

DECEMBER 7, 2005

**CANADIAN CENTRE FOR POLICY ALTERNATIVES – MANITOBA
PRESENTATION TO EMPLOYMENT STANDARDS CODE REVIEW
COMMISSION**

My name is Errol Black. I am making this presentation on behalf of the CCPA – Manitoba board of directors. The comments I make here today will be expanded and added to in a written submission that we will file with you in January.

My presentation will be in three parts. First, