Labour Standards for the 21st Century:

Canadian Labour Congress Issues Paper on Part III of the *Canada Labour Code*

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1. Introduction: The Review of Part III

The federal Minister of Labour has launched a review of Part III of the *Canada Labour Code* dealing with employment standards in the federal jurisdiction. The review, to be completed by mid-2006, will be undertaken by Professor Harry Arthurs, assisted by three expert advisers and two advisers from each of labour and employers. The two labour advisers are CLC President Kenneth V. Georgetti and CLC Secretary-Treasurer Hassan Yussuff.[1]

In the course of his work, Mr. Arthurs will initiate a research program and undertake private and public consultations, including with labour and with community groups. A consultation paper and background material related to Part III of the *Canada Labour Code* has been posted to the review Web site (http://www.fls-ntf.gc.ca/).

The CLC has established a working committee on Part III issues, made up of representatives from affiliated unions who are best placed to comment on issues affecting specific sectors and specific groups of workers. We have also met with academics and community organizations familiar with employment standards issues.

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[1] Andrew Jackson, CLC National Director of Social and Economic Policy, is providing staff support. Comments on this paper can be sent to his attention at ajackson@clc-ctc.ca .

Throughout the Part III review process, the CLC will have the opportunity to learn from the input of our affiliates, other organizations, experts, and the general public. We will also have the opportunity to engage directly with Professor Arthurs in the course of his work.

This paper has been prepared to provide an overview of Part III issues from a labour perspective at an early stage of the review process, and to propose some directions for public discussion. A final set of CLC recommendations and priority items will be put forward at a later stage of the inquiry.

2. New Realities and Key Challenges

Many provisions of Part III and its framework date back to 1965, or forty years ago. Much has changed since, and most changes have not been for the better for workers. Market-driven "globalization," contracting-out, privatization, and deregulation have greatly increased competitive pressures on employers, leaving many seeking a cost advantage by depressing wages and working conditions, and by fundamentally restructuring employment relationships to make jobs more unstable and precarious.

The dominant response of governments to changed economic conditions has not been to protect workers, but rather to deregulate the labour market. Employment standards legislation is supposed to provide a basic level of protection for all workers, but lack of effective enforcement of these standards and shrinking coverage because of the growth of non-standard work make them almost a dead-letter for many vulnerable workers. This is true of the federal jurisdiction as well. Many employers are not in compliance with minimum standards.

The growth of precarious work is partly to be explained by the fact that deregulation of the labour market has itself made work more precarious. Lack of protection means that growing numbers of workers must put up with substandard wages and poor working conditions, or leave the job. There is a huge cost to ineffective enforcement and non-compliance of employers with labour standards. But, it is largely hidden and unaccounted for, borne by vulnerable workers who are unable to access their basic rights.

As has been stated by the Law Commission of Canada (2005), the costs of "unbridled flexibility" and labour market deregulation are transferred to workers. The solution to this state of affairs is to push enforcement back into the workplace, and to make sure that the protections of the law are updated to take full account of the changing realities of work and of new social realities.

We reject the view of many employers and policy-makers that promotion and enforcement of basic standards is dated and somehow out of tune with the needs of the new economy. In fact, it is the changing nature of work which demands the renewal of employment standards, and a new determination to make them relevant.

The mantra of competitiveness has been used to undermine the goal of promoting worker rights and protections. But, far from undermining economic performance, a strong floor of rights and standards will protect responsible employers who treat their employees with respect and dignity. Weak enforcement of low standards rewards bad employers and marginalizes vulnerable workers, but does nothing to promote long-term economic success. Decent standards must be seen as a central part of a modern, highly productive economy based

upon skilled and knowledgeable workers. There is no contradiction between promoting high labour standards and building a highly productive economy. (See final section of the paper.)

3. Key Goals of Employment Standards

The central goal and purpose of legislated employment standards is to set a socially acceptable minimum floor of labour rights and standards for workers. A floor is needed since there is a fundamental imbalance of power between workers and employers. Most workers are highly dependent upon maintaining their current employment to support themselves and their families, and the norm is for the demand of workers for jobs to exceed employer demands for labour. So long as we live in an economy with significant unemployment (including high levels of disguised unemployment in involuntary part-time and very precarious, insecure and badly paid jobs), some employers will be able to pay very low wages and provide substandard working conditions. Minimum standards help redress this imbalance of power between employers and vulnerable workers.

Employment standards must also be seen as a key means to secure and promote human rights. Paid work is a major part of the lives of workers, and employment still means subordination to the demands of an employer. The employment relationship must be balanced to protect against unreasonable demands and lack of power to enjoy basic freedoms, such as freedom from psychological or physical harassment, and discrimination on the basis of sex, race, or ability.

Ensuring effective protection for vulnerable workers is the key priority for the CLC in the review of Part III. Employment standards legislation in Canada (including Part III) falls far short of providing such protection due to lack of enforcement of current provisions, exclusion of many workers from coverage, and minimum standards which are dated and/or inadequate in terms of their substance. Those who are most vulnerable to substandard wages and working conditions and to unjust dismissal include women, recent immigrants and workers of colour, and young workers, especially those working in smaller firms, and in particular sectors and occupations.

Setting a statutory minimum provides an important floor of rights and standards for ALL workers. Basic rights and standards of so-called "core workers" who are often seen as not requiring protection are frequently violated due to ongoing economic restructuring, privatization, deregulation and free trade. Even full-time, permanent, unionized workers are not infrequently obliged to work long hours, denied access to needed leaves of absence, and subjected to harassment in the workplace. The same is true of non-unionized professionals and managers, who often work very long hours and can be subject to unjust dismissal.

4. The Federal Jurisdiction

The federal jurisdiction covers about one million or about 10% of all Canadian workers, including workers at about 40,000 work sites in key sectors of the economy: inter-provincial and international transportation (bus drivers, truckers, rail and airline, and airport workers), pipeline workers, bank workers, workers in the communications and broadcasting industries, workers in ports and shipping, grain

handlers, uranium miners, and workers in the nuclear industry, federal Crown corporation employees, as well as some workers on First Nations reserves. The unionization rate is probably somewhat above average since parts of the federal jurisdiction (the railways, the airlines) are predominantly unionized, and there is a significant union presence in other parts. The proportion of workers in very large firms may also be somewhat above average. However, the federal jurisdiction is very diverse in terms of industrial sectors, occupations, extent of union coverage, firm size, and other key characteristics. In that sense, it is little different from any single provincial jurisdiction.

While the review of Part III will obviously raise a number of specific sectoral issues, it also must cover most of the major and general issues covered by provincial employment standards. The CLC will speak to these general issues.

Because the federal jurisdiction spans the whole country, it is quite possible and indeed common for workers in this jurisdiction to have access to lower levels of rights and standards than other workers in the same province. For example, workers in the federal jurisdiction do not enjoy a right to meal breaks and have inferior rights to family responsibility leaves and to paid vacations compared to workers in several provinces.

