

SUBMISSION TO THE GOVERNMENT OF CANADA

**Federal Labour Standards Review
Labour Code Part III:
Modernizing and Improving its Relevance**

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**Canadian Teachers' Federation
2490 Don Reid Drive
Ottawa, Ontario K1H 1E1**

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Contacts:

John Staple, Director, Economic and Member Services
(613) 232-1505 ext. 132

Carmen Pickering, Researcher, Economic and Member Services
(613) 232-1505 ext. 129

Francine Filion, Director, Communication
(613) 232-1505 ext. 130

Winston Carter, President, Canadian Teachers' Federation
(613) 232-1505 ext. 155

EXECUTIVE SUMMARY

The Federal Labour Standards Review is a necessary and long overdue process addressing the new realities in Canada's labour and employment market. Previous reviews of the *Canada Labour Code* have been completed in part. The following brief addresses issues of concern related to Part III of the *Code*, which are of particular interest to the Canadian Teachers' Federation and the over 210, 000 teaching professionals it represents.

From a teaching professional and more broadly, a worker welfare perspective, the Canadian Teachers' Federation and its member organizations and affiliate member identify Divisions I, VII, VIII, IX, and XV.1 as Part III issues that require attention and modification. This brief responds generally to the question of what are the Teachers' respective issues and concerns and frames these in the context of background and implications. Recommendations with rationale as appropriate, follow.

Specifically, Hours of Work should not be averaged and if so, in exceptional cases and with mutual agreement between employer and employee(s). Division VII and VIII's family and care-giving related leaves need more expansive definitions of who is covered and under what circumstances as well as a greater time duration for leaves. In addition, continuous service expectations before an employee is entitled to paid leave need to be reduced. Notice periods within Division IX Group Termination of Employment need to be increased. Finally, major legislative amendments are necessary to Division XV.1 to take into account the reality of workplace harassment beyond that of a sexual nature or those covered under prohibited grounds of the *Human Rights Code*.

In conclusion, the proceeding brief is intended to offer commentary and guiding principles that are relevant not only to the working lives of teachers but to all workers. Review of Part III of the *Canada Labour Code* provides a unique and welcome opportunity for interested stakeholders to be involved with and contribute meaningfully to the consultation process. The Federation's intent is to provide reasoned opinion and practical advice on how to insure the relevancy of the *Canada Labour Code* in Canadian workplaces in the 21st century.

BACKGROUND/IMPLICATIONS

Introduction

The Canadian Teachers' Federation (CTF) has sought input from its member organizations and its affiliate member related to *Canada Labour Code (CLC)*-Part III issues. The information and insight offered from these groups provides the framework and guiding principles for the proceeding submission. As the National organization for over 210, 000 teaching professionals, CTF is committed to furthering the professional and work related interests of teachers and giving voice to issues of collective concern including those that arise from the federal review of Part III of the *CLC*. Although a majority of teachers in Canada's publicly-funded schools do not rely on the *CLC* to directly govern their workplace labour standards, nevertheless, it is the belief of the CTF that its implications and review outcomes will be felt indirectly and widely.

Issues of Concern: Setting the Bar for Federal Labour Standards

Canada as Signatory to International Standards

Although specifically covered under Part I, an employee's right and freedom to organize, bargain collectively and serve as a worker representative provides the foundation on which all subsequent parts of the *Code* elaborate. Therefore, these issues bear some mention as the Commission reviews Part III. The Canadian Teachers' Federation Collective Bargaining Policy supports the principle that all employees "should have the right to full and free collective bargaining...".¹ Similarly, "Those who engage in teacher union leadership or activity must be guaranteed freedom from harassment and discrimination"².

Labour standards should not reflect the lowest standards available but should consider the wage rates and working conditions of the average worker, the conditions of work established under provincial and international statutes as well as the conditions of work established under collective agreements applicable to federal employees. Consequently, Canadian labour standards should reflect all international standards to which Canada is a signatory-in particular, the International Labour Organization (ILO). In this context and as a member of Education International, the CTF is committed to furthering the rights of workers and their conditions of

¹ CTF Policy 2.4, *CTF Handbook: Government, Administration and Finance, 2004-2005*.

² CTF Policy 2.4.8.2, *CTF Handbook: Government, Administration and Finance, 2004-2005*.

employment from a Canadian (teaching) context as well as an International one. The Canadian Teachers' Federation "supports the principles affirmed in the Freedom of Association and Protection of the Right to Organize Convention, 1948; the Right to Organize and Collective Bargaining Convention, 1949; the Worker's [sic] Representatives Convention and Recommendation 1971; and the Labour Relations (Public Service) Convention 1978"³. Of equal importance in respect of workers' rights and benefits and specific to the aims of the review of Part III of the *LRC* is the ILO's Convention 183, the Maternity Protection Convention 2000. Ratification of this Convention is timely and relevant. Thus, Canada's ongoing refusal to ratify this Convention along with ILO Conventions 98 [The Right to Organize and Bargain Collectively], 135 [Workers' Representatives], 151 [Labour Relations (Public Service)] and 154 [Collective Bargaining Convention] is unacceptable. Correspondingly, the number of times Canada has been found in violation of international standards by the ILO is equally objectionable. It is the position of the CTF that Canada's abysmal record on the international labour standards platform must be immediately rectified and substantial improvements realized at the national level.

Issues of Concern: Existing Federal Labour Standards

Hours of Work

Society, government and interested stakeholders are turning their minds to a compelling question-how to support organizations and employers to achieve efficiency and productivity while simultaneously acknowledging the growing concern for worker welfare and an appropriate work-life balance. Unfortunately, favour is lent employers rather than workers, much to the detriment of employees. Indeed, a 2002 research paper: "Dying to work? An Investigation into work stress, quitting intentions and absenteeism" highlighted that Canadian workers are among the most stressed and the main cause is long working hours (*The Worklife Report*, 2002). Those employees who report working more than 40 hours a week were found to be 45% more likely to experience work related stress (*The Worklife Report*, 2002). Adequate rest, breaks and 'down time' away from work is seriously eroded insidiously and substantially by the prevailing "more with less" philosophy that demands so much from workers. The *CLC* does not adequately address or balance the issue and in fact, contributes to the problem by allowing many exemptions to limits on long hours.

³ CTF Policy 7.1.1 (b) *CTF Handbook: Government, Administration and Finance, 2004-2005*.

Specifically, the *CLC*'s provision permitting averaging of working hours can only be justified in rare cases. As stipulated in the *Code*, employees are entitled to standard working hours of 8 hours in a day and 40 hours in a week. Thereafter, overtime rates apply. Teachers are concerned that this standard is being undermined by hours averaging and question its effect in and out of the workplace. In fact, teachers themselves are subject to longer working hours that are unrecognized and uncompensated. A recent CTF survey reveals that teachers are working an average 55.6 hour work week, up from 51.8 hours per week in 2001.

Frequently, averaging is used as a means of allowing employers to avoid hiring additional workers and/or paying overtime rates. Also, the *CLC* sanctions averaging solely at the discretion of the employer; no agreement with the employee(s) is required. Such arbitrary decision-making and apparent measures to avoid expanding the workforce frustrates any intent toward a healthier, more positive work-life balance.

Reassignment, Maternity Leave, Parental Leave, Compassionate Care Leave and Bereavement Leave

From its original inception, the *CLC* reflected the predominant needs of workers and societal values held at the time. However, the outdated views of 'who' the worker is and the value placed on 'family' in society at the time, do not match the profile of nor the priorities and interests of today's modern Canadian worker. The teaching profession itself has seen shifts in the demographics of its teaching population with increasing numbers of women entering the field. According to Statistics Canada, in 1999/2000, women accounted for 65% of full-time teachers at elementary and secondary levels, compared with 59% a decade earlier. The percentage of women was also higher among younger educators—78% of those aged 20 to 29 (*Canada e-Book*, 2004). The growth of women in the workforce has not only signaled the need for changes in relevant leave provisions but has marked a transition from the traditional parenting roles of 'mother at home-father at work'. As such, family related leave provisions in the *Code* need to be modernized and reflect best options available not only nationally, but also internationally. Interestingly, Québec has recently set the pattern and established a template for modernized Canadian parental, maternity and paternity leave provisions with its provincially administered Québec Parental Insurance Plan (QPIP).

Upon the birth of a child most attention is, deservedly, paid to the needs of the mother. However, legislators, lawmakers and policy makers are giving increased attention to the needs of fathers⁴. Although progressive by many standards, Canada's family leave entitlements do lag behind a number of other countries and the province of Québec, including the area of paid paternity leave. Iceland's paternity law, in effect since 2002, provides for three months off work on 80% of salary. In total, the law gives parents *nine months of paid leave* for childcare—three for the mother, three for the father and the rest divided as the parents choose. In Denmark, parents can share *a year of paid leave*. Indeed, in an increasing number of OECD countries, policy is attempting to get more fathers engaged in providing personal care for their children through paternity leave or sharing in parental leave.

Despite attempts to achieve a better work-life balance and redistribute the focus between work and family, the *CLC* also continues to fall short in its Bereavement Leave and Compassionate Care Leave provisions. Teachers, similar to many professions, are a group of employees with a number of workers among the 'baby boomer' generation. Along with the challenges of their own ageing-related health concerns, responsibility for care of elderly family members who choose to remain at home for a far greater time period, often falls to them. Although including Bereavement Leave and Compassionate Care Leave provisions in the *CLC* reflect improvement and some measure of success, it is the CTF's view that more is needed.

Continuous service obligations before Bereavement Leave is compensated fully are too long and the definition of Immediate Family is too limited. As well, it is unreasonable to require that Compassionate Care Leave must be shared where two or more family members want to provide care to the same relative. The emotional, physical and psychological toll that care-giving requires especially in situations of terminal illness, is borne and managed differently and on various time frames by individuals—a time frame that may not be suited for sharing. In addition, those who are included in the definition of Family Member needs to be broadened to reflect the realities of extended family as well as the demographic realities of the Canadian population. In particular, the definition needs to consider our aging society and the fact that Canadian citizens are living longer, often necessitating care of *grandparents* as well as our aging parents.

⁴ Adema, Willem (2005, March). Babies and Bosses. *OECD Observer*, 248, 9-11, and Quality time thrills Nordic dads. *BBC News*. Retrieved June 29, 2005 from <http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/2/hi/europe/4629631.stm>.

Group Termination of Employment

Within an increasingly competitive and globalized Canadian economy, fiscal responsibility and profitability is often translated to downsizing, restructuring and reorganization. Teachers and school-based services are not immune to this fiscal reality. In the education sector, school boards are continually competing for increasingly scarce resources and must resort to less than favoured options including school closures and staff cutbacks. The risk that the education sector may see large-scale staff reductions, is an unpleasant possibility. The tendency and trend toward outsourcing of services in numerous federal, provincial and municipal jurisdictions certainly has had a significant, unwelcome and irreparable impact on the Canadian workforce. In short, there is less stability in the workplace for employees and large scale termination is possible now more than ever. Principally, communication, information and knowledge are key to minimizing disruption and facilitating a smooth transition should termination occur. However, without appropriate time and consideration paid to these elements-confusion, uncertainty and insecurity become the norm. The *CLC*'s 16-week notice period of an employer's intent to terminate the employment of a large group of employees is insufficient to meet the objective of achieving successful work re-deployment.

Sexual Harassment

Harassment takes many forms and not least of which may be sexual. Isolating coverage under the *CLC* to sexual harassment alone does a disservice to Canadian workers and reflects a limited, antiquated view of harassment no longer held by the general populace. For example, physical aggression, psychological attacks, personal ridicule, bullying and intimidation are but a few of the insidious elements and manifestations of harassment in the workplace. A survey conducted in May 2005 by the Canadian Teachers' Federation found bullying to be a regular occurrence in elementary schools across Canada. Of 1,100 teachers surveyed, 60 per cent reported witnessing a student verbally abusing a teacher in the last year and 35 per cent said they saw a teacher being physically assaulted or intimidated by a student. In addition, the Stats Canada General Social Survey conducted in 2000 and released June 25, 2003 revealed that the second most cited cause of workplace stress was poor interpersonal relations. Fifteen

percent of respondents reported it was the most common source of stress in their workplace- next only to too many demands or too many hours⁵.

Notably, recent changes to Québec's labour standards legislation have instituted a requirement for employers to develop and implement formal procedures to deal with psychological harassment in the workplace. "The Act stipulates that every employee has a right to a work environment free from psychological harassment, and that employers must take reasonable action to prevent psychological harassment and, whenever they become aware of such behaviour, to put a stop to it" (Canadian Labour Congress, 2005, p. 26). Furthermore, to the benefit of Québec workers, its *Act Respecting Labour Standards* thoroughly and comprehensively defines the concept of psychological harassment while keeping its scope relatively broad. It includes *any vexatious behaviour* that may take a variety of forms, directed at an employee in the workplace that results in a *harmful work environment* for the employee. The language is clear, as is the intent; harassment of any kind in a Québec workplace will not be condoned. In this regard, the *Code* must reflect the realities in the workplace, the changing nature of harassment, no longer limit its applicability to sexual-related complaints and be a leader on the national and international stages.

Issues of Concern: New Forms of Employment Relationships and Non-Standard Work

Definition of Employee

Part III of the *CLC* is noticeably silent in terms of a precise definition of employee where one is certainly needed. The issue is of particular concern to the CTF and the teachers on whose behalf it advocates. In the Yukon for example, teachers-on-call (substitute teachers) are not recognized as 'employees' under the definition captured by the Yukon's *Education Staff Relations Act*. As a result, these teachers are denied the opportunity to organize and become part of the Yukon Teachers' Association and benefit from the protections afforded under the territorial agreement. This inequity does little to assist in the recruitment and retention of qualified substitute teachers, who are so necessary within the public school system.

⁵ Statistics Canada (2003, June 25). Sources of workplace stress. *The Daily*. Retrieved September 20, 2005 from <http://www.statcan.ca/Daily/English/030625/d030625c.htm>.

Assuming that workers are permanent and full time ignores the realities of the current working environment. The growth of precarious and non-standard forms of employment is an increasing issue within the teaching profession along with many other professions. Notably, figures released by Statistics Canada for 1998-1999 indicate that 14.3% of public elementary-secondary school educators in Canada were teaching on a part-time basis. The share of the total elementary-secondary teaching force accounted for by part-time educators has grown significantly over the long term, rising from 1.8% in 1970-71 to the high of 14.3% in 1998-1999. Similarly, the number of public elementary-secondary school educators employed in Canada on a part-time basis rose almost tenfold from 4,761 in 1970-71 to 46,175 in 1998-99 and the number of part-time teaching positions in Canada in 1998-99 was 41,414 higher than in 1970-71, or about three times greater than the increase of 14,087 in full-time teaching positions⁶.

Identified by a number of titles: casual, on-call, temporary and substitute to name a few, these workers' presence in numerous professions and occupations demand attention and recognition at the federal level. Unequivocally, these workers are employees and along with being defined as such, are owed the full provisions afforded under federal and provincial statutes. In addition, it should be noted that because it is more difficult for these working people to organize and therefore, to reap the benefits of collective bargaining, Canada must ensure that labour standards extend coverage to them. The *CLC* must establish the platform to recognize the invaluable service and meaningful contribution that these workers offer to their respective organizations.

⁶ Reported in *Canadian Teachers' Federation Economic Services Notes*, 2001-6, 5-7.

RECOMMENDATIONS

Improvements to the *CLC-Part III* are a necessary element to instituting modern, progressive and responsive standards that reflect the realities of work life for Canadian society. The previous sections highlight the background and implications to selected issues of concern to the CTF. In turn, the background and implications reflect the rationale for the recommendations that follow, which are brought in part from the values and principles held by the CTF, its member organizations and affiliate member.

Setting the Bar for Federal Labour Standards

Canada as Signatory to International Standards

Federal labour standards should reflect all international standards to which Canada is a signatory. Similarly, Canada must live up to its international commitments and ratify Conventions 98, 135, 151 and 154 of the ILO⁷. Canada's recalcitrance to sign-off on these Conventions weakens its reputation on the world stage and diminishes the sincerity of present and future participation as a signatory to other labour related Conventions. Canada's involvement should not be piecemeal or incomplete. International labour standards are not onerous and are entirely achievable in Canadian workplaces.

Existing Federal Labour Standards

Hours of Work

Permitting the averaging of working hours can only be justified in exceptional circumstances or with mutual agreement between an employer and employee(s). An employer ought not to have the right to arbitrarily institute hours averaging. In addition, in the best interest of all workers including teachers, the CTF concurs with the Canadian Labour Congress (2005) that *agreed to* "averaging agreements should be filed and made subject to government approval, and exemptions to maximum hours should be demonstrably justifiable..." (p. 41).

⁷ CTF Action Resolution 17.1, *CTF Handbook: Government, Administration and Finance, 2004-2005*.

Reassignment, Maternity Leave, Parental Leave, Compassionate Care Leave and Bereavement Leave

The *CLC* leave provisions are limited and do little to assist employees to achieve a better work-life balance. Federal maternity and parental leave standards should reflect 'best in practice' and one need only look to Québec's Parental Insurance Plan as a template. The *CLC*'s continuous service obligations before an employee is entitled to Bereavement Leave needs to be shortened to one month while the definition of Immediate Family needs to be broadened to reflect the realities of extended family including the influence of the employees' *and employees' spouse's* grandchild, aunts, uncles, nieces and nephews.

The CTF recommends that the restriction stipulating that Compassionate Care Leave must be shared where two or more family members want to provide care to the same relative should be revisited and consideration given that leave must be *consecutive* rather than shared.

Furthermore, the CTF believes that current compassionate leave provisions should be revised to increase the duration of the leave and expand the scope of circumstances under which it can be accessed. Finally, as with the definition of Immediate Family for Bereavement Leave, the definition of Family Member needs to be broadened to reflect the realities of extended family and in particular, to include grandparents.

Group Termination of Employment

In order to achieve successful work re-deployment for employees in the event of large-scale terminations, the *CLC*'s 16-week notice period of an employer's intent to terminate the employment of the employees must be increased to 24 weeks.

Sexual Harassment

The *CLC* needs to be completely rewritten in respect of relevant anti-harassment standards and not be restricted to harassment of a sexual nature. Québec's legislation in regard to psychological harassment could serve as one model among a number of elements captured in new federal standards. Also, employees who report harassment must be afforded the protection of a quick and objective process.

New Forms of Employment Relationships and Non-Standard Work

Definition of Employee

Part III of the *Code* should include a definition of ‘employee’ and cover a wide scope of workers. In particular, a significant population of the teaching profession work as temporary, substitute, on-call, or casual *employees* and ought to have the rights and obligations of applicable labour standards therein. Despite different monikers, their responsibility and contribution to the workplace is essentially the same as that of full-time employees. In the Yukon’s *Education Staff Relations Act* for example, teachers-on-call are specifically excluded from the definition of “casual employee” and not entitled to the same representation rights as other colleagues. Should the matter be addressed at the Federal level and this category of worker included within its definition, problems that result at the provincial or territorial level would be easier to remedy. The teaching profession is not the only area where this class of worker is utilized; therefore, the definition of employee needs to reflect this important and relevant group of workers.

REFERENCES and RESOURCES

- Adema, Willem (2005, March). Babies and Bosses. *OECD Observer*, 248, 9-11.
- Anonymous (2002). Canadian workers among most stressed. *The Worklife Report*, 14, 2, 8-9. Retrieved September 29, 2005 from ABI/INFORM Global on the Proquest host database.
- Canadian Labour Congress (2005). *Labour Standards for the 21st Century: Canadian Labour Congress Issues Paper on Part III of the Canada Labour Code*. Ottawa, Ontario.
- Canadian Teachers' Federation (2001). Share of Educators Employed Part-Time Peaks in 1998-99. *Economic Services Notes*, 6, 5-7.
- Law Commission of Canada (2004). *Is Work Working? Work Laws that Do a Better Job*. Ottawa, Ontario. Retrieved from www.lcc.gc.ca, July 5, 2005.
- Quality time thrills Nordic dads. *BBC News*. Retrieved from <http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/2/hi/europe/4629631.stm> June 29, 2005.
- Sengenberger, Werner (2002). *Globalization and Social Progress: The Role and Impact of International Labour Standards?* (Friedrich Ebert Stiftung) Germany: Toennes Satz + Druck GmbH, Erkrath. Retrieved from <http://www.fes-geneva.org/Publications.htm>, July 5, 2005.
- Sengenberger, Werner (2001). Decent Work: The International Labour Organization Agenda (Friedrich Ebert Stiftung). *Globalization with Social Progress: The Responsibilities of the ILO event*, Bonn, Germany. Retrieved from <http://www.fes-geneva.org/reports.htm>, July 5, 2005.
- Statistics Canada (2004). Teachers-2001 Canada Year Book. *Canada e-Book*. Retrieved October 3, 2005 from <http://www.statcan.ca/start.html>.
- Statistics Canada (2003). Sources of workplace stress. *The Daily*, June 25. Retrieved September 20, 2005 from <http://www.statcan.ca/Daily/English/030625/d030625c.htm>.
- Vosko, Leah F., Zukewich, Nancy & Cranford, Cynthia (2003). Precarious jobs: A new typology of employment. *Perspectives on Labour and Income*, 15, 4, pp. 39-49, Statistics Canada.
- WORLD BANK. *World Development Report 2005: A Better Investment Climate For Everyone*. Chapter 7, Workers and Labor Markets. Retrieved from <http://web.worldbank.org>.