented workers. In some respects, the laws and policies of this period were progressive and egalitarian, improving the economic security and equality of some groups of workers — primarily those engaged in standard employment.



Legislation was passed requiring the payment of overtime and a minimum wage, establishing no-fault compensation for work accidents and regulating workplace health and safety conditions, among numerous other measures designed to protect workers.

However, the economic and political climate changed in the mid-1970s. The scale of business profits, which had financed the demands of workers and communities in the post-war period, diminished. Increased competition from foreign markets with lower costs, and the demands of a more confident and empowered workforce for better treatment, prompted businesses to avoid the costs associated with the highly regulated standard employment contract by creating non-standard arrangements that would be less costly. Employers increasingly adopted strategies to enhance their flexibility with respect to the management of labour costs. Thus, there was an increase in contracting out jobs and reliance on non-standard forms of work to shrink the core staff.

The result was a general move toward the deregulation of the labour market. Many were of the view that the post-war regulatory structure had become an impediment to economic growth and prosperity in that it placed excessive demands on employers to compensate workers beyond competitive rates. The concern was (and still is, to some extent) that if the costs of protecting and compensating workers were too high, employers would not be able to resist the pressure to relocate to countries where labour costs are lower. The flight of capital, or the threat of the flight of capital, placed pressure on the state to “deregulate” the labour market.

Some have suggested that the call for deregulation to enhance competitiveness takes both active and passive forms.⁵¹ An example of overt or active deregulation in Canada might be the changes to employment standards legislation introduced in Ontario in 2000. The changes increase the number of hours employees are permitted to work per week and allow employers to “average” overtime hours so employee entitlement to overtime compensation is reduced.

Although overt attempts to diminish labour market protections attract more attention, passive labour market deregulation may have more of an impact on workers. Passive deregulation occurs when changes to labour and employment laws are not made to reflect changes in the economy and in the nature and organization of work. An example would be failing to raise the minimum wage as the cost of living increases, with the result that its real value is eroded. Another example would be failing to change work laws to reflect the growing number of workers in non-standard employment arrangements who lack protections. Finally, deregulation may also occur through the lack of adequate enforcement. This is done by restricting the resources



provided for enforcing existing labour and employment legislation and regulations.

Thus, socio-economic changes over the past three or four decades may have resulted in a shift in the attitudes and values regarding the appropriate role of labour and employment regulation. The traditional role involved altering the balance of power between workers and employers, redistributing risk and resources among workers, and establishing the basic terms and conditions of work. Labour and employment laws were a way to ensure the employment contract was fair and non-exploitative. As concern over the profitability and competitiveness of business in the global economy took a more dominant role in shaping labour and employment policy and regulation, the functions of regulation were questioned and even displaced. As a result, the protective and supportive role of labour and employment regulation shifted to facilitating the efficient use of human capital. The individuals in our four case studies represent groups of workers who may well be suffering the consequences of this shift in attitude.

This shift regarding the appropriate role of labour and employment regulation is structured around certain norms and assumptions which merit careful examination.

The Efficiency Costs of Protecting Workers

One key norm supporting the move toward deregulation is that state intervention, in the form of onerous and costly regulatory requirements to promote worker well-being, diminishes competitiveness and efficiency. It is suggested that this leads to job losses and lower standards of living for all Canadians.

In examining assumptions supporting this norm, one first needs to analyze the claims that so-called equity measures — regulations designed to promote fairness and worker well-being — are costly and detract from Canada's competitiveness. According to labour economists, like Gunderson and Riddell, little empirical evidence exists on the extent to which labour and employment regulations increase labour costs and the extent to which these costs are offset, at least in part, by the benefits gained in terms of increased productivity and decreased costs in the form of sick leave, etc.⁵² There is considerable support for the notion that enhanced labour protections may increase productivity and competitiveness, because healthy, secure workers are generally absent less, are more motivated, make fewer mistakes, have fewer accidents and perform better. Furthermore, a number of studies support the conclusion that investment is attracted to, not repelled by, adherence to core labour standards. More research



is needed to determine the extent to which the costs associated with equity measures may be offset by productivity gains to determine the validity of this claim.

However, even if we accept the notion that protecting workers is costly, we need to also examine the assertion that the cost of providing protection to all vulnerable workers is too high for employers and the state to bear. If the costs are too high for employers and the state, what makes us think the vulnerable workers themselves are any more capable of bearing these costs? Although they may be transformed into other kinds of costs, the costs of participating in the labour market do not disappear. For example, maintaining wage levels at a rate below the poverty line may well assist employers to keep labour costs to a minimum, but what are the costs to individual workers, their children and society? To what extent do these costs count as part of the equation when the decision is made not to raise the minimum wage, for example? There is empirical evidence of the link between unemployment and poverty, stress, health deterioration, child abuse, spousal abuse, suicide, accidents and increased demands on social services. The costs associated with these social problems should be taken into account when considering the efficiency costs of regulating the labour market.

The Role of the Market in Determining the Terms and Conditions of Work

The traditional view is that state intervention is necessary to compel employers to take measures that promote fairness in the workplace and worker well-being. In an unregulated free market, employers will not necessarily be motivated to ensure that all workers have at least minimum standards of work.

