



Interim Report of the Federal Labour Standards Review

**To the Honourable Joe Fontana,
Minister of Labour and Housing**

October 2005

**Federal
Labour
Standards
Review**

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The Establishment and Mandate of the Review

I was appointed as a Commissioner by the Minister of Labour and Housing, the Honourable Joseph Frank Fontana on October 1, 2004, to review Part III of the *Canada Labour Code*. Part III deals with a variety of labour standards established for employers operating in the federal jurisdiction. These standards govern hours of work, minimum wages, holidays, severance pay, unjust dismissal and various types of leave, but not collective bargaining or occupational health and safety. Although some provisions go back to the beginning of the 20th century, or even earlier, and others have been added in recent decades, Part III itself was enacted in 1965 and has not been systematically reviewed since then.

The need for the review is captured in my letter of appointment (Appendix 1) and in a statement by the Minister on December 2, 2004, when my appointment was formally announced (Appendix 2). As these documents suggest, and as our own early investigations have revealed, five considerations have emerged as drivers of the review:

First, significant changes have occurred in the environment of work since 1965. Manufacturing workers accounted for almost half of the workforce then; today they are outnumbered by workers in the service sector; businesses such as trucking and banking were organized to serve mainly domestic markets then; today they serve continental and global customers. Second, changes have occurred within Canadian workplaces. With increasingly sophisticated technology systems, more workers are engaged in “knowledge work”; with the restructuring of Canada’s economy, workers are changing jobs more often and are more likely to be working under non-standard arrangements with their employer; and businesses now often conduct parts of their operations through extended production and distribution chains, rather than through the “core” workforce of their own employees. Third, the demography and deployment of the workforce has changed: there are more women in the workforce, and there is greater racial and ethnic diversity; and workers are often connected to each other by electronic means rather than by physical proximity. Fourth, changes in the workplace and in family structures have created tensions for some people between their work, on the one hand, and on the other the things they want and need to do in the rest of their life. Finally, opinions seem more polarized than they did forty years ago about whether the state should be a more or a less intrusive presence in the labour market. This last point takes on special importance in a study of labour standards, where the state’s role has long been central.

The Structure of the Review

Reviewing such a complex subject as labour standards, in such a volatile environment, represents a significant challenge for me. Fortunately, while I am the sole Commissioner, the work of the Review is in fact being carried out with the assistance of three groups. First, I am advised by a panel representing labour and management stakeholder groups. Members of this panel have offered valuable advice concerning the general strategy of the Commission, organized meetings between the Commissioner and stakeholder constituencies, and participated in discussions concerning its research program, public consultations and other matters. Second, a panel of experts has worked closely with me on many aspects of the Review, but especially in conceiving and launching its research program. (For membership of these two panels, see



Appendix 3.) And third, the small - but able and hardworking - staff has given me sound advice based on their experience with labour standards and in other related fields, provided logistical support and undertaken several major research projects. The staff has been supplemented from time to time by individuals with particular expertise who have assisted on particular projects. (The staff is listed in Appendix 4.)

The Strategy of the Review

Any assessment of how Canada's labour standards legislation has been working over the past 40 years, and how it should evolve in order to meet the challenges of the future, depends on a number of approaches. First, it is important to obtain the best possible information about the actual operation and impact of Part III as it presently exists, about how comparable legislation works in other Canadian jurisdictions and in comparable foreign countries, and about the likely effects of changes, so far as these can be predicted. It must therefore be carefully researched. Moreover, it must be informed by the views and experiences of those who are going to be most directly affected by any future changes. It must therefore involve a series of conversations with Canadian workers and employers, and with public and private sector organizations that work with Part III. Finally so far as possible, it should operate in synergy with other public policies. It must therefore address some open-ended questions about issues not traditionally described as "labour standards". If this strategy succeeds – if our research is of high quality, our discussions informative and our policy approach sound - I am optimistic that our final report will attract at least the confidence, and hopefully the support, of a broad cross section of interested Canadians.

Research

We have tried to ensure that research undertaken in connection with the Review is comprehensive, objective, user-friendly and of the highest quality. To assist us in mounting our research program, we convened two consultations attended by some forty leading Canadian and international scholars in the field of labour standards and in adjacent fields, such as regulatory theory (see Appendix 5). These consultations were followed by a meeting involving both the stakeholder and expert advisor panels at which specific research assignments were agreed. In the end, some 23 research projects were commissioned, in addition to a number of projects undertaken by or under the direction of the staff of the Review.

We have asked our researchers to maintain a balanced perspective and, in general, to provide a state-of-the-art review of the literature. In a few key areas, however, we have commissioned more extensive research projects designed to gather and analyze new data. The largest of these is the first-ever survey of employers and work practices in the federal sector, which is being undertaken by Statistics Canada in consultation with the HRSDC Labour Program Policy Development Division and monitored by staff of the Review. The second is a study of the trucking industry, one of the largest covered by Part III, and an industry which presents many difficult issues of interpretation, application and administration.

Our research program is described in more detail on our website at www.flis-ntf.gc.ca (see Appendix 6). Research reports will be posted there when completed and will be available to interested parties.



Conversations with Workers, Employers and Other Interested Parties

Our stakeholders' advisory panel comprises representatives of the Canadian Labour Congress (CLC) and of the two largest groups of federally regulated employers – the Canadian Bankers' Association (CBA) and Federally Regulated Employers in Transportation and Communications (FETCO). These panel members have been involved at each step in the Review; we have briefed the three organizations they represent on several occasions; and we will engage them in further structured consultations as the process unfolds. It is my sincere hope that the labour and management community will continue their active participation in the Review and will assist me in working towards a series of balanced and fair recommendations.

There are, of course, employers who are neither members of the CBA nor FETCO affiliates, workers who do not belong to CLC unions, and many other non-governmental organizations with an interest in labour standards. We are doing our utmost to ensure that all interested businesses, organizations and individuals have a chance to register their views. Where we are aware of their possible interest, we have contacted them directly to invite them to submit briefs and, in some cases, have actually met with them. In addition, we will be holding public hearings in the fall of 2005 in 13 centres across the country (Appendix 7). These hearings will provide an important opportunity for representative organizations, as well as Canadians in general, to make their views known, and to share with us the lessons they have learned from their practical encounters with labour standards legislation. At each hearing, we will receive briefs and oral submissions. In addition, Commission staff will be available to assist those attending to submit their suggestions or comments directly through the Commission's web site. Further, those unable to attend one of the hearings are invited to submit a brief directly to the Commission, as several groups and individuals have already done.

Finally, on May 19, 2005 in response to its request for a briefing, I appeared before the House of Commons Standing Committee on Human Resources and Skills Development and the Status of Persons with Disabilities. I am pleased to report that all members of the Committee seemed to have a very positive view of the Review.

Synchronizing Public Policies

While jurisdiction over federal labour standards is legally vested in the HRSDC Labour Program, in reality many other public agencies can and do play a role in establishing and administering these standards. International treaties impose obligations on the federal government to observe certain minimum standards; Transport Canada regulations set hours of work for some federal workers such as pilots and truck drivers; decisions on whether or not to prosecute employers under Part III are the responsibility of the Department of Justice; and the federal minimum wage is set on the basis of provincial benchmarks. We have therefore launched a project to "map" the federal labour jurisdiction so as to ensure that our proceedings and, ultimately, our recommendations are brought to the attention of all federal government agencies concerned with labour standards. We have also established close contact with provincial ministries of labour both to gain the benefit of their views and experience and to open up the possibility of a broad-based discussion of labour standards following completion of the Review.



The Issues

To focus our expert consultations, give direction to our research and stimulate public interest in our work, we posted a Consultation Paper on our website in January 2005 and distributed it widely in written form (see Appendix 8). In March and April, our consultation with experts and stakeholders helped to clarify some issues and introduce us to others. And of course, formal and informal communications from interested parties and the public will place new matters on our agenda on a daily basis.

Here are some of the issues which seem to be emerging:

1. Many traditional labour standards provisions established by Part III – hours of work, minimum wages, vacations and other forms of leave, remuneration etc. – have their roots in laws going back to the 19th century. However, they were first consolidated and enacted as a comprehensive code forty years ago. Their adequacy has to be reviewed in light of contemporary expectations, but one litmus test must surely be: how – if at all – do they affect the employment conditions of our most vulnerable workers?
2. Several innovative provisions were added to Part III subsequent to its enactment. We have to ensure that these provisions are working well. Compassionate care leave, parental leave, wage recovery and the unjust dismissal provisions are good examples. We now have several years of experience with these provisions. Who is making use of them, and to what effect? Has experience shown that there are substantive or procedural changes which might make them work better?
3. The emergence of new forms of employment and of new patterns of family life are forcing Canadians to deal with tensions between the two. Do legislated labour standards have a role to play in striking the right balance? Or should that balance be worked out pragmatically by individual workers and employers according to their special circumstances, preferences and needs?
4. To be competitive in today's world, employers need to effectively deploy a committed, skilled and educated workforce. Workers can use higher skill levels and higher educational achievements to meet their employer's needs, enhance their work and career prospects and equip themselves to cope with the many changes in job requirements which they will encounter over their careers. Can labour standards play some role in advancing Canada's human capital strategy?
5. It is not obvious just who is covered by federal labour standards and who is not. This involves some grey areas around which enterprises fall within "federal" jurisdiction, who is an "employee" entitled to the protection of Part III, and which agency of the federal government sets "standards" for which groups of workers. These ambiguities may be unavoidable, but they present problems for employers, for workers and for those charged with administering Part III. If they cannot be eliminated, they ought to be minimized.
6. Another important question is how to ensure that all workers are treated decently at work while at the same time allowing employers a degree of flexibility to adapt some labour standards to the exigencies of their particular circumstances? It is already clear that I am going



to be asked to consider whether, and if so when and how, derogation or deviation from labour standards ought to be permitted.

7. Part III presently requires employers to consult with their employees about, and then to adopt, a policy dealing with sexual harassment. It has been suggested that these provisions raise the question of whether labour standards legislation ought to be concerned with a broader range of issues relating to conduct in the workplace more generally and to the role, if any, of employee “voice” and participation in addressing workplace conditions and policies.

8. Whatever may be the content of labour standards, once they acquire legal force they ought to be observed. If some employers consistently fail to observe them, this not only deprives workers of their rights, but puts pressure on their law-abiding competitors to cut corners. Compliance is clearly a very important issue and no doubt there will be considerable discussion around the issue of how it can best be achieved by developing the right combination of strategies to achieve compliance. These might include stronger programs of education and information for employers and workers, greater labour and management involvement in the setting of labour standards and, possibly, in promoting compliance and, as a last resort in the event of non-compliance, enhanced legal sanctions.

9. Other jurisdictions in Canada and abroad have been experimenting with new approaches to labour standards and their enforcement. What can we learn from their experience?

These are all difficult issues. If we are to respond to them in a sensible fashion, we have to identify some general principles which will help us understand what labour standards are designed to do and capable of doing and why they sometimes fail. We also have to develop a real sense of context. Labour standards apply to workers – often vulnerable workers – whose lives are affected by them on a daily basis. And they apply to employers – often small enterprises – which are making their way in a highly competitive environment. We hope that our research, our public hearings and our discussions with important stakeholder groups will assist us in developing both guiding principles and a well-informed sense of the context in which those principles are translated into practical measures.

Moving Ahead

I am looking forward to my conversations over the next few months with interested individuals and organizations across the country. Those conversations, complemented by the results of our research program, will put me in a position where in June 2006 I will be able to provide the best possible advice about labour standards for the consideration of the Minister and the government, of Canadian workers and employers and their organizations, and of other interested parties and the general public. Until I am in that position, however, I feel I ought to be listening rather than talking.

I appreciate this opportunity to address a set of interesting and important issues which will have a great impact on all our lives. I hope that my recommendations, when I make them, will make that impact a positive one.



Minister of Labour
and Housing



Ministre du Travail et
du Logement

IN THE MATTER OF A REVIEW OF
PART III OF THE *CANADA LABOUR
CODE* (LABOUR STANDARDS)

EN CE QUI CONCERNE UN EXAMEN
DE LA PARTIE III DU *CODE
CANADIEN DU TRAVAIL* (NORMES
DU TRAVAIL)

WHEREAS the *Canada Labour Code*, Part III, (Labour Standards) establishes basic working conditions which are intended to promote fair, stable, cooperative and productive workplaces, while maintaining workplace flexibility;

ATTENDU QUE le *Code canadien du travail*, partie III, (Normes du travail) établit les conditions de travail minimales qui visent à favoriser des milieux de travail justes, stables, productifs et coopératifs tout en maintenant sa flexibilité;

WHEREAS the following developments have profoundly affected the workplace:

ATTENDU QUE les développements suivants ont profondément affecté le milieu de travail :

- the changing nature of work, growth of knowledge-based economy, and need for extensive learning in the workplace;
- intensity of competition in the global marketplace with corresponding increased pressure on workplace productivity and responsiveness;
- increased heterogeneity of the workplace – new forms of workplace structures and new forms of employment relationships;
- increased work-life pressures and the need to accommodate evolving family structures;
- La nature changeante du travail, l'essor d'une économie du savoir et le besoin d'un apprentissage à grande échelle dans le milieu de travail;
- La concurrence intense au sein du marché mondial qui s'accompagne de pressions accrues sur la productivité et la capacité à répondre aux attentes dans le milieu de travail;
- L'hétérogénéité accrue du milieu de travail – de nouvelles formes de structures du lieu de travail et de nouvelles formes de relations de travail;
- Les contraintes de plus en plus importantes exercées sur l'équilibre travail-vie personnelle et la nécessité de s'adapter aux changements affectant la structure familiale;



- demographic changes – such as increasing diversity (immigrants, visible minorities, Aboriginals) and aging of the workforce;
- les changements démographiques – tels que la diversité accrue (immigrants, minorités visibles, Autochtones) et le vieillissement de la main-d'œuvre;

WHEREAS there are linkages between the coverage and protections provided by Part III and Part I of the *Canada Labour Code*;

ATTENDU les liens existant entre les garanties et la protection qu'offrent les parties III et I du *Code canadien du travail*;

NOW THEREFORE, the Minister of Labour and Housing appoints Harry Arthurs pursuant to Sections 106 and 248 of the *Canada Labour Code* to conduct a comprehensive review of Part III of the *Canada Labour Code*, taking into account the above noted developments and other factors he may consider pertinent, and to make recommendations for legislative changes with a view to modernizing and improving the relevance and effectiveness of federal labour standards, including their relationship to collective agreements, and to the relevant definitions related to employment under the *Canada Labour Code*. Mr. Arthurs may also make recommendations of a non-legislative nature which identify options for consideration by government, business, and labour in light of the changing world of work. Mr. Arthurs is to hold consultations in the manner he deems productive with labour and management organizations whose members are subject to the Code as well as with any other interested individuals, experts, or groups which he feels would assist him in achieving his goals. Mr. Arthurs is to submit a final written report to the Minister of Labour and Housing no later than January 31, 2006, subject to extension

À CES CAUSES le ministre du Travail et du Logement désigne Harry Arthurs en vertu des articles 106 et 248 du *Code canadien du travail* afin qu'il réalise un examen approfondi de la partie III du *Code canadien du travail*, en tenant compte des développements susmentionnés et autres facteurs qu'il juge pertinents, et de formuler des recommandations quant aux modifications législatives à apporter pour moderniser et améliorer la pertinence et l'efficacité des normes fédérales du travail, y compris leur rapport avec les conventions collectives et les définitions pertinentes relatives à l'emploi en vertu du *Code canadien du travail*. M. Arthurs peut également formuler des recommandations de nature non législative qui définissent les options que doivent prendre en considération le gouvernement, les responsables du milieu des affaires et du milieu ouvrier compte tenu des changements dans le monde du travail. M. Arthurs devra tenir des consultations de la manière qu'il jugera productive avec des organismes de gestion et des organisations syndicales dont les membres sont assujettis au Code de même qu'avec toute autre personne, expert ou groupe concerné dont il juge qu'il pourra l'aider à atteindre ses



at the discretion of the Minister.

objectifs. M. Arthurs devra présenter un rapport final écrit au ministre du Travail et du Logement au plus tard le 31 janvier 2006, sous réserve des prorogations que peut accorder le ministre.

Mr Arthurs, with the prior approval of the Minister of Labour and Housing, may retain such assistance as is necessary to facilitate his or her work.

M. Arthurs, avec l'approbation préalable du ministre du Travail et du Logement, peut recourir à l'aide qui lui est nécessaire pour faciliter son travail.

IN WITNESS WHEREOF the Minister of Labour and Housing has hereto set his hand this 1st day of October, 2004.

EN FOI DE QUOI, le ministre du Travail et du Logement a apposé ci-dessous sa signature en 1^{ier} jour d'octobre 2004.

Minister of Labour and Housing
Ministre du Travail Logement



Office of the Minister of Labour



Cabinet du ministre du Travail

news release

Date
For release

04-06
December 2, 2004
FOR IMMEDIATE RELEASE

Minister Fontana announces appointment to lead review of federal labour standards

OTTAWA, ONTARIO—The Honourable Joe Fontana, Minister of Labour and Housing, today announced the appointment of Harry W. Arthurs as Commissioner leading the review of federal Labour Standards, Part III of the *Canada Labour Code*.

Professor Arthurs is a world renowned legal scholar and labour law expert who is highly regarded by both business and worker organizations. He is President Emeritus and University Professor at York University. Professor Arthurs is former President of York University (Toronto), former Dean of Osgoode Hall Law School (Toronto), an Officer of the Order of Canada and a member of the Order of Ontario.

The Commissioner will be supported by an advisory panel including Ms. Sherry Liang, an adjudicator with the Information and Privacy Commissioner of Ontario, Dr. Daphne Taras, Associate Dean of Haskayne School of Business at the University of Calgary, and Dr. Gilles Trudeau, Professor at the Université de Montréal's Faculty of Law. The panel will also include representatives from business and labour.

I am confident that Professor Arthurs is eminently qualified to provide forward-looking advice so that federal labour standards legislation and programs remain relevant and meet the needs of workplaces in today's rapidly changing environment," said Minister Fontana. "With the participation and strong support of business and labour in this review process, we will strive to find the right balance in providing protection to working Canadians while supporting flexibility and productivity in the workplace."

The world of work today has changed fundamentally. For example, the diversity of workers (women, visible minorities, persons with disabilities and Aboriginal peoples) has increased and created demographic changes; new technology has transferred the way work gets done and has put pressures on workers to learn new skills and to be available all the time; most parents are working now and families are seeking a balance between work and family responsibilities; there



are new forms of employment relationships; and employers are competing in a globalized world and need a flexible and responsive work force.

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As workplaces continue to evolve, these changes will require corresponding changes to labour policy and legislation.

Modifications to other parts of the *Canada Labour Code* were made in the past few years. In 1999, changes were made to Part I (Industrial Relations) of the Code. These changes included streamlining and modernizing the collective bargaining process. Part II (Occupational Safety and Health) was modified in 2000. The new legislation created a better balance between the roles of government, employers and employees by enabling workplace parties to assume more responsibility for their own work place health and safety. Also, the *Employment Equity Act* was reviewed in 2002, this review bringing forth recommendations to improve the administrative effectiveness of the legislation.

The review of Part III of the *Canada Labour Code* will complete the process of modernizing federal labour legislation. The final report of the review and recommendations are to be submitted to the Minister of Labour and Housing by January 2006.

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The biographical notes are attached.

For more information:

Peter Graham
Office of the Minister of Labour and Housing
(819) 953-5646

Web site: www.hrsdc.gc.ca



STAKEHOLDERS AND EXPERT ADVISORS

Expert Advisors

Gilles Trudeau	Université de Montréal – Faculty of Law	Expert Advisor
Daphne Taras	University of Calgary Haskayne School of Business	Expert Advisor
Sherry Liang	Arbitrator	Expert Advisor

Stakeholder Advisors

Don Brazier	Executive Director	Federally Regulated Employers–Transportation and Communication
Andrew Finlay	Vice-President and Assistant	Canadian Bankers Association
Ken Georgetti	President	Canadian Labour Congress
Hassan Yussuff	Secretary-Treasurer	Canadian Labour Congress

Alternate:

Andrew Jackson	Director of Research	Canadian Labour Congress
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Commission Staff

Neil Gavigan	Senior Director
Kevin Banks	Director of Research
Fred Chilton	Manager
Antonio Bakopoulos	Senior Policy Analyst
Charles Philippe Rochon	Senior Policy Analyst
Carli Disano	Project Officer
Caroline Laverdière	Project Officer
Émélie Pendergast	Administrative Officer
Claudette Yee Kin Shin	Office Coordinator
Roger Trahan	Clerk



Academic Consultations
Lists of Participants
Toronto, March 11 - 12, 2005 & Montreal, March 18 - 19, 2005

Names	Coordinates	Consultations Attended
Adell, Bernard	Queen's University	Toronto, Montreal
Anand, Anita	Queen's University	Toronto
Berg, Peter	Michigan State University	Montreal
Bernier, Jean	Laval University	Toronto, Montreal
Bernstein, Stéphanie	Université du Québec à Montréal	Toronto, Montreal
Blackett, Adelle	McGill University	Montreal
Block, Richard	Michigan State University	Montreal
Charest, Jean	Université de Montréal	Montreal
Chaykowski, Rick	Queen's University	Montreal
Coiquaud, Urwana	HEC Montréal	Montreal
Craven, Paul	York University	Toronto
Dau-Schmidt, Kenneth	University of Indiana	Montreal
England, Geoff	University of Saskatchewan	Montreal
Etherington, Brian	Windsor University	Toronto
Fredman, Sandra	Oxford University	Montreal
Fudge, Judy	York University	Toronto
Gallina, Paul	Bishop's University	Montreal
Green, Andrew	University of Toronto	Toronto
Gunderson, Morley	University of Toronto	Toronto
Kuttner, Tom	University of New Brunswick	Toronto
Langille, Brian	University of Toronto	Montreal
Murray, Gregor	Université de Montréal	Montreal
Saunders, Ron	Canadian Policy Research Network	Toronto
Shapiro, Daniel	Simon Fraser University	Montreal
Sossin, Lorne	University of Toronto	Toronto
Trubek, Dave	University of Wisconsin	Montreal
Vallée, Guylaine	Université de Montréal	Montreal
Verge, Pierre	Université Laval	Montreal
Verma, Anil	University of Toronto	Montreal
Vosko, Leah F.	York University	Toronto
Zumbansen, Peer	York University	Montreal
Arthurs, Harry W.	Commissioner	Toronto, Montreal
Liang, Sherry	Expert Advisor	Toronto, Montreal
Taras, Daphne	Expert Advisor	Toronto, Montreal
Trudeau, Gilles	Expert Advisor	Toronto, Montreal
Brazier, Don	FETCO	Toronto
Jackson, Andrew	Canadian Labour Congress	Toronto
Leamen, Nancy	Canadian Bankers Association	Montreal
Ritchie, Laurell	Canadian Auto Workers	Montreal



Commission Research Program

With a view to ensuring that the work of the Commission benefits from high quality, objective and user-friendly research, the Commission is implementing a comprehensive research program. Projects currently underway are listed below. The program draws upon acknowledged experts to address key issues pertaining to the aims, content and application of labour standards. The Commission will post the completed research projects on its web site as they become available in both official languages.