As a general principle, no worker should be worse-off by being in the federal than in the provincial jurisdiction. This implies that federal *Code* provisions should be at least as protective as those in any province.

5. The Changing Workplace and Its Implications for Employment Standards

The restructuring of work which has taken place since the 1970s has large implications for how we conceive of the role of employment standards. With a few exceptions, the *Canada Labour Code* reflects the conditions and perceptions of an era which has passed into history. Most importantly, work has become more insecure, and the workforce and the needs of workers have become much more diverse.

Union Coverage: Implications for Part III

The scope of collective bargaining coverage in the private sector has fallen from over 25% in the mid-1980s to just under 20% today, and it can no longer be simply assumed that unionized workers enjoy wages and working conditions far above legislated standards. Rights and standards have been subject to downward pressure and erosion in unionized as well as non-union workplaces as a result of economic restructuring and increased competitive pressures on employers.

While collective agreement provisions still generally exceed minimum employment standards, legislative standards have always been and are increasingly important in terms of setting a floor under collective bargaining arrangements. Further, due to competitive pressures, it is difficult for unions to bargain improved rights and benefits if the floor is set too low.

It is our experience that some unionized employers can and do use any available provision for "flexibility" to undercut standards, in the hope that the law will not be enforced. It cannot be assumed that there is an equality of power between employers and unions.

For all of these reasons, the CLC opposes suggestions that employment standards should be waived or made more "flexible" in unionized workplaces. Provisions in the *Code* that collective agreements cannot undercut minimum *Code* provisions need to be made even more explicit. It is, of course, recognized that some *Code* provisions may need to be modified to reflect specific conditions in a specific industry, such as a need for continuous operations over paid holiday periods, or a need for hours-averaging in some circumstances. As a practical matter, some of these issues may be determined in collective bargaining, but they should be approved only if *Code* minimums are clearly exceeded.

The erosion of collective bargaining and the very low level of union density in many sectors of the economy means that employment standards must now be seen as a fundamentally important form of protection for all workers, rather than as "labour law's little sister" as was the case in the 1960s. Their potential relevance to the real lives of workers is greater than when Part III was drafted.

Generally speaking, unionized workers have two forms of protection. Violations of collective agreement provisions can be grieved and arbitrated. And, unions can help members by drawing the attention of employers

and the authorities to violations of legislated employment standards.

One consequence of declining unionization in the private sector has been that it is more difficult for workers to access the protection of minimum legislated standards. The implication is that enforcement should be strengthened.

5.a. The Persistence and Growth of Precarious Work

One fundamentally important aspect of the restructuring of work in the 1980s and 1990s has been the growth of precarious forms of employment, defined as employment which offers low levels of security, limited access to rights and protections and, usually, low earnings (Vosko, Zukewich, and Cranford 2003; Jackson 2005). Precarious work overlaps with, but is not reducible to, so-called non-standard forms of employment, i.e. part-time and temporary jobs and self-employment. Some self-employed workers have secure, high earnings, and some full-time, permanent workers have very low hourly wages, limited, if any, benefits, and very little access to rights and protections at work.

Low pay can be taken as a very rough indicator of trends in job quality. Recent analysis by Statistics Canada shows that almost one in four of all employees aged 17 to 64 earns less than $10 per hour – roughly two-thirds of the median hourly wage level, and roughly the amount needed to reach the poverty line for a single person working full-time for a full year in a large urban centre. The proportion of low-wage workers by this

definition (earning less than $10 per hour in constant dollar terms) has increased slightly since 1981 (from 22.4% to 23.6%), despite the average annual growth of real national income of about 3% per year. Real median hourly wages (half earn more and half earn less) have been stagnant over this extended period, falling by 2.2% for men while rising by 8.5% for women (ages 17-64) (Morissette and Johnson 2005).

Defined by relative wages (earning less than two-thirds of the median), Canada is second only to the US as a low-wage country among the advanced industrial countries (Jackson 2005. Chapter 11). Vulnerability to low-wage employment is much greater than average among young workers and adult women than among adult men. Data from the *Labour Force Survey* for 2003 show that 57% of young people earned less than $10 per hour, while 16.2% of women aged 25 to 54 and 11.2% of men aged 25 to 54 earned less than $10 per hour. The incidence of low wages is much higher among recent immigrants and workers of colour.

Research by Emmanuel Saez and Michael Veall (2003) helps explain why the wages of the bottom half and more of Canadian workers have been stagnant for so long. Starting from the mid-1980s, there has been a pronounced shift of employment income from the bottom half to the extreme top end of the wage distribution. Between 1980 and 2000, average employment income was almost unchanged, but the average (inflation adjusted) annual employment income of the top 1% of earners more than doubled (from $157,000 to $333,000), and their share of total employment income also doubled, from 5.3% to 10.5%.

The central point is that – measured by median hourly or by average annual earnings – there has been little or no improvement in the quality of jobs of the majority of Canadian workers for the past twenty-five years. No one can seriously argue that employment standards have somehow become *passé* because of generally shared economic progress and improvement in the conditions of work. The majority of workers are not sharing in overall economic growth. Moreover, there is evidence that the chances of low-wage workers climbing job ladders over time have been falling, such that more workers are trapped in insecure jobs for much longer periods of time than used to be the case (Beach, Finnie, and Gray 2003).

While the annual unemployment rate ebbs and flows, more than 10% of workers currently experience unemployment over the course of a year, and many low-wage workers hold low-tenure jobs and move frequently from one low-pay, short-term job to another. The incidence of short-tenure jobs is understandably high among younger workers, but one-in- seven adult full-time workers have held their current job for less than one year. (Data from *The Labour Force Survey*.)

More than 11% of all workers are in explicitly temporary jobs (seasonal jobs or jobs with a specified end date), up from 7% in the late 1980s. The incidence of temporary and contract work has increased greatly among younger workers, and now represents close to the dominant mode of entry into what might turn out to be a permanent job. Employment through temporary agencies has also grown to be a significant part of the job market, especially for recent immigrants.

As part of this shift to more precarious work, the standard norm of full-time, permanent employment, working on the premises and under the direct control of a single employer has been eroding. As recently noted by the Law Commission of Canada (2004, p.1):

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

The proportion of part-time jobs rose in the 1980s, and represents a form of employment which is highly likely to be precarious. One in six adult women work part-time, of whom at least one in three would rather work full-time, but cannot access jobs with full-time hours. Major issues for part-time youth and adult women part-time workers include low wages, lack of access to benefits, very unstable and often unsocial shift schedules, and lack of access to full-time, permanent jobs, training, and job ladders. Part-time work can represent an important, voluntary way in which to balance paid work with other activities potentially, but only if it is properly regulated.