The notion that has gained ascendancy of late is that the market should be given more latitude to set the basic terms and conditions of work for some workers. It is contended that market forces often do promote worker protection and well-being. To attract and maintain high-quality labour, it is necessary to offer workplaces that are safe, healthy and fair. Hence, certain groups, such as self-employed workers, are not covered by legislation governing the basic terms and conditions of work. It is assumed that market forces will set the appropriate terms and conditions of work for these workers. Is this always the case?

One argument in favour of not increasing the minimum wage is that by elevating the wage above the market rate, we inhibit an employer's ability to compete in the international market and thereby endanger the jobs of the very workers we seek to protect. It is argued that raising minimum wages could have a negative effect on competitiveness.



Question:

- *Should we allow the market to determine the basic terms and conditions of work for all workers, or only some and on what basis should we make this decision?*

Employee Associations and Unions

Related to the notion that less restraint should be placed on the market to set the terms and conditions of work is the idea that third-party intermediaries, such as unions and employee associations, create additional deficiencies that ultimately harm the economy and workers. Some feel unions and enhanced employment protections are not needed as employers and individual employees can work out, in a non-confrontational way, a mutually advantageous work arrangement without third-party intervention. However, this model of industrial peace may be based on certain assumptions about the balance of power between employers and workers and about the compatibility of interests, which may not correspond with reality in every case.

As we saw in the case studies, some vulnerable workers lack the power and experience to assert their needs and interests in the presence of a powerful employer. If the employer is unwilling to accommodate them on important issues, such as wages and workplace safety, vulnerable workers may have no recourse. The enforcement and compliance mechanisms for labour and employment standards may be inadequate to provide effective protection for these workers.

Question:

- *What are the appropriate roles for unions and employee associations in protecting worker interests in the new economy?*

Labour Market Flexibility

Although countries have implemented it differently, the “flexibilization” of the workforce has arguably become the dominant trend in labour market regulation. In the global economy, employers require increased room to manoeuvre in managing their workforce. They need to be able to hire and fire employees as needed, to limit the duration of their contracts to suit their production schedules, and to keep labour costs as low as possible by not paying into employee insurance programs and providing benefits. In addition, employers need employees with increased skill levels, who are willing to take responsibility and initiative, and will co-operate with the employer as partners in production. This flexibilization of the workforce means

Alice de Wolff, author of a study by the Contingent Workers’ Project, stated:

“Much is made about non-standard workers, particularly women, having more flexible time to be with their families. This study suggests that where employment flexibility actually assists an employee with their family responsibilities, it is likely to be accompanied by fairly high earnings. The study participants were dealing with a very different reality — unpredictability and a constant process of re-scheduling rather than flexibility. Forty-three percent didn’t know their schedules in advance, 45% worked split shifts; and temporary workers reported being constantly on call. This has a profound impact on workers’ abilities to maintain healthy friendships, intimate and familiar relationships, and stable child or elder care arrangements. They find it difficult to support their children at school, get involved in any community involvement, or to participate in a regular course of study.”⁵³

The respondents in the study appreciated some aspects of contingent work: they had some form of work, were able to keep their skills updated, and did not have to get completely involved in workplace dynamics. However, many did not experience flexibility in any real sense.⁵⁴



economic security for employees is expected to come from the possession, refinement and successful marketing of skills by the individual worker in a constantly shifting labour market. Long-term attachment to particular firms or employers is no longer a reality.

Flexible work arrangements are also said to be of great benefit to workers, allowing them to balance work and child and elder care, training and other life commitments. The assumption is that workers voluntarily choose flexibility and autonomy over the security of employment and that they do, in fact, experience real flexibility and autonomy. As the case studies point out, this is not always the case.

While workers who are well-educated and highly skilled can take advantage of the deregulation of the labour market and increased flexibility of work arrangements, evidence suggests disadvantaged workers are not faring as well in the competitive labour market. They are not well positioned to negotiate contracts on an individual basis. This intensifies the differences in working conditions between the relatively powerful elite worker and the disadvantaged worker.

Although part-time work may provide flexibility for some workers with an alternate source of income, evidence suggests a large number of part-time workers are not seeking flexibility. Rather, they take whatever work they can find and hope to piece together a full-time work week based on multiple jobs. In other words, they are involuntary part-time workers who would like full-time work but cannot find it.

For some self-employed workers, the push toward autonomy and flexibility has been a double-edged sword. There is evidence that many workers initially welcome the idea of increased independence only to find that the financial pressure of saving for retirement, paying for dental and vision care, and other health-related care for one's family, as well as living with the insecurity of contract work seriously undermines the value of the flexibility and autonomy. Well-paid workers with other family and community support and resources may be able to benefit from these arrangements; others may need additional support.

Fiscal Austerity and Reduction in the Size of Government

The pressure from business to deregulate and reduce labour costs to enhance competitiveness parallels a movement in countries like Canada to reduce the size of the public service and public spending. Concerns about the deficit, tax rates, and government inefficiency and waste prompted all levels of government to reduce budgets drastically, downsize the public service and reduce services. Included in these reductions are the budgets to ensure compliance and enforcement of



labour and employment-related laws and regulations, and measures to enhance or restructure existing protections to include a broader range of workers. As a result, there has been a certain reluctance by governments to consider any proposal that would increase public spending and government infrastructure to better protect vulnerable workers.

The cost of providing public goods, and protecting fundamental rights and vulnerable workers can be quite high, and there is good reason to examine carefully the wisdom of state expenditures in that regard. However, people like Nobel prize winner Amartya Sen, have stated that financial conservatism — important as it is — cannot stand in solitary isolation as a rationale for either action or inaction. It must fit into the broad framework of the social objectives a country sets for itself.⁵⁵ It may, therefore, be appropriate to consider whether the needs of Canada's most vulnerable workers have taken a back seat to the goal of debt reduction and public service downsizing.

Government fiscal austerity may have disproportionately negative consequences for some of the most vulnerable Canadian workers. To the extent that fiscal austerity or the privatization of public services affects employment in the public sector, it is likely to reduce access to better protected and remunerated forms of employment. This has an impact on women, immigrants, people from visible minority groups and others who have difficulty accessing jobs in the private sector. Unless some compensatory action is taken, no matter how beneficial this reduction in the size of the public sector may seem, it will have ramifications for vulnerable workers and for society as a whole. Will the cost of dealing with those issues exceed the savings generated by reducing the size of government?

Unpaid Work

The current regulatory model assumes workers can either afford to hire someone to do the unpaid work involved in child-, elder- and home-care, or someone else in the home provides that care for free. As highlighted in the case studies, this assumption is clearly not borne out by the evidence. In fact, large numbers of Canadian workers struggle to combine work in the paid labour force with unpaid work obligations or work in non-standard work arrangements to accommodate their unpaid obligations. The result for many is crushing workloads, work-life imbalances that result in serious health consequences and unsatisfactory work arrangements.

Non-marketable forms of work are, in fact, those most crucial to humankind.⁵⁶ Disregarding the close ties between work inside and outside the market is tantamount to disregarding both the



circumstances of peoples' lives and those of the market. This sets a course for disaster. Treating labour as an infinitely flexible resource compromises workers' living conditions and the conditions under which their children are raised.

Question:

- *Is a regulatory model that fails to take unpaid work obligations into account sustainable?*

Summary

There may well have been a shift away from the regulatory intervention of the state to promote worker protection toward greater emphasis on the use of market forces to regulate the use of labour. While deregulation has had positive consequences for employers and highly qualified workers, it has left gaps and deficiencies in the regulatory structure.

It may be that we have arrived at a point in the evolution of labour and employment regulation where it is appropriate to ask some hard questions about these results, such as:

- *Are the gains made as a result of the deregulatory shift worth the costs incurred by vulnerable workers, their families and, ultimately, society?*
- *Is this shift consonant with the basic values of most Canadians?*
- *Does the current regulatory structure appropriately reflect core Canadian values?*
- *Are we willing to allow the traditional functions of labour and employment law and policy to be displaced by the economic drive toward deregulation?*

The answers may lie in our basic values and beliefs about the appropriate role of the state in regulating the labour market. What are society's interests in regulating work? What core values do we need to promote and protect? These questions form the discussion in the next chapter.



Chapter 6 — Society's Interests in Worker Protection

All laws are supported by or reflect a set of values and beliefs about human nature, social living and the goals of life. Popular support for laws will depend on the extent to which they reflect the values and beliefs of most people. In a democratic society, law and policy should reflect, to the greatest extent possible, the norms and values of the whole society and not a particular subset of people within that society.

Canadians influence the shape of laws by electing politicians they believe share their values and beliefs. Other institutions and vehicles within civil society also provide people with an opportunity to express their views on the kinds of values they want reflected in their laws. The Law Commission of Canada provides such an opportunity. It is on the basis of this mandate that we are asking Canadians to indicate the core values they would like to see reflected in Canada's work laws. It is our view that any proposed changes should be based on the fundamental values and beliefs of Canadians.

To stimulate a discussion on the normative basis of work laws and policy, we draw on the work of the Canadian Policy Research Networks (CPRN). In the fall of 2002, the CPRN invited a representative sample of Canadians to identify the core values they want to see reflected in the laws and social institutions of this country.⁵⁷ The results serve as a useful comparison. We invite you to consider whether, and to what extent, you see yourself and your community of interest reflected in these values. Are there other core values not expressed here you think should be reflected in Canada's work laws? What weight would you put on the various values?

A Vision of Canada in the 21st Century

Those who participated in the Citizens' Dialogue expressed an overall vision of a productive and humane Canada, committed to promoting individual and shared responsibility for personal well-being and productivity. Market and social goals should be combined in a way that does not make concerns about social justice and equality subservient to, or of lesser priority than, market interests. Participants expressed a general belief in the power of the market to serve public as well as private interests and therefore, they supported measures to improve the efficiency and strength of the market. However, they insisted that improving Canada's position in the global economy should not come at the expense of social justice and equality.



Questions:

- *Is this view consistent with your vision? Would you put more emphasis on other values?*
- *Do Canada's laws and policies about work reflect this vision? If not, what changes are needed?*

There are no straightforward answers. Some people believe that to fulfill Canada's commitment to justice and equality, fundamental changes are needed to better protect and support workers such as those in the four case studies. Others believe any changes that would result in a further restriction of employers' abilities to manage their workforce as they see fit undermines the competitiveness and productivity of the Canadian economy and, ultimately, harms workers.

As a society, we have an interest in the productivity of our workers, the efficient use of human resources and the competitiveness of our nation. But, are the values of productivity, efficiency and competitiveness more important than our interest in the protection of vulnerable workers? Are these values really in conflict and if so, do trade-offs have to be made? How are conflicts of this nature resolved? Who gets to make the decisions about the trade-offs? What mechanisms are in place to allow for a full debate on these issues?

Productivity as a Means, Not an End

Canadians in the CPRN study placed a high value on a strong market economy. They wanted Canada's laws and social policy to contribute to the productivity of the nation and to work with market forces instead of against them. They preferred more use of market instruments or other alternatives to command and control regulation of corporate behaviour.

Arguably, labour and employment protections and benefits do contribute to the productivity of the nation. Productive workers ensure the competitiveness of the industry and its continued revitalization. Many worker protection laws ensure that employers preserve the "productivity" of the worker. Preventing workplace injury ensures that one careless employer does not sacrifice workers. Samuel Yaul's back injury is a burden to Samuel and his family, his community and society. Samuel may be prevented from fully contributing as a worker because of this injury. Similarly, helping the Yaul brothers learn to read, write and speak English is a service to their future employers. Finally, rewarding employees (financially and otherwise) is the best guarantee of their continued interest in the job. So in fact, many labour protections have an economic basis and aim at maintaining a productive workforce.



However, circumstances exist in which measures to promote worker well-being would seem to undermine the efficiency of the market. For example, laws designed to redistribute the rewards of work through mechanisms, such as a minimum wage or pay equity, are often viewed as being in conflict with the promotion of market efficiency.

There is little debate that market forces have limited power to ensure the well-being of workers. An unregulated market does not necessarily promote the social and economic goals and interests of civil society. For example, there is ample evidence that market forces on their own will not eliminate discrimination against certain groups of people. State intervention may be necessary to accomplish these goals. While there may be ways of intervening to achieve these social goals that are less disruptive and more compatible with market forces, inevitably, there will be times when the values of efficiency and equity will be in conflict. What is to be done in these cases?

Some people advocate an integrated approach⁵⁸ to the evaluation of the utility of a particular measure. Such an approach must consider the impact of the measure on all the actors and institutions in society. Thus, what may appear to be an efficiency-enhancing measure may create greater inefficiencies when viewed in a broader context. Workers who are unable to parent properly or who have health issues arising from their work may create inefficiencies, which undermine the cost savings of a particular measure.

Moreover, many Canadians contend that the end goal of a strong and productive economy is not the generation of more wealth for its own sake. Rather, the point of all our striving for productivity, increased domestic product per head and internationally competitive markets is to provide a means for expanding peoples' capabilities to live longer, better and more meaningful lives.⁵⁹ The integrated approach recognizes the importance of market forces without viewing them in isolation or permitting them to take precedence over the ultimate goal of human flourishing for all.

Questions:

- *Are the values expressed above consonant with your values and those of your community of interest?*
- *When trade-offs have to be made to accommodate the competing interests, goals and values of various groups, how should that be done?*
- *Is it helpful to view productivity as a means to an end rather than as an end goal?*
- *What are the implications of this approach?*



Social Justice and Equality

Equality, justice and fairness were considered by participants in the Citizens' Dialogue to be the bedrock of the Canadian community. The central requirement, as they saw it, was providing equal opportunity and levelling the playing field for people who have been born with, or have experienced, very limited advantages and opportunities. For this reason, participants found working poverty offensive, and insisted on the importance of a living wage. They also believed that access to education and training should receive priority, because it is a way to achieve greater equality of opportunity. However, as has been discussed, concerns about fiscal austerity have greatly reduced training and skill development opportunities for many disadvantaged workers.

Questions:

- *To what extent should the values of social justice and equality be reflected in Canada's labour and employment laws?*
- *Do the current laws and policies adequately reflect and promote the values of social justice and equality?*

Decent Work that Meets Basic Needs

Some Canadians believe work should provide the ability to satisfy the basic needs for food, clothing, education, housing, health care and other fundamental requirements for security and dignity of the person. Participants in the Citizens' Dialogue articulated a vision of a working society where everyone who can work full time should be able to earn a living wage to support themselves and their families. Unfortunately, the gaps and deficiencies in Canada's current laws and policies prevent all Canadians from having their basic needs fully met through paid work.

Many Canadians also believe that workers should be free from discriminatory treatment, harassment and unsafe work conditions, and they should be paid for overtime, receive paid holidays and vacations, and other such minimum standards for decent work. Indeed, Canada is a member of the International Labour Organization, which has declared the right of workers to work in conditions of freedom, equity, safety and human dignity.

While many Canadians believe workers should be entitled to minimum standards for decent work, there is disagreement over the core components of these minimum standards and the extent to which state and third-party intervention is permitted. There is also a prevailing view that the promise of financial reward may compensate



some workers for not having these minimum conditions met as in the case of self-employed workers. Finally, some individuals may be concerned that improving work conditions for workers, such as exotic dancers, might not be in the best interests of society.

Questions:

- *Should all workers be entitled to work that meets certain minimum standards and provides the means to satisfy basic needs?*
- *If not, who should be exempt?*
- *On what basis should they be exempt from these protections and rights?*

“There was general support in the group for a working society, a society that does encourage people to work, but also supports people to work, meaning that...you should be able to live off your income and that involves either raising minimum wages or giving extra support for people at the lower end of the income scale. We want to encourage work — we also want to make work something that gives people dignity and a living income.”⁶⁰

Promoting Self-Reliance and Personal Responsibility

The current regulatory framework is based on the notion that individual workers have full responsibility for their own well-being. Any economic security comes from being able to upgrade, market and sell their skills. To a certain extent, this is consonant with the general attitude of participants in the Citizens’ Dialogue who felt that all but the most vulnerable members of society must take personal responsibility for their well-being, and any program to assist workers must encourage self-reliance and personal responsibility.

Alain Supiot, a labour law specialist from France, has stated that there are three necessary components to work: freedom, security and responsibility. If we remove security, as we have done for many workers, then they are made entirely responsible for their own destiny.⁶¹ Evidence suggests significant numbers of workers, who lack the support necessary to insure against risk and achieve security in a highly competitive labour market, are unable to do this. Supiot thus suggests that new forms of security, which are not dependent on a standard employment contract, must be offered to assist workers in making responsible decisions with respect to their careers.

Questions:

- *Do you think the values of self-reliance and personal responsibility should be reflected in Canada’s labour and employment laws?*
- *Are those values adequately reflected and promoted in current laws and policies?*



- *What do you think about the view that workers need support to achieve self-reliance and take responsibility for their careers?*

Support for Those in Need

Another value identified by participants in the Citizens' Dialogue was compassion. Governments, individuals, business and communities, all have a responsibility to assist those who are vulnerable or marginalized. Everyone is entitled to a fair chance to become more self-reliant, and the most vulnerable should be supported, even if they cannot give back.

Questions:

- *Are these values and ideas consistent with your beliefs?*
- *Are they adequately reflected in current laws and policies?*
- *What would have to change to reflect your values on this issue?*

Promoting Healthy Families

The participants valued social institutions and laws that promote healthy families. In turn, healthy families require healthy parents who are not overwhelmed by trying to keep up with paid labour and unpaid work obligations. This may require more family-friendly policies and laws. This, in turn, likely involves more than merely granting requests for flex-time.

Questions:

- *Are these values and ideas consistent with your beliefs?*
- *Are they adequately reflected in current laws and policies?*
- *What would have to change to reflect your values on this issue?*

Summary

The participants in the Citizens' Dialogue generally favoured labour market regulation that struck a balance between the market and other institutions in society that provide social support and protection to workers. Many Canadians appear to be unwilling to sacrifice the well-being of vulnerable workers to the interests of business in enhancing international competitiveness and productivity. There is a



view that market efficiency and flexibility are important principles, and disregarding them may undermine the benefits of a measure to improve worker well-being. However, according to some, efficiency and flexibility should not be the only guiding principles. Rather, these values should be placed in the context of the overall goal of enhancing human capability to lead fulfilling lives.

Certainly, the values we hold and the priority we give to them have important ramifications for the way policy and regulatory options are evaluated. For example, more attention may need to be paid to the costs to families, communities and other institutions in society of increased responsibility for the risks and costs associated with work in the labour force, and unpaid work in the home and community. More support may be required to enable workers to assume this increased risk and responsibility.

We are interested in hearing your thoughts and views on the values expressed here and on the implications for law reform.



PART III — WORK LAWS THAT WORK BETTER

Chapter 7 — Regulation and Enforcement

Even if labour market flexibility remains an important aspect of Canada's competitive strategy, there are various ways to provide workers with the kinds of support needed over the course of their working lives to ensure their economic security and well-being through labour market participation. It may be crucial in the new economy to revise and reform our labour market institutions through a range of responses. As the case studies point out, vulnerable workers are from diverse groups with different sources of vulnerability and needs. Any policy or law reform response must be sensitive to these differences.

Moreover, the overall achievements of the market are deeply connected to other political and social arrangements and institutions within a given society.⁶² Our well-being depends on the interaction between the various institutions or systems, such as the democratic system, the educational system, the media, the market and the public distribution system. We need to view them in an integrated perspective, to see what they can or cannot do in combination with each other to evaluate their effectiveness.

Enhancing Compliance and Enforcement

As illustrated by the case of Samuel and Kuc Yaul, some workers are entitled to statutory protections and benefits, but are unable to enjoy real access to these protections. These workers lack the power and knowledge needed to ensure the enforcement of the regulations designed to protect them.

One of the first and least radical steps in ensuring better protection of vulnerable workers might be to examine alternative practices of enforcement and compliance. There may be some merit to compliance mechanisms, such as the audit system. Research is needed to determine what other methods of ensuring compliance work best in different contexts. A very important aspect of the problem likely lies in the issue of worker bargaining power and representation. Unless this is also addressed, the effectiveness of any compliance mechanism may be diminished.

Finally, there is general support for the notion that more resources may need to be devoted to enforcement and compliance.



Questions:

- *Are there ways to enhance enforcement of laws regarding workers' rights and protections?*
- *Is there a role for the media and educational institutions in this area?*
- *Would third-party representation, “watchdog” associations or ombudsmen be helpful?*

Providing Protection to Temporary Agency Workers

Temporary agencies fill an important role in the labour market. The flexibility and efficiency associated with the use of this type of labour has important benefits for both employers and workers. Thus, it would not likely be helpful to prohibit use of temporary agencies as has been done in some countries. Rather, it might be possible to suggest changes to address problems created by this employment relationship.

Experts suggest that many aspects of the current legislation could be improved. Some of the suggestions are as follows:

- Clarify the employment-related responsibilities of each party to the contract.⁶³
- Create a comprehensive set of protections in areas such as occupational health and safety.⁶⁴
- Guarantee equal treatment with respect to wages and conditions of employment for workers engaged in substantially similar work whether they are permanent or temporary workers.⁶⁵
- Introduce some form of precarity pay to take into account the insecure nature of temporary work.⁶⁶
- Improve anti-discrimination laws and their enforcement to prevent false representations and other abuses committed against immigrant and migrant workers.⁶⁷
- Make it illegal for temporary agencies to charge buy-out fees (the practice whereby the agency charges the customer a fee to hire workers permanently) and to use other mechanisms to restrain firms from hiring temporary agency workers.⁶⁸



Above all, most people urge recognition of the fact that although there may be clear benefits for employers to reduce their labour costs and maintain a flexible labour force through temporary workers, the costs do not disappear. In many cases, they are simply transferred to the workers. The question is whether these workers are able to bear the costs and if not, to what extent efforts should be made to support temporary agency workers so the costs of participating in the labour force do not become so great that, like Catherine O'Donnell, they feel obliged to turn to the social security system for support.

Questions:

- *Are the suggested changes to the law desirable?*
- *What would be the implications of such changes?*
- *How can we better support the work of groups that help temporary workers?*



Chapter 8 — Modernizing Labour Law Concepts

Many of our labour concepts have not kept pace with developments in society. Our labour law concepts can be modernized by changing them altogether or ensuring they continue to fulfill their objectives.

The Living Wage

Many argue that the failure to increase the minimum wage prevents legislation from having its intended effect of ensuring workers have their basic needs met.

Canada has policies and programs that address the issue of work and poverty. All provinces have some form of minimum wage requirement. Several provinces have a lower minimum wage requirement for youth to encourage the hiring of youth. Financial support is provided to workers after job loss (including, in some cases, retraining) to assist them to re-enter the labour force as quickly as possible. These are but a few of the programs and regulations aimed at helping individuals achieve economic security. But, do these programs and policies achieve their objectives and if not, what improvements or alternatives should be considered?

There is considerable debate about the merits of increasing the minimum wage. Some argue that the minimum wage is an important policy tool for addressing wage inequalities and an essential element in addressing poverty. By this reasoning, the minimum wage should be set at a level where basic needs are adequately met. Others argue that minimum wage is a job killer, since a minimum wage that is too high can artificially increase the cost of labour to the detriment of the very people it is designed to help. Increases in the minimum wage would reduce the demand for workers (as firms find substitutes for the now more costly labour) and might also increase the supply of workers (as some would be encouraged to consider jobs they would not previously have found attractive).

Various policy instruments are available to raise the incomes of low-paid workers and to increase their self-sufficiency. They include:

- tax measures targeted at low-income workers (including child tax benefits);
- wage supplements to workers;



It is worth noting one particular program that was part of an experiment to reduce welfare dependency and provide support to single mothers. The Canadian Self-Sufficiency Project compared a large group of lone-parent welfare recipients to whom in-work benefits were provided with another large group who continued to rely on welfare alone. Welfare recipients were offered the program rather than being compelled to participate in it. The short-term results have been very positive. Employment rates among those who took the in-work benefits are about double the rate of those who did not. Findings from this and other research suggest that the likelihood of benefit dependence can be reduced by suitably designed income transfer programs that provide employment incentives, though whether there are long-term positive effects on labour market outcomes for those targeted by the programs is not clear.⁶⁹

- better access for employed workers to training programs;
- universal day-care programs;
- increases in the minimum wage; and
- living wage programs.

Questions:

- *What are the merits of using minimum wage as a tool for ensuring workers are able to meet their basic needs through work?*
- *Are tax measures effective in providing support to vulnerable workers?*
- *Are other instruments better suited to assisting low-wage workers?*

Expanding Labour Laws

As the preceding discussion has shown, a central problem in the new economy is that workers are deprived of many important employment rights, benefits and protections, because their work arrangements do not conform to the standard employment model. Many labour and employment experts suggest that access to labour and employment protections, benefits and rights should not be limited to employees. If improving the welfare of workers is accepted as a legitimate aspect of both economic development and social justice, then expanding the scope of labour protection may be necessary.

