



Modernizing Federal Labour Standards

**Review of Part III
of the *Canada Labour Code***

Consultation Paper

February 2005

**Federal
Labour
Standards
Review**



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Introduction

The Honourable Joseph Frank Fontana, Minister of Labour and Housing, officially launched the Commission on the Review of Federal Labour Standards in December 2004. He appointed Prof. Harry Arthurs as Commissioner to conduct the review, with the assistance of a panel of experts and labour and management representatives. The mandate of the Commission is to conduct a review of Part III of the *Canada Labour Code* and to submit a list of recommendations for legislative and non-legislative options to the Minister.

Part III of the *Code* has not undergone a comprehensive review since its adoption in 1965. Over the years, Part III has been amended occasionally, most recently by enacting new parental and compassionate care leave provisions. But its overall framework is still largely based on the world of work that existed four decades ago.

Other pieces of federal labour legislation were reviewed over the last 10 years: Part I (industrial relations) and Part II (occupational health and safety) of the *Canada Labour Code* and the *Employment Equity Act*. Many provinces have also conducted reviews of their labour standards legislation in recent years. Reviewing Part III of the *Canada Labour Code* is critical to ensure that it remains relevant to Canadian workplaces in the 21st century.

The Commission will consult widely with Canadians. It invites submissions from interested experts, business, labour and community organizations, as well as individual workers and employers.

The purpose of this consultation paper is to give Canadians an opportunity to think about legislative and non-legislative options to improve current federal labour standards legislation and policies. Your opinions and practical advice on how to meet the challenges facing federally regulated workers and businesses are a crucial part of this initiative.

We encourage you to read this document and send your written submissions to the address below or to our website at www.fl-s-ntf.gc.ca. The Commission will hold public consultations across the country later this year. Locations and dates will appear on our website and in the media.

Federal Labour Standards Review

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Background

Purpose and Scope of Federal Labour Standards

Part III of the *Canada Labour Code* was enacted in 1965. It establishes minimum standards of employment for employees and employers under federal jurisdiction. These standards include provisions on hours of work, minimum wages, holidays, termination notice, severance pay, unjust dismissal and various types of leave.

Labour standards ensure that employees are given fair and equitable employment conditions. Minimum standards also provide a level playing field for employers in the marketplace.

Federal labour standards cover about 15,000 employers and 10% of the Canadian workforce. They apply to sectors as diverse as inter-provincial and international transportation, banking, telecommunications, federal Crown corporations and some First Nations activities. However, they do not cover the federal public service. Although federally regulated employers include some of the biggest corporations in Canada, most industries that fall under federal labour standards are small- to medium-sized.

Changing Nature of the Workplace

Canada's social, economic and demographic landscape has changed dramatically since the 1960s. This has led to a fundamental shift in how Canadians work and how the workplace is organized today.

Work arrangements and employment relationships have become much more complex. This is characterized by the rise in self-employment and other non-standard forms of work, including part-time, temporary, casual and agency employment, telework, and holding multiple jobs. Holding a "permanent" job throughout one's working life is no longer a reality for most workers. Today, most Canadians can expect to have about three careers and eight jobs over their lifetime.

There have also been remarkable changes to the family and workforce demographics in Canada. Key examples include the greater participation of women in the labour force, the rise in dual earner and lone parent families, an aging population and a more diverse and multicultural workforce.

Globalization, increased competition, rapid technological change, evolving work processes and the need to constantly upgrade skills and acquire new knowledge have also made workplaces more complex.

These changes present new opportunities that can often benefit both employers and workers. On the other hand, they can also pose important challenges.



For example, the employment status of some non-standard workers may in effect exclude them from minimum labour standards protection and access to certain rights or benefits. Many workers also report facing increasing pressures to work longer hours while at the same time having to deal with pressures at home. As a result, some workers, especially those who are part of the “sandwich generation”, face difficulties balancing their work obligations with their personal and family responsibilities. Some studies suggest that this may contribute to rising stress in the workplace and related health and productivity problems.

Other studies show that Canadian workers seeking to be more productive and to respond to the demands of the labour market are looking for more learning opportunities, more control over their work schedules, and more input into important issues affecting their working lives.

Employers today also face many challenges. Canadian businesses need to respond rapidly to technological change and intense global competition in a 24/7 world. They want to improve their productivity and competitiveness, to increase their ability to adapt to changing conditions and to attract and retain highly skilled workers. They also want to ensure that labour standards take into account the diverse needs of employers in the federal jurisdiction.