The incidence of self-employment in Canada has increased modestly over the 1980s and 1990s, but there has been a big increase in solo or "own-account" self-employment, which is often linked to very low annual earnings. (About half of the solo self-employed earn less than $20,000 per year.) Since the late 1980s, the

proportion of all workers who are solo self-employed (employing no others) has risen from 7% to 10%, and this increase has been much greater among women than among men. Often, so-called self-employed workers are economically dependent upon and subject to direction from employers who contract for their services, and should be considered as disguised employees. There is a very high level of precariousness and vulnerability among the so-called solo self-employed in particular, which needs to be addressed by extending eligibility for statutory worker entitlements (such as EI maternity benefit) and expanding coverage for purposes of employment standards.

Precarious Work: Implications for Part III

In principle, Part III of the *Canada Labour Code* covers workers regardless of whether they work part-time or full-time, or on a permanent or contract basis (except that a period of job tenure is required to obtain some rights and benefits, such as paid vacation and protection from unjust dismissal). The *Code* is silent on differences in employment conditions as between contract and permanent employees, and as between full-time and part-time workers. It makes no provision for equal pay or access to benefits regardless of the form of employment, as is now the norm in the European Union following passage of the directives on part-time and contract work. There is no provision for the conversion of part-time or contract to full-time or permanent jobs, or for equal access to training. While many substantive provisions of the *Code* do cover part-time and contract workers, it is

also silent on issues of specific interest to such workers, such as shift scheduling.

The *Code* should provide for equal pay for part-timers in comparable jobs (as in Quebec up to twice the minimum wage) and access to benefits comparable to those provided to full-time workers (as in Saskatchewan). (This could be done by providing full benefits after twenty hours of work or a similar threshold or, at a minimum, by paying pro-rated cash in lieu of benefits paid to full-time workers.) Such provisions are needed not just to assist part-time workers, but also to counter employer strategies to lower costs by converting full-time to part-time jobs. Greater access to workplace non-wage benefits for non-standard workers should be pursued until such time as public benefits provided to all citizens or all employees provide adequate income security in retirement, as well as coverage for prescription drugs and other basic health care needs.

Employers of part-time workers exercise greater power over such workers through their ability to change hours and shift schedules. Often, part-time workers are unfairly disciplined through arbitrary changes in hours or schedules, and allocations of hours to workers are often made on the basis of favoritism. The *Code* should oblige employers to provide advance notice of hours and minimum shift hours to part-time workers. (The current provision in the *Code* is that employers must provide at least three hours pay if asked to report to work, but there are no standards for advance notice of schedules.) As was proposed in Saskatchewan, employers should also be required to offer available hours of work to part-time workers before new workers performing similar work are

hired. Such a standard would permit involuntary part-time workers to move into full-time jobs over time, but would not undercut the ability of an employer to vary the total hours of work in line with business conditions.

The *Code* should provide for equal pay between contract workers and comparable permanent workers performing substantially similar work, and access to benefits, as with part-timers, after the total duration of contracts has reached a reasonable threshold. There should be full coverage of contract workers for leaves, vacation, paid holidays, severance pay, etc. on the basis of total time accumulated under contracts even if they are non-consecutive.

Non-renewal of a contract after one year's employment should be considered as grounds for unjust dismissal, if there is no just cause for non-renewal, and if the work is being performed by a newly hired worker or another contractor. In the European Union, the directive on contract work stipulates limits on the renewal of contracts such that seniority should translate into permanent job status.

The growth of contracting-out of work to individuals and to third-party providers of labour, such as temporary agencies and labour contractors, has created disguised and complex triangular employment relationships which were not envisaged in the *Code*. Recent experience demonstrates that large employers who are generally compliant with labour standards often make use of labour contractors who flagrantly abuse worker rights. For example, telecommunications firms have subcontracted some marketing operations, such as door-

to-door sales, to contractors who have been found guilty of not paying due wages. Many large employers in federally regulated industries have converted formerly permanent full-time jobs into nominally independent contractor positions, changing the apparent legal status of the worker despite no real change in the work performed.

The *Code* should address the needs of temporary agency workers by establishing that employers and the agency have joint responsibility for meeting all employment standards, and by stopping prohibitions on temporary agency workers taking a job with an employer with whom they have been placed. This is a common practice which can effectively imprison temporary agency workers, mainly recent immigrants, in temporary employment.

There is a need for the Part III process to reflect upon how employment standards apply in a context of extensive contracting-out of labour services to nominally independent contractors. For example, workers in a bank's call centre are covered by the *Code*, but they are not covered if they work for a nominally independent contractor providing call-in services in a dedicated centre. Employers should be held at least jointly responsible for the employment conditions of indirect employees who nominally work for contractors delivering labour-intensive services.

The *Code* should require employers to maintain a registry of home-workers to facilitate audits of pay, hours, and access to other benefits.

There is no clear definition of an employee in the *Code* even though work has been and continues to be restructured through extensive subcontracting in such a way as to create disguised employment relationships. Courts have made fairly expansive interpretations to cover dependent contractors based on control of the labour process, degree of financial risk, economic dependence, and other factors. However, according to the Law Commission of Canada (2004, p.8), "it is not uncommon for workers to be told they are independent contractors and, therefore, not entitled to various statutory and non-statutory benefits and protections when an analysis of the circumstances of their work arrangement, based on the legal tests, would reveal that they are, in fact, employees."

While no one definition can cover all circumstances, the definition of employee for purposes of the *Code* (which conveys coverage) must be expressed in very expansive terms in all information materials, and explicitly include so-called dependent contractors (that is persons who are nominally self-employed but, in reality, are economically dependent upon and subject to the control of an employer).

Inspectors must be given the power to determine who is and is not an employee to speed the complaints process and to increase employer compliance.

We see merit in the suggestion of the Law Commission of Canada that, rather than define who is and who is not an employee, coverage for most purposes should be extended to persons who are economically dependent on their capacity to work and who are not

independent entrepreneurs. In that case, the regulatory issue would be to define who is the employer of a covered worker.

Coverage with respect to hours should extend to all professionals and to at least lower-level supervisors and managers. Some occupations are now excluded from some provisions, notably with respect to hours of work. Salaried professionals and managers are frequently obliged to work very long weekly hours, and there is no good reason why they should not qualify for either overtime pay or time off in lieu, or why very long hours should not be capped. The definition of covered employees should be inclusive of all but senior managers with the power to hire and fire, and this should be widely publicized.

5.b. Women in the Workforce

Another key change since Part III was drafted has been the profoundly changed face of the workplace in terms of gender. Employment rates for men and women are now almost level, with the small remaining gap being primarily explained by (fast-shrinking) gaps between older women and older men, and by the fact that a significant proportion of women with younger children still leave the labour force for a period of time. However, very few women with children now leave the paid workforce for an extended period, and the majority of women with young children at any given time are now in the paid workforce. In short, the norm is now for two-person families to have two earners, and also for women single-parents to be in the paid workforce.