It has been recommended that labour protections, social insurance legislation and non-wage benefits be extended to a broader range of workers.⁷⁰ A number of proposals have been made to expand the scope of labour and employment laws. They include the following:

- Develop a new, more inclusive legislative test to determine whether a worker is an employee or adopt a new, more extensive definition that extends coverage to all workers in “employee-like” work arrangements.
- Develop a completely new concept to replace the term “employee” that would determine the personal scope of employment and labour legislation. It might leave only



independent entrepreneurs without coverage (i.e., those with business assets and the opportunity to capture residual profits).

- Extend all dimensions of labour regulation to all workers defined as persons economically dependent on the sale of their capacity to work, unless there is a compelling reason for not doing so.

The latter approach involves the most radical break from the use of the employment contract as the primary vehicle for the delivery of labour protection. With this approach, the challenge would be to develop alternative mechanisms or platforms for the delivery and enforcement of these rights in ways that would not only make them accessible to all people who work for a living, but also cost effective.

Questions:

- *What would be the obstacles to enlarging the scope of our labour laws?*
- *Would a new legal concept, such as “worker”, help? Is it necessary to also provide help for workers in asserting their status and eligibility for protection?*
- *Are there ways in which the definitional battles can be minimized?*
- *Could standards or best practices be developed with different sectors?*



Chapter 9 — Rethinking the Employee-Employer Relationship

The new employment reality may mean the contract of employment is not the best focal point for labour and employment laws and policies, since many vulnerable workers find themselves outside the legal definition of employee. Should public policy and laws use a different concept to articulate their intervention? Is there a different way of delivering the rights and benefits required to promote human flourishing? What other and better platforms exist?

Canadian Residency

In Canada, we already have publicly funded medical care and health insurance as an example of “benefits” that are attached to Canadian residency and are not, as in the United States, dependent on employment or the lack thereof. Arguably, this has created a significant competitive advantage for Canada. Thus, we are not unfamiliar with the idea that providing the infrastructure to develop and maintain human capability requires, at times, a total detachment from the employment contract.

Other benefits and protections might reasonably be attached to Canadian residency. These could include dental and vision care, child care, education and training, pensions and possibly basic drug plans. There is no doubt that the cost of publicly funding these kinds of programs would be extremely high. However, it may be possible to devise creative financing options to provide workers with a choice of participating, for a cost, in a given program. Moreover, it is important to consider whether the productivity gains as a result of these investments might offset some, if not all, of the costs associated with the programs.

Worker/Professional Organizations

It has been suggested that worker associations could facilitate the delivery of benefits and the protection of rights in ways that cannot be as efficiently accomplished by other mechanisms.⁷¹ Worker associations mean both formally recognized bargaining agents as well as non-union representation vehicles, such as professional associations (e.g., medical, bar, engineering) and employee associations.

“Unions are often more effective at devising readjustment programs because their focus is broader than that of the departing or shrinking employer[...]. I think there are tremendous opportunities in such areas, particularly in partnership with government.”⁷²



The construction industry provides an example of how unions, employers and government can work together to create new models to suit the new employment realities. In that industry, as in many others, workers are greatly affected by job uncertainty, the risk of unemployment at the end of a major project, intense bouts of overtime followed by slack periods, considerable seasonality and irregularity in the receipt of benefits. Rather than unions succumbing to strife and labour turmoil to resolve grievances and advance the interests of workers, there has been a marked tendency to develop joint labour-management councils with multiple parties. These joint councils have created major initiatives to smooth out employment difficulties, such as new dispute resolution procedures and multi-employer benefits plans. They have tackled seasonality issues and tried to create more stable employment situations for more workers.⁷³

Outside the traditional union sector are what has been referred to as “human capital organizations.” For example, nursing associations are a human capital organization, because they provide training, insurance, professional discipline and certification. These kinds of organizations may be able to provide benefits and entitlements in a more efficient manner than other potential vehicles.

It has also been suggested that unions or worker associations may provide a potential vehicle for the portability of pensions. As workers shift from one workplace and employer to another, they need to be able to move their pensions with them.

However, as we have discussed, there has been a general erosion of the strength of trade unions over the past few decades, and they have not generally been replaced by other kinds of worker associations. Most labour observers cite the absence of centralized and co-ordinated bargaining across labour markets as the major impediment to unions’ abilities to retain and expand membership.⁷⁴ Hence, they call for changes to labour laws that would allow for sectoral bargaining, among other changes. The value of employee associations of some nature in providing an effective vehicle for the delivery of benefits and in ensuring the protection of worker rights is an idea that might merit consideration.

Social Drawing Rights — The Life Cycle Approach

There is now a move toward the recognition of a worker’s membership in the labour force over the course of a lifetime to provide the legal status for according a particular set of rights and benefits.⁷⁵ This is an occupational status that does not refer to a specific employment contract. Rather, it extends beyond the immediate contractual commitment to a particular job to cover the diverse forms



of work experienced during one's lifetime, including non-marketable forms of work such as child and elder care. "Social drawing rights" would facilitate the worker's ability to move in and out of the paid labour force to accomplish certain social purposes, such as occupational training, child or elder care, and volunteer work.⁷⁶

The idea is that workers would be able to draw on rights or credits accumulated during their working lives. The rights release time and provide continuity of income during periods of non-participation in the paid labour force. Thus, a worker may decide to draw on accumulated credits to receive income support while working part time in the labour force in order to care for preschool children at home. Or, a worker like Samuel Yaul may draw on the rights he has accumulated to receive financial support while attending school.