Project	Researcher
What is the Relationship Between Labour Standards, Productivity and Competitiveness?	Morley Gunderson University of Toronto
Survey on Working Conditions Within Federal Jurisdiction	Statistics Canada
Conceptual Approach to Identifying Workers Most in Need of Labour Standards Protection	Stéphanie Bernstein Université du Québec à Montréal
The Function of Labour Standards In Relation to Other Social and Economic Worker Protection Platforms	Guylaine Vallée Université de Montréal
Empirical Study Identifying Workers Most in Need of Labour Standards Protection	Richard Chaykowski Queen's University
Employment Conditions and Work Arrangements in Federal Jurisdiction Industries	Richard Chaykowski Queen's University
Labour Standard Issues in the Interprovincial Canadian Trucking Industry	Garland Chow University of British Columbia
Comparing Labour Standards Across Jurisdictions	Richard Block Michigan State University
Coverage of Federal Labour Standards Legislation	Jean Bernier Université Laval
The Effect of Jurisdictional Issues on the Application and Administration of Part III	Robert Howse University of Toronto
Adapting Standards to Specific Sectors, Occupations or Workplaces	Ron Saunders Canadian Policy Research Networks
Prospects for Sectoral Setting and Administration of Standards in the Federal Domain	Mark Thompson University of British Columbia
Assessment of Minimum Wage Issues	Morley Gunderson University of Toronto
Wage Protection and Wage Recovery Provisions	Rod Wood University of Lethbridge



Unjust Dismissal and Other Termination-Related Provisions	Geoffrey England University of Saskatchewan
Rights, Respect and Dignity in the Workplace: Interface between Labour Standards and Human Rights Legislation	Colleen Sheppard McGill University
Control Over Time: Empirical Analysis – What is Happening in the Federal Jurisdiction Industries; Effects on Work-Life Balance	Graham Lowe
Control Over Time: Comparative and Theoretical Perspectives	Sandra Fredman Oxford University
Control Over Time and Work-Life Balance: Detailed Analysis of Legislation	Judy Fudge York University
Labour Standards Perspective on Human Capital Strategy: Training and Learning	Jean Charest Université de Montréal
Worker Representation and Voice: Information and Consultation Mechanisms	Anil Verma University of Toronto
New Compliance Strategies: Review of Enforcement Procedures	Paul Gallina Bishop's University
New Compliance Strategies: Self-regulation, Incentives, Education	Michael Trebilcock with Patrick Macklem University of Toronto

In addition to the above commissioned research, the staff of the Commission is gathering federal/provincial and international comparative information on labour standards; information on Canada's international obligations; data on labour standards complaints, on working conditions in the federal jurisdiction, and on the interplay between various labour standards and other regulatory regimes and public policies.



PUBLIC HEARINGS
Fall 2005

CITIES	DATES
Whitehorse, Yukon	September 8
Ottawa, Ontario	September 14 & 15
Toronto, Ontario	September 20 & 21
Regina, Saskatchewan	September 23
Winnipeg, Manitoba	September 26
Vancouver, British Columbia	September 27 & 28
Edmonton, Alberta	October 6
Calgary, Alberta	October 11 & 12
Montréal, Québec	October 18 & 19
Moncton, New Brunswick	October 24
Charlottetown, Prince Edward Island	October 24
Halifax, Nova Scotia	October 25 & 26
St. John's, Newfoundland	October 27



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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.flis-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.