Women workers are more likely than men to be in bad jobs defined by low wages, unstable employment, lack of access to rights and benefits at work, and poor working conditions. As noted, adult women are much more likely than adult men to be low paid, much more likely to be working part-time (often on an involuntary basis), and more likely to be in the most insecure forms of self-employment.

Minimum employment standards are particularly relevant to women workers, and full account must be taken of how such standards address the real problems of working women. Women continue to pay a heavy penalty for time spent in caring responsibilities, and this helps explain pay and opportunity gaps between women and men which persist despite high levels of education.

Notwithstanding near equality with men in terms of participation in the paid labour force, women still bear most of the burden of caring for children and the elderly. The time-burden of care for the elderly, the sick, and persons with disabilities has been shifted to workers as the result of cuts to community and social services, and every more-early discharges from the health care system.

Women bear the brunt of so-called work – family conflict. It is women who experience the greatest problems from excessively long hours, from unsocial and unstable shift schedules, and from lack of provision for family responsibility leaves.

The implicit assumption of the "male family bread-winner" model which underpins the current regulatory provisions around hours of work and leaves is that

someone (a woman) is available in the home to provide care for free. This is demonstrably untrue today, and governments have not filled the gap by providing adequate and affordable child care, elder care, and home care. As stated by the Law Commission of Canada (2004, p.2) "(e)xisting laws and policies dealing with work are still organized around the concept that 'someone' (not the worker) provides the child, elder and home-care for the worker. In reality, most workers struggle to meet the increasing demands of work and family/home obligations with few resources and supports to assist them. The sacrifices being made may well undermine the short- and long-term well-being of Canadian workers and society as a whole."

Women in the Workforce: Implications for Part III

Issues relating to work-family conflict – above all promoting more flexibility for workers in terms of working time over the working week and the life-course – should be a major priority in the review of Part III. It should be underlined that more time flexibility to meet the needs of workers is needed, not just to meet the needs of working women, but also to provide a basis for a more equitable sharing of caring responsibilities between women and men.

The federal *Code* provides for up to 52 weeks of combined maternity/parental leave. It should ensure that women taking maternity and parental leaves as well as men taking parental leaves enjoy full job protection and continue to get notice of training and promotion opportunities while in leave. In principle, this is now the

case, but enforcement is a major issue. Firing returning mothers or reassignment to lower paid positions are not infrequent practices for some employers. The *Code* provisions and enforcement procedures must ensure that workers returning to employment after maternity/ parental or care-giving leaves have the effective right to return to substantially the same position at the same rate of pay.

The federal *Code* currently has no provision for personal or family responsibility leave. Quebec currently provides for up to ten days unpaid leave per year to deal with family responsibilities, Ontario provides for up to 10 days (only for workers in larger establishments of 50 or more workers). British Columbia provides for up to 5 days, and there are lesser provisions in Atlantic Canada.

All workers should have the right to take up to 10 paid days per year to deal with personal and family responsibilities, including disruptions to child care and elder care arrangements, dealing with household illness, domestic emergencies, and medical appointments.

In addition, workers should be able to take up to 12 weeks of unpaid leave to assume significant, temporary care-giving responsibilities, such as caring for an ill child, another family member, or any other person, with a right to return to the job with no loss in pay. Quebec and Saskatchewan provide up to 12 weeks leave for serious illness in the family.

The current compassionate leave provision is inadequate in terms of duration (up to eight weeks) and

unduly restrictive, confined to palliative care of a close relative.

A right to reduce hours or to opt for flextime provisions to provide care exists in the Netherlands and Germany. In addition to the ability to take a leave, care-givers should be provided the right to work voluntarily reduced hours for reasonable periods of time.

5.c. A More Diverse Workforce, Anti-Racism and Human Rights

Canada is a much more diverse society than twenty years ago. More than three in four immigrants are persons of colour (belong to visible minority groups) and immigration now accounts for virtually all labour force growth. About one in seven workers are workers of colour, and this proportion is far higher in Toronto, Vancouver, and a few other urban centres.

Precarious jobs, especially in our biggest cities, are highly racialized as well as highly gendered. Workers of colour and recent immigrants are much more likely than other workers to be in low-paid and insecure jobs. (See *Is Work Working for Workers of Colour?* Canadian Labour Congress Research Paper, 2003.) Thus raising the general level of employment rights and standards is of particular importance from the perspective of promoting greater equality and inclusion, and narrowing pay, job quality, employment security, and opportunity gaps between workers of colour and other workers.

Racial discrimination is one factor behind the disproportionate employment of workers of colour in

precarious and low-paid jobs, as demonstrated by persistent pay and quality of employment differences based upon racial status even when education and skills are held constant.

If new immigrants and workers of colour are to be fully included in Canadian society, and to participate equally in the job market, then workplaces must be welcoming and supportive. Racism must be actively confronted in workplaces, or workers of colour will fail to get ahead.

Employment standards legislation, along with pay and employment equity and human rights laws, can play a role in combating discrimination and harassment.

A major research priority for the Part III review should be to examine the relationship between human rights legislation and employment standards, with a view to ensuring that human rights provisions are, at a minimum, reflected in employment standards. Further, consideration should be given to remedying key gaps in Canadian human rights legislation through improvements to Part III employment standards.

In its submission to the *Canadian Human Rights Act* Review Panel in 1999, the CLC proposed that the establishment of Human Rights Workplace Committees be required, on the model of the health and safety committees required in Part II of the *Code*. These would be required to monitor compliance with human rights legislation, and to act as providers of information on how workers could bring forward complaints. Unions are a potential and important source of access to human rights

tribunals, but workers in non-union workplaces often do not have the knowledge or means to carry complaints forward. Workplace Committees could help fill this key gap. They might also take responsibility for diversity training for workers, and supervisors and managers.

This proposal should be considered by the review as one means to combat racism and racial discrimination in the workplace, linking employment standards with human rights protections in a very concrete way.

More than half (55%) of all unionized workers are covered by a harassment complaint procedure. It is our experience that anti-harassment procedures in collective agreements are a needed and effective form of redress. In many cases, harassment complaints are dealt with on a highly expedited basis by specially trained union and employer representatives who undertake a very quick and impartial joint review of the facts (e.g., *The Respect at Work* program of CUPE and Toronto Hydro).

A priority for the CLC in the review of Part III is the inclusion of provisions related to harassment in the workplace, including racial harassment, to protect vulnerable workers. What is essential is that persons who are harassed have the protection of a speedy and objective process for complaint and investigation. Unfortunately, such procedures are lacking in many workplaces.