The funding for social drawing rights is provided by various sources: the state, firms, trade unions, social security agencies, professional bodies, insurance companies and workers themselves. The loan or grant provided through the social drawing rights program may be supplemented by technical assistance to support the worker's initiative (e.g., assistance in setting up a business).

The social drawing rights system recognizes the autonomy of workers and their need for support. Workers are given real freedom to choose flexible work arrangements and upgrade their skills, because the financial security and support necessary to exercise that freedom is there. Social drawing rights spread the risks involved in exercising the freedom to move in and out of the paid labour force and thereby make it a real, as opposed to imaginary, freedom. In this way, workers are not being told to take responsibility for their own economic security without being given the support to do so. There is a collective responsibility to fill the pool of social drawing rights, so the risks involved in the flexible labour market are more equitably borne by all, including the worker. Thus, the system, which puts the responsibility on workers to make decisions about when and for what purpose to draw on their rights, is consistent with the notion of individual as well as collective responsibility.

It is important to distinguish this system of insurance against voluntary risk from the system that provides protection against involuntary risks, such as unemployment or underemployment as a result of disability, injury, illness or job loss. A worker should not be forced to draw on accumulated credits for involuntary employment interruptions. Moreover, the social drawing rights system depends upon a solid foundation of public services.

Kuc and Samuel Yaul might well obtain real benefit from a system such as this. The brothers were unable to engage in the training needed to escape long-term poverty. Yet, through the work they do, they



contribute in very real ways to the Canadian economy and thus, it would make sense to ensure their access to vocational training without the requirement that they be unemployed or on welfare first.

Certainly, reforms in the area of work law and policy will have an important bearing on the social security system and therefore, the two should be considered together.

Questions:

- *Is there merit to the notion of social drawing rights? Would this concept empower people to make responsible choices about the balance between career and family? Would the idea of achieving a work-family balance be helpful to the economy?*
- *What is the role of workers' associations and unions in protecting against vulnerability?*
- *What are the positive and negative features of the proposals canvassed in this chapter and the preceding chapters?*
- *Are there other reforms that might combine the positive features you have identified?*
- *What would be needed to implement such alternatives?*

Conclusion

The well-being of a society depends, in part, on its ability to maximize the human potential for productive work. Individuals, families and society all fare better when everyone is provided with an opportunity to train for, find and sustain meaningful work. Work that provides enough compensation for a reasonable standard of living results in lower expenditures on items like health care, education, social assistance and crime control, and gives individuals and families a sense of dignity and social inclusion. Similarly, providing workers with real access to protections, rights and benefits on the job has benefits for society and workers.

Nonetheless, improving the work conditions of Canadian workers comes at a cost. Although there is a lack of precise empirical data, the general view is that labour regulation costs a lot of money. Over the past three decades, Canadian businesses have experienced a host of competitive pressures that have necessitated cost reductions in all aspects of their businesses. Labour costs have been no exception. As a result, there has been increasing pressure to deregulate the labour market to provide employers with more latitude to reduce labour costs.



However, in reality those costs have not been reduced; they have merely been shifted onto workers. Hence, when employers seek to reduce their benefits expenses and the costs of protecting workers, they are in fact assigning those costs to the workers. Similarly, when minimum wage is not raised as the cost of living increases, the costs are shifted from employers to the individual workers. Citing the need for fiscal austerity, the state has been reluctant to assume many of these costs and risks that have been transferred to workers. As a result, significant numbers of workers find themselves increasingly burdened by the social and economic costs of participating in the workforce. Often, those facing the brunt of the burden are least likely to be able to bear it.

Certainly, we face serious gaps between the labour protection currently offered through labour and employment laws and policies, and the reality of many workers. These workers find themselves unprotected, “outside the umbrella” of Canadian law. The case examples illustrate the costs and risks of being unprotected. In our discussion of those case studies, we have tried to provide an estimate of the size of the vulnerabilities in question and the complexity of the issues. Our research into the four areas of vulnerability presented in this paper has led us to believe a significant percentage of the workforce finds its well-being seriously compromised.

There are a number of ways in which the law and social policy have failed many workers:

- Laws and social policy have not kept pace with the changing ways in which employers structure the work relationship. As a result, many workers receive inadequate compensation and lack access to important rights, benefits and protections.
- Existing laws and regulations are not enforced to the extent necessary to provide workers with adequate protections.
- There are inadequate supports for workers (especially the low-skilled) to move out of non-standard or low-paying work arrangements and to train for and obtain better work.
- Current laws and policies fail to accommodate unpaid work obligations adequately.



Such inadequacies are not consistent with society's interest in its workers and their productivity, capacity and dignity. A humane and productive country promotes individual and shared responsibility for personal and societal well-being and ensures that people have the capacity to lead longer, better and more meaningful lives. Respect for, and attention to, the efficiency of market forces is an integral component of this goal. However, if human flourishing and long-term productivity are the ultimate goals of labour market policy and regulation, more attention will need to be paid to the costs to families, communities and other social institutions of the increased burdens currently borne by vulnerable workers.

We look forward to hearing your responses.



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