When it comes to the administration of Part III of the *Canada Labour Code*, workers and employers are looking for enforcement that is both effective and applied in a fair and consistent manner.

The Commission hopes to address these and other important issues brought to its attention through consultations with Canadians.



Topics and Questions for Consultation

The questions posed in this paper deal with issues identified by interested parties over the years. They highlight some key topics for consideration and are designed to bring forward opinions, from different perspectives, on how federal labour standards are working and where they can be improved. For this reason, these questions have been left open-ended. They do not constitute an exhaustive list. Nor should they be interpreted as a reflection of the Commissioner's or the Government of Canada's intentions with respect to legislative or policy changes.

The Commission wants to hear what you have to say. You are invited to present your views, or those of the organization you represent, on these questions as well as on any other relevant issue within the mandate of the Commission. However, please note that this review focuses on labour standards in the federal jurisdiction.

Persons making submissions are also encouraged to take into account the impact of their recommendations on workers and their families, employers, communities and the Canadian economy in general.

I. Setting the Bar for Federal Labour Standards

The Parliament of Canada has established, by statute, minimum standards of employment for sectors falling within the federal jurisdiction. Those standards have been shaped by the experience and expectations of Canadian workers and employers, provisions found in collective agreements, workplace practices, international norms and innovative legislation and policies in other jurisdictions.

One of the overarching goals of federal labour standards has traditionally been to protect employees who are in a weak bargaining position, by enshrining standards of employment that reflect community norms and workplace practices in unionized sectors. Over the years, Part III of the *Canada Labour Code* was also amended to meet various social policy objectives. Some examples include the introduction of maternity, parental and compassionate care leave, group termination, and equal pay and sexual harassment provisions. Federal labour standards have also been modified to include exceptions and special provisions, especially with respect to the regulation of hours of work in certain sectors.

Questions

1. What should be the overall objective of federal labour standards? Should their main purpose be to provide minimum protection aimed primarily at the most vulnerable workers or to improve the working conditions of workers in general? Should they try to adopt and generalize new innovative practices or be limited to matters already covered under Part III of the *Canada Labour Code*?
2. What should be the relationship between labour standards and conditions of work established by collective agreements?



3. How closely should federal labour standards reflect international labour standards, standards in other advanced economies, standards in the provinces and territories and “best practices” adopted by leading Canadian employers?
4. Should different labour standards apply to specific industries, occupations or sizes of businesses? If so, what should be these standards and how should they apply? Please give an example.
5. How can Part III of the *Code* strike the right balance between fair and adequate protection for workers on the one hand and reasonable flexibility in the application of those standards for employers and workers on the other?
6. How can the *Code* promote investment, job creation, productivity and competitiveness while maintaining a decent environment for Canadian workers and their families?

II. Looking at Existing Federal Labour Standards: What Works? What Does Not Work?

Federal labour standards establish minimum standards of employment for employees with which employers must comply. Labour standards covered by Part III of the *Canada Labour Code* include provisions for:

- ❖ hours of work
- ❖ minimum wage
- ❖ equal wages
- ❖ annual vacation
- ❖ general holidays
- ❖ multi-employer employment
- ❖ maternity-related reassignment leave, maternity leave and parental leave and compassionate care leave
- ❖ bereavement leave
- ❖ group termination
- ❖ individual termination
- ❖ severance pay
- ❖ garnishment
- ❖ sick leave
- ❖ work-related illness and injury
- ❖ unjust dismissal
- ❖ payment of wages
- ❖ sexual harassment

General information about federal labour standards can be found at:

<http://www.hrsdc.gc.ca/en/gateways/topics/lxn-pup.shtml>.



Questions

1. Do any current provisions of Part III of the *Canada Labour Code* need improvement? Are there problems with the application of Part III of the *Code* that need examining? What works and what doesn't work from your perspective? Please describe any solutions you feel might allow the *Code* to work more effectively.
2. Are there any important workplace issues not currently covered by Part III of the *Code* that should be regulated by labour standards legislation?
3. Should any issue currently covered under Part III of the *Code* be dealt with elsewhere instead, such as another federal statute (for example, the *Canadian Human Rights Act*)?
4. Self-employed persons are not covered under Part III of the *Canada Labour Code*. In addition, certain provisions, such as hours of work, do not apply to managers and specified professionals. Should these exclusions be revised, eliminated or extended? If so, what criteria should be applied?
5. Should alternative mechanisms or non-legislative options be explored to give employers and employees more flexibility to set conditions of employment that, overall, meet or exceed existing federal labour standards?

III. New Forms of Employment Relationships and Non-Standard Work

Federal labour standards are mainly designed to protect workers in traditional employment relationships: permanent full-time employees who have a single employer. However, a growing number of workers now find themselves in non-standard forms of employment, including part-time and temporary work, self-employment, telework and multiple job holding.

Under current legislation, workers who are not considered employees are excluded from labour standards protection. Other non-standard workers, particularly those who have short-term contracts of employment, may not qualify for certain labour standards entitlements. With some exceptions, non-standard workers tend to have limited access to non-wage benefits, workplace training and certain social programs, such as Employment Insurance. They also experience less job security and lower earnings on average than full-time permanent employees do.

However, many workers find that the flexibility and the opportunities that non-standard work can provide outweigh any negative aspects. They may also consider themselves in a good position to negotiate conditions of work that meet their needs, lessening the need for employment regulation.

Many employers argue that non-standard work arrangements help them to meet consumer demands, accommodate employee preferences, raise productivity, and improve competitiveness. Consequently, they can be seen as contributing to employment and economic growth.



Questions

1. What forms of work should be covered by federal labour standards?
 - a. Should the scope of Part III of the *Canada Labour Code* be extended so that some or all provisions cover certain own account self-employed workers (self-employed workers who have no employees working for them)? Are there other ways to provide some protection and benefits to self-employed workers who would like to have coverage?
 - b. Should Part III of the *Code* include an explicit definition of “employee” (and “employer”)? If so, how broad should this definition be and what types of work relationships should it encompass?
 - c. What are the social and economic consequences, whether positive or negative, of not recognizing certain kinds of work and work relationships under Part III of the *Code*?
2. Are particular groups of workers or economic sectors best covered under special statutory or non-statutory regimes rather than under Part III of the *Code*? If so, which workers or sectors, and why?
3. Are part-time, temporary and casual employees, and employees provided by employment agencies, appropriately protected under current federal labour standards?
 - a. What are the advantages and disadvantages of these forms of work for employers and employees? How important is the use of these forms of work to ensure business competitiveness and economic growth?
 - b. What impact, if any, do existing federal labour standards have on the decisions of employers to hire non-standard workers rather than full-time permanent employees?
 - c. Should any legislative or non-legislative measures be adopted to improve minimum protections and benefits for different categories of employees in non-standard work? For example, should existing eligibility requirements for certain provisions of Part III of the *Code* be modified? What would be the impact of these measures on employees, employers and the Canadian economy in general? What would be the consequences of maintaining Part III of the *Code* as it now stands?



IV. Balancing Work and Personal/Family Responsibilities

One of the key challenges facing employers, unions, workers and governments today is how to make it easier for Canadians to achieve a better work-life balance.

Studies indicate that a growing number of Canadians are experiencing difficulty balancing their work obligations with the demands of family life. Research suggests that “work-life conflict” is associated with greater workplace stress. As a result, it may lead to a decline in physical and mental health, lower job satisfaction and commitment, and increased absenteeism and employee turnover. It not only has an impact on the quality of life for workers and their families, but may also lead to significant costs for employers and Canada’s health care system.

Questions

1. What is the impact of work-life conflict in federally regulated workplaces on employees and their families? On productivity and other employer concerns? On communities? On government expenditures?
2. What could be done to help employees achieve a better work-life balance, while also taking into account employers’ needs?
 - a. What arrangements do employees need to be able to respond to family and other responsibilities? Are certain groups of workers facing distinct work-life issues that need to be taken into account? For example, what are the pressures facing female employees, older workers and Aboriginal peoples? What good practices have employers, and unions, put in place to address these issues?
 - b. What legislative or other changes, if any, should be made to federal labour standards to foster greater work-life balance in federally regulated workplaces? What would be the impact of these proposed measures on employees and employers? Are any current federal labour standards hindering efforts to provide flexible work arrangements to benefit employees?



V. Workplace Productivity

Enhancing the productivity of businesses is recognized as a crucial factor to ensure continued economic growth and a higher standard of living for all Canadians.

Studies suggest that access to training and learning opportunities for employees is a major driver of productivity growth. Many Canadian employers and employees see skills upgrading as an essential tool to adapt to changing conditions in the workplace and to improve employment security and job quality. However, many employees who want to pursue training and education opportunities may face obstacles due to their work environment, limited financial resources and competing pressures on their time.

Many other issues affect workplace productivity, such as involving employees through information and consultation mechanisms, the organization of working time, and working conditions that promote employee retention and workplace health.