The CLC proposed in the review of Part II of the *Code* that the *Canada Labour Code* be used to counter violence, assault, abuse, and harassment in the

workplace. These issues were put off to the Part III review.

"Violence" is any incident in which an employee is abused, threatened, harassed, or assaulted by any person. The act may be actual or implied, and either verbal or physical in nature.

"Assault" includes aggravated assault, assault, sexual assault, gestures, kicking, pushing, biting, and/or spitting. "Abuse" includes jokes, comments, obscene remarks, insults, ridicule, swearing, shouting, or threats without weapons, causing emotional distress.

"Harassment" occurs when an individual is subjected to unwelcome or unacceptable verbal or physical conduct related to a prohibited ground: race, color, national or ethic origin, religion, age, sex (including pregnancy or child birth), marital or family status, sexual orientation, physical or mental disability, and conviction of an offense from which a pardon has been granted. It can be one or a series of incidents that demean, humiliate, or embarrass another person, and that ought to reasonably be known to be unwelcome or offensive.

Recent changes to Quebec's labour standards legislation require an employer to establish formal procedures to deal with psychological harassment in the workplace.

For the purposes of the Quebec Act, "psychological harassment" means any vexatious behaviour in the form of repeated and hostile or unwanted conduct, verbal comments, actions, or gestures that affects an employee's

dignity or psychological or physical integrity, and that results in a harmful work environment for the employee. A single serious incidence of such behaviour that has a lasting harmful effect on an employee may also constitute psychological harassment.

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.

An employee who believes he has been the victim of psychological harassment may file a complaint in writing. Such a complaint may also be filed by a non-profit organization dedicated to the defence of employees' rights on behalf of one or more employees who consent thereto in writing. Remedies may include orders to an employer to take reasonable action to stop the harassment, to reinstate the employee, or to pay punitive and moral damages, among other measures.

Similar provisions should be included in Part III.

The *Code* should also provide for accommodation for persons with disabilities (on top of job protection for workers injured on the job).

6. Compliance and Effective Enforcement

A central priority for the CLC in this review of Part III is to ensure that measures are put in place so that there is effective employer compliance with and enforcement of the *Code*. We believe the federal government could and should play a model role in this regard, setting a new standard which could be copied by the provinces.

As argued by the Law Commission of Canada, there was a shift away from active regulation of the labour market over the past twenty and more years, marked by a failure to adapt standards to the new realities of work which were undercutting coverage, and by a deliberate weakening of enforcement.

The general shift to labour market deregulation in the 1980s and 1990s starved employment standards authorities of resources and political support. Sometimes it is argued by employers that we need alternatives to "command and control" regulation. The reality is that we badly need alternatives to the current practice of deregulation and non-enforcement which has left vulnerable workers in the lurch.

It should go without saying that there is little ultimate point in proposing or legislating substantive improvements in employment standards if these do not become the lived reality of our workplaces.

It is incumbent upon governments, not just to set a decent minimum floor of rights and standards in law, but also to ensure that the law is effectively communicated and enforced.

There is substantial evidence from evaluation reports that employment standards are almost a dead-letter in Canadian workplaces, and this is certainly the experience of many workers. As things stand, standards are widely ignored and violated by employers. There is only limited education and proactive enforcement by government inspectors. Individual complaints arise almost entirely after the severance of the employment relationship for unpaid wages, unfair dismissal, or similar issues, and even employers found to be in persistent violation of the law face weak, if any, sanctions. As noted by the Law Commission of Canada (2004, p.22) "Unrepresented workers have a very limited ability to take action against violations of labour standards" and there is "a real and perceived threat of reprisal against employees who complain about their employment while on the job."

The situation is better in some provinces than in others, but the *2004 Annual Report of the Provincial Auditor of Ontario* is probably reflective of the general situation. It found that – notwithstanding concerns raised in the 1991 audit – proactive inspections had been virtually abandoned despite their success in uncovering violations, and that the policy of no prosecutions meant there was little incentive for employers to respect standards. It noted that promoting awareness of employee rights and employer responsibilities is essential to the widespread observance of minimum standards.

The federal jurisdiction is no different. Government-funded independent evaluation studies undertaken in 1997 and 1998 found massive non-compliance with Part III by employers. Phase I of the evaluation undertaken by independent consultants for the Department of Human Resources and Skills Development found that only 25% of employers covered by the *Code* were in full compliance; 25% were in widespread non-

compliance; with the other 50% somewhere between these two poles. Many common working practices in the federal jurisdiction – such as long hours – are in violation of the *Code*. Widespread ignorance of *Code* provisions was identified as one factor. Non-compliance was found to be greatest with respect to maximum hours; no payment or provision for statutory holidays; no provision of severance pay, sick leave, maternity and parental leave; and lack of a sexual harassment policy.

The evaluation report found that most complaints are made following termination of the employment relationship, for unpaid wages, or for unfair dismissal.

Part of the solution suggested in the evaluation report was to free up more time of officers for education, and part was seen to lie in more effective enforcement. Currently, investigations are undertaken almost exclusively of individual complaints, meaning that a single complaint does not usually lead to comprehensive consideration of compliance or non-compliance by an employer, even if there is evidence of a pattern of violations by the employer or within a specific industry. (This is a matter of administrative practice as determined, in part, by resources. The statute and regulations do allow for going beyond an individual complaint to undertake a general audit.)

The limits of an individual complaints-based enforcement strategy are that violations with respect to many issues are usually reflective of general working practices of an employer or an industry. The evaluation report found that non-compliance in the federal jurisdiction is just as high in firms from which no complaints have been filed as in firms from which complaints originated.

In the current context, individuals filing individual complaints may be subject to reprisal, and fear of reprisal is very real.

Since 1986, the official federal government policy has been to promote "voluntary compliance," even though the evaluation report has clearly demonstrated that this is ineffective. Current practice is to prosecute only as last resort, and no prosecutions have been undertaken for almost twenty years, since 1987. Resolution of payment orders with respect to unpaid wages generally require employer compliance to be effective, since the onus is on workers to initiate and continue often lengthy legal procedures. (This is in contrast to Quebec where the authorities have substantial staff lawyer resources.) There are effectively no sanctions at all for employers in non-compliance with non-monetary provisions.

Prosecutions for violations of the *Code* are not undertaken partly because such procedures are very expensive and time-consuming, and the monetary amounts involved are generally modest compared to the costs of prosecution. For example, it could take thousands of dollars in legal costs to recover a few hundred dollars of unpaid wages. The evaluation report described prosecution as "too long and expensive a process to be effective." Prosecutions are very rare "and employers understand this" (p.57).

The evaluation report, echoed in the 2004 Audit of Part III, proposed a system of administrative penalties or fines as an alternative to time-consuming and expensive prosecutions, combined with greater powers for inspectors to make immediate determinations and decisions.

A context of widespread non-compliance demonstrates that Part III of the *Canada Labour Code* as it now stands is, like most provincial employment standards statutes, ineffective in terms of promoting good practices within covered workplaces and protecting workers.

This generally dismal situation contrasts to earlier periods in our history and occasional experiments which tell us what works. For example, in the 1960s in Ontario, there were proactive inspections of problem industries, full audits of employers if individual complaints were upheld, and effective sanctions and remedies were applied. Compliance was much higher. In the federal jurisdiction, officials report that when more resources have been devoted to proactive measures, including education and audits, compliance rises. For example, some special efforts have been taken recently to address major violations of the *Code* in the trucking industry, with some effect.

One key problem today is that resources are overwhelmingly devoted to the investigation and resolution of individual complaints (mainly against former employers) rather than the proactive kinds of activities which would lead to much higher levels of compliance by employers and protection of the rights of currently employed workers. The 2004 Audit of Part III showed that, in 2002-03, proactive activities accounted for just 11% of primary officer work time, and that there were no regional or national targets for proactive activities.

Compliance and Enforcement: Implications for Review of Part III

In the final analysis, the key bottom-line policy objective should be generalized observance of standards, and government performance should be measured on the

basis of the level of compliance with the law. Greater compliance requires more resources, and greater political will to undertake proactive education and enforcement.

The first step should be education and publicity. There should be mandatory posting of employment standards in all federal sector workplaces, and popular materials summarizing standards and how complaints can be filed should be distributed on a regular basis to employees, starting from the date of hiring. These materials should be translated and widely distributed to conform to languages in common use in the workplace.

More resources should be devoted to educating employers on their obligations, and employees on their rights. Funds should be made available to community and worker organizations to promote greater worker awareness of standards and of the procedures through which violations could be reported. Seminars for employers should be convened with industry associations. Consideration should be given to requiring workplace education sessions in cases where an employer has shown a pattern of frequent violations of the *Code*.

The federal government should develop strategic plans for education, to be based, in part, upon complaints received and on identified patterns of abuse.

The second step is audits. Comprehensive audits should be undertaken of individual employers, based upon identified patterns of complaints and on information available to inspectors. In the course of a complaints-based inspection, employers should be routinely liable to a general audit of their degree of non-compliance. In

most instances, an individual complaint arises because of more general non-compliance.

As noted by the *2004 Annual Report of the Provincial Auditor of Ontario* "(g)reater emphasis of extending investigations of a substantiated claim to cover other employees of the same employer to determine whether additional violations had taken place would be an effective and efficient means of enforcing the employment standards legislation." Detailed orders for compliance should be issued with minimum delay after an inspection.

Strategic plans for audits of employers in problem industries should be developed on the basis of information developed in the course of investigations based upon complaints, with a view to undertaking audits of employers even if no individual complaint has been filed by an employee. Again, as noted by the Provincial Auditor of Ontario, "targeted inspections of high-risk business sectors have been effective in the past" and have revealed "high rates of violations." While requiring additional resources, audits are an efficient means of promoting compliance, and can sometimes save the costs of investigating repeated individual complaints from problem firms and sectors.

The Province of Ontario recently established a dedicated team to take a proactive approach to enforcement, ensuring that all resources are not diverted to the investigation of individual complaints. This approach should be emulated in the federal jurisdiction.

Inspectors should be mandated to investigate not just individual complaints, but also third-party

complaints filed by non-profit organizations representing workers. Provisions for anonymity are essential if workers wish to bring an employer into compliance and secure respect for the law without severing the employment relationship. Dismissal of an employee for filing a complaint should be prohibited, with violations subject to significant sanctions.

The third step is effective and practical sanctions. As suggested by the evaluation report, there should be a system of tickets or fines (with avenues for appeal by an employer) in place of the current policy of enforcement only through prosecution.

All employers found to be in non-compliance after an inspection and made subject to an order should be subject to a follow-up inspection within the next year, and fines should be imposed if there is again found to be non-compliance. The level of fines should include all costs of the investigation. Any third offence should lead to prosecution and the imposition of substantial financial penalties. Also, persistent offenders should be "named and shamed."

Procedures should, of course, be established so that employers can appeal orders and fines, first through an internal review and ultimately through the courts. But, it is important that immediate and effective penalties be imposed.

To assist in promoting compliance, orders should be made for prompt back-payment of any unpaid wages, including unpaid overtime and vacation pay, to all workers affected by previous non-compliance.

6.b. New Institutional Mechanisms

The following suggestion is put forward for purposes of discussion.

One means of ensuring greater worker access to the protection of employment standards would be to assist and empower new labour organizations (such as community-based or sector-based worker associations) to advocate and represent workers to the employment standards authorities. (Some suggestions along these lines were made by Andrew Sims in his contribution to the *Collective Reflection on the Changing Workplace*.) Community legal clinics and associations already play an important role in informing workers of their rights under employment standards laws, but they are very inadequately resourced. Such associations are deserving of support and are an important part of the solution to non-compliance to the extent that they are rooted within and represent communities of vulnerable workers.

Community organizations representing workers in areas of employment covered by the *Canada Labour Code* could apply for formal recognition and support based upon being a *bona fide* not-for-profit association of workers with democratic internal procedures. Certified associations could assist in the identification of problem employers and industries, adding to information provided to inspectors through individual complaints. They could be seen as credible providers of information and a source of third-party complaints requiring inspections and audits. A portion of any fines or penalties imposed as the result of inspections could be remitted to an association

as an alternative to support through grants or contributions.

7. Minimum Wage Issues: A Living Wage for Canadian Workers

Working-poor single parents and families cycle in and out of poverty depending upon how many weeks of work they get in a year, and at what wage. A single person in a large urban centre has to be working more or less full-time in a full-year job and earning about $10 per hour to escape poverty (i.e. be above the pre-tax, low-income, cut-off line). The threshold is obviously higher if a single earner has to support a child or a non-working spouse. A two-adult family with children has to put in about 75 weeks of work a year at $10 per hour to get above the poverty line. Minimum wages are far too low in all provinces to put working families with even full-time, full-year jobs above the poverty line, and even $10 per hour, full-time, full-year jobs supplemented by current government income supports leave most families in larger cities at risk. (See detailed calculations by National Council of Welfare. *Income for Living?* Spring, 2004.)

Social programs and progressive income taxes can and do significantly lessen earnings-driven differences of family incomes. However, even if we improve EI benefits, it will be very difficult to prevent increased income inequality and to promote a more inclusive society if earnings inequality continues to increase and nothing is done about low wages.

High equality countries such as Sweden are that way, not just because of generous social programs, but also because the initial distribution of income by the job market is fairly equal.

The conventional view is that imposing decent wages for so-called lower skilled workers destroys jobs, but higher wages can work in a positive way by raising productivity and job quality. The fact that employers are under pressure to pay good wages will lead them to invest more in capital equipment and in training than would otherwise be the case. Minimum wages can lower worker turnover and increase experience and skills, reducing employer costs. A common wage standard can also take wage costs out of the competitive equation. If all employers pay the same wage and benefit package, firms must compete with one another on the basis of non-labour cost issues, such as quality and customer service, which require more skilled workers. Responsible employers would welcome a wage floor which stops them from being undercut by more unscrupulous competitors.

Higher minimum wages will work best if they are combined with active labour market and training policies to raise the skills of lower paid workers, sector development policies to create good jobs, and accelerated job creation in public – and social services. Some European countries – notably Denmark and Sweden – have shown that it is possible to have very modest wage gaps and very low levels of low-paid work, and still have high rates of employment. The proportion of working-age people with jobs is actually higher in the Scandinavian countries than in the US or Canada, even though poverty-level wages hardly exist.

Currently, Part III of the *Code* provides for a minimum wage for workers in the federal jurisdiction, but it is currently

set at a level equal to the minimum wage in the province of employment.

The federal government should reintroduce a federal minimum wage of $10 per hour in its own jurisdiction and index this to the growth of the average hourly wage. To prevent disruption, the new federal minimum wage could be reintroduced at a lower level and then increased at faster than average wage growth to reach the $10 level in a reasonable period of time.

The rationale for $10 per hour is that this is roughly the level at which a person working full-time, full-year (2,000 hours) earns enough to escape poverty in a larger city. Social benefits should deal with the issue of child poverty and inadequate family incomes, and EI benefits should provide adequate income assistance to deal with unemployment. But, employers should be expected to pay at least enough to keep a single full-time worker out of poverty. Setting a wage threshold will lower the cost to governments of abolishing poverty.

To make the federal minimum wage a national minimum wage, the new standard should be applied to all federal contractors, and provinces should be encouraged to match the federal minimum wage.

Analysis has shown that setting a minimum wage at a reasonable level, as proposed here, will not have a negative impact on jobs. (This was the conclusion reached by the OECD in a major review of the economic studies, published in the OECD *Employment Outlook*, 1998.) That has been the recent experience in Britain. But, a higher minimum wage can help lower poverty, can lower the costs of government income-support programs, can address the issue of the "welfare wall,"

and can raise productivity and job quality in the private sector. A minimum wage is not the whole answer to working poverty, but it is an important part of the answer.

8. Time-Related Issues

8.a. Long Hours of Work

Employment standards have not caught up with the shift to increased work hours which has been one side of the growing polarization between core and peripheral workers. Employers have often restructured work to increase the proportion of workers with flexible hours (part-time, contract) on the one hand, while also increasing demands on a shrinking core of permanent, full-time workers. Increased work demands often take the form explicitly (or implicitly, through increased workloads) of demands for long hours. About one-half of all overtime work is unpaid.

Long hours are most prevalent among salaried professional and managerial workers, and among skilled blue-collar workers who frequently work paid overtime. From an employer perspective, overtime helps adjust production to changing market demand, and provides a particularly high cost-saving if the extra hours are not paid for. Even overtime pay premiums are often cheaper than the costs of hiring, training, and providing non-wage benefits to additional workers. Unpaid overtime is increasingly required, not just of managers and professionals, but also of social services workers attempting to cope with increased workloads. Self-

employed workers (including dependent contractors) also tend to work very long hours.

While long hours are most common among men, the incidence of long-hours jobs is rapidly increasing among a layer of women workers. The proportion of men working more than 50 hours per week in their main job rose steadily from 15% in the early 1980s to about 20% in 1994, and has continued at that level through 2004. Over the same period, the proportion of women working more than 50 hours per week has risen from 5% to about 7%. About one in three men and one in eight women in paid jobs now work more than 40 hours per week.

While some workers want to work overtime for higher pay or out of commitment to the job or a career, most have limited ability to refuse demands for longer hours under employment standards legislation. Long hours are the major driving force behind severe levels of stress and work/family conflict among workers who might not otherwise be considered to be vulnerable and in need of protection, and can be harmful to both physical and mental health. (See the CLC Research Paper, *The Unhealthy Canadian Workplace*, 2003.)

The shift of core workers to long daily and weekly hours of work is much more characteristic of the US and Canada than the more regulated job markets of continental Europe. Here, the work-time debate is over the widespread shift from a 40-hour to a 35-hour week, and 50-hour weeks are almost unknown.

The federal *Labour Code* provides for a maximum 48-hour week, with overtime to be paid after eight hours

in the day and 40 hours in the week. It is widely recognized that long-hours provisions are widely ignored.

Employees should, in principle, have a right to refuse demands for overtime in excess of 40 hours, except in emergency situations. There are some rights to refuse overtime in Saskatchewan and in Quebec. In practice, given shifting work demands over the year and some reasonable demands for flexibility, it would be more practical to cap overtime hours in a year, with a right to refuse overtime after 44 hours in any single week. An annual cap on overtime was recommended by the Donner Report.

Employees should also have the right to receive compensation for overtime in the form of time off in lieu (1.5 hours off per overtime hour worked).

Maximum-hours provisions should clearly and explicitly extend to all but senior management, and employers should be required to maintain a log of hours for salaried workers to ensure compliance.

The *Code* and its regulations currently allow for many exemptions to limits on long hours, through averaging provisions, and through special long-hours provisions for some industries (e.g., bus operators and trucking). At a minimum, averaging agreements should be filed and made subject to government approval, and exemptions to maximum hours should be demonstrably justifiable on the basis of the characteristics of a sector.

There is little effective enforcement of limits on very long hours in the federal jurisdiction, and no

prosecutions for non-compliance. A culture of compliance should be created in place of a culture of long hours.

A major anomaly in Part III is lack of provision for breaks over the workday. At a minimum the provincial norm of a half-hour break after five hours of work should be implemented.

8.b. Vacation and Paid Holidays

Paid vacations and holidays are clearly an important element of balancing work and family life, and giving workers the opportunity to take paid time off the job for rest and renewal is an important goal for labour standards. Part III provides for paid vacation of just two weeks after one year and three weeks after six years, and nine paid holiday days. These entitlements are very low compared to European levels. In the EU, the minimum statutory entitlement to paid vacation leave is 20 days or four weeks, and most workers get five to six weeks of paid vacation per year.

Paid vacation should be increased to at least three weeks after one year and four weeks after 10 years of service. This is the norm in collective agreements, and the current provision in Saskatchewan.

A tenth general paid holiday should be added so as to accommodate the needs of different cultural communities in a more diverse society. We suggest that the tenth day be decided at the level of the workplace.

Inspectors should have the power to make employers pay for agreed vacation time above minimum *Code* provisions.

The current *Code* unreasonably provides that vacation and vacation pay can be withheld for up to ten months after the end of the year.

Continuous-operations exceptions for general holidays should exclude only employees needed to run the continuous operation, rather than all employees.

8.c. Leave

The *Code* provides only for job protection without pay for a period of illness. It should provide for up to five days of paid sick leave per year.

The *Code* should provide for at least one paid day off for marriage leave, and birth of a child to a father or adoption day. Quebec provides for five days leave for a father, including two days with pay.

The current provision of up to three days bereavement leave is heartbreakingly short, and certainly inadequate to help a worker deal with the death of a spouse, child, or close relative.

There should be a provision for jury leave as in most provinces.

9. Lifelong Learning: Training and Educational Leaves

Canada needs a new approach to worker training. We need to develop a culture based on the recognition that continuous updating of skills and education is critical, not only for employers and workers, but also for the country as a whole.

A society with an active and engaged citizenry with the skills needed to participate fully in all aspects of life is more vital, inclusive, and democratic. This means enabling all workers, both younger and older, full- and part-time and unemployed, Canadian born, as well as immigrants and refugees, to learn and upgrade their skills on an on-going basis throughout the course of their lives, both on the job and in the classroom.

Workers need higher levels of education and skills to find and keep good jobs now and in the future. Workers with limited skills and literacy find themselves increasingly trapped in precarious and marginal jobs with low levels of employment security, low pay, limited career progress, and a high risk of poverty. This is especially true of young people who leave school with limited education and skills; women who leave the workforce for extended periods; older workers who fall victim to work restructuring that devalues their existing skills; and, immigrants whose skills and credentials are frequently not recognized and who face a high risk of marginalization.

Educational credentials are increasingly the major requirement to enter good jobs, and access to training over the life-course provides opportunities for advancement to more challenging and rewarding work. However, it is apparent that

access to employer-provided training is extremely limited for non-professional/managerial workers, especially in non-unionized workplaces.

There is no provision in the *Code* for paid or unpaid training leaves. This makes a mockery of the goal of lifelong learning, since many workers are simply unable to take time off from work to attend extended courses.

The *Code* should provide a right to unpaid educational/ training leave to attend courses leading to a credential or qualification, such as exists in Sweden and many collective agreements, and as recommended by the Donner Report.

The *Code* could specify a right to worker training on the job in terms of days per year or proportion of payroll per year (e.g., reflecting the statutory payroll requirement in Quebec).

10. Job Security, Severance and Unjust Dismissal

The *Code* provides for two weeks notice of dismissal or pay in lieu; severance pay on termination of employment after minimum service, and protection against unjust dismissal via a mediation/arbitration process (managers excluded).

Severance pay on termination provisions are minimal - two days per year of service with a minimum of five days. Entitlement to severance pay should be increased, and the *Code* should be amended to provide that severance should be paid in addition to any retirement benefit.

With respect to unjust dismissal, procedures can be very lengthy. To expedite the process, the inspector should be given the power to determine if there was an employer/employee relationship, and if the dismissal was unjust at the first stage of the proceedings.

With respect to group terminations, the 50-worker minimum threshold for notice should apply to all operations of an employer, and inspectors should follow-up on the notice to ensure that workers receive all benefits to which they are entitled.

11. Economic and Employment Impacts of Employment Standards

Employers often argue that a decent floor of employment rights and standards undermines employment, competitiveness, and economic growth. This argument is bogus to the considerable degree that a floor applies to all employers in a sector or community, and thus does not undermine their relative competitive position. The overall impact of employment standards on the total-cost position of an industry or sector has been found to be very modest, as in Part III evaluations. It also has to be appreciated that employment standards can have positive effects for employers, not just workers, by reducing worker turnover and raising skills and productivity.

In a major defence of labour rights and standards, Werner Sengenberger – a recently retired senior official with the International Labour Organization (ILO) – argues that the neo-classical view of the labour market is profoundly misleading since it does not take account of the fundamental fact that

"labour is not a commodity" or a "factor of production." (Sengenberger 2003.) Rather, labour is a productive potential, linked to human beings with individual and social needs. Productivity – what a worker delivers in return for a wage – depends upon what the ILO has termed "decent work." "A worker will be more or less productive, co-operative, and innovative depending on how he or she is treated; whether the wage is seen as fair in relation to the demands of the job; whether the worker gets equal pay for work of equal value; whether training is provided; whether grievances can be voiced. In short, what the worker delivers is contingent on the terms of employment, working conditions, the work environment, collective representation, and due process." (Sengenberger 2003, p.48.)

There are some very tangible and direct links from high standards in the workplace to higher productivity. Decent wages and working conditions reduce the incidence of quits, reducing training costs, and giving an employer the benefit of experienced workers. Longer job tenure means that employers have a major incentive to invest in the skills of employees, which is critical to success in building a knowledge-based economy. Some level of job security also means that workers have an incentive to co-operate to raise productivity. A host of studies have shown that the path to higher productivity lies in the effective combination of new technologies, training, and changes in the organization of work to maximize the use of skills. Many of these studies also show that good labour relations can make a major contribution to the success of workplace restructuring. (Black and Lynch 2002; Betcherman, McMullen, and Davidson 1998.) This productivity offset from good labour standards is one major reason why increases in minimum wages and minimum standards do not come at the cost of jobs.

At the economy-wide level, regulated labour markets are often seen as a cause of high unemployment. The dismal message to governments has been that there is a trade-off between the quantity and quality of jobs for lower skilled and vulnerable workers, and that protective institutions come at a significant cost. However, evidence for a systematic linkage between labour market regulation and national unemployment rates is lacking in the econometric work of the OECD (Baker, Glyn, Howell, and Schmitt 2002.) The International Labour Organization argues that high employment growth and strong economic growth can be achieved in a very wide range of labour market settings. Recent studies by that organization (Auer 2000; ILO 2003) have shown that some countries with very high levels of labour standards, notably Denmark, the Netherlands, and Sweden in the second half of the 1990s, have also been able to achieve high levels of employment and strong rates of economic growth. The European Commission has also rejected the idea of a job quality/job quantity trade-off for lower skilled workers, and has highlighted the experiences of Denmark and the Netherlands as a desirable alternative to the US model. The fundamental message has been that the deregulated liberal labour market model gives rise to unacceptable levels of wage inequality and social exclusion, but that well-designed labour market regulation can provide high levels of quality employment with low levels of insecurity.

12. Conclusion

The *Canada Labour Code* Part III needs to be comprehensively overhauled to make it relevant to the needs of today's workers. Coverage of precarious workers needs to be greatly expanded, and provisions relating to wages, working time, and leaves need to be greatly improved. As importantly,

there has to be a major new commitment to making employment standards an effective floor of rights and standards. Pursuit of this agenda is vitally important for all workers, particularly women, workers of colour, youth, and other vulnerable workers. It is an agenda that is fully consistent with our goal of promoting a more productive economy with good jobs.

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