Questions

1. To what extent are current federal labour standards positively or negatively affecting productivity? What measures related to labour standards could be taken to enhance productivity?
2. What should be the role of labour standards in promoting continuous learning in the workplace?
 - a. Should new provisions be added to Part III of the *Canada Labour Code* to support employee learning and training opportunities? How could such provisions be tailored to minimize costs and operational difficulties for employers while maximizing returns in terms of higher productivity and improved economic security for employees?
 - b. Are there non-legislative alternatives to promote training, skills upgrading and workplace learning in federally regulated industries?
3. How might Part III of the encourage workers and employers to cooperate in finding creative solutions to these and other workplace issues?



VI. Diversity and Changing Demographics in the Workforce

The Canadian workforce has changed considerably in the last four decades. The labour participation rate of women has doubled. Canada's population is aging. Members of the baby boom generation are now entering or approaching retirement, while the birth rate continues to decrease. The workforce is becoming more multicultural, as immigration continues to make up, at least in part, for existing and future labour shortages. There is also a recognized need to bring more people into the labour force from traditionally disadvantaged groups.

The signing of self-government agreements with Aboriginal peoples, including the devolution of activities to First Nations, will likely lead to a growth in the number and types of Aboriginal employers and employment.

These developments, which could not be foreseen when Part III of the *Canada Labour Code* was enacted, raise new issues.

Questions

1. How can federal labour standards better reflect Aboriginal cultures and the needs of First Nations communities, workers and employers?
2. How can federal labour standards address the realities of a multicultural workforce?
3. Do current federal labour standards meet the needs of an aging workforce? For example, are older workers and their employers given the necessary flexibility to design work arrangements to allow these workers to remain active in the labour force if they wish to do so? Could legislative or non-legislative measures be taken to ease the transition from work to retirement? If so, please provide examples or describe how this might be done.
4. Do current federal labour standards meet the needs of women employed in federally regulated sectors? Are there any provisions that promote or hinder the pursuit of gender equality in the workplace and in the labour market?
5. Are there specific needs unique to other groups protected by the *Canadian Human Rights Act* that should be taken into account in modernizing federal labour standards?



VII. Modernizing and Clarifying the *Code's* Enforcement and Administrative Provisions

Federal labour standards are enforced mainly through a complaints-based process designed 40 years ago. Employees can file a complaint with the Labour Program, which is investigated by an inspector who decides whether there has been a violation. When there are grounds for a complaint, efforts are made, where possible, to settle the matter quickly and amicably.

When a violation is identified, the employer is formally requested in writing to correct the situation. Inspectors may also issue payment orders, which may be filed in Federal Court. Part III of the *Canada Labour Code* also provides that prosecution may be undertaken for breaches of federal labour standards that are not corrected, although this is rare.

The current compliance policy is based on the premise that most employers comply with federal labour standards or will do so after being informed of the requirements. However, concerns have been raised about the effectiveness of current enforcement measures in dealing with the few employers who refuse to comply with federal labour standards. Other issues identified include the need for more educational activities to promote compliance, cost and time constraints in the complaints procedures and the fact that most labour standards complaints are only filed once an employee has lost his or her job.

Questions

1. From your experience, to what extent are current compliance measures adequate? Are they effective and fair for employees and employers? Do they deter potential violators?
2. What are the obstacles to securing compliance with federal labour standards? Are there any particular factors creating problems for employers who wish to comply with specific provisions of the *Canada Labour Code*?
3. Enforcement of Part III of the *Code* rests primarily on a complaints-based model. Should new models and mechanisms for administering and enforcing federal labour standards be explored? Are there alternative means of ensuring compliance with the legislation? Should new enforcement tools be developed, such as monetary penalties, fines, and administrative surcharges on wages owing?
4. Should there be more educational and other activities to inform employers and employees of their rights and responsibilities under Part III of the *Code*? If so, what would be the most effective measures to take?
5. Should employees and employers, particularly in unionized workplaces, be given a greater degree of responsibility in ensuring compliance with federal labour standards? What would this involve?



6. To improve efficiency, should other government departments or levels of government play a role in the administration of federal labour standards? If so, what role should they play?
7. How can federal labour standards be clarified, so that employers and employees can better understand their legal rights and obligations?
8. Does Part III of the *Code* adequately protect employees who wish to file a complaint? If not, are additional measures needed to ensure they can exercise their rights?
9. How can employees, unions and employers work together to build respect for federal labour standards? Can community organizations play a larger role in helping to improve compliance with Part III of the *Code*? How can the federal government support these efforts?

VIII. Other Issues

The Commission welcomes your comments and suggestions concerning any issues related to federal labour standards not raised in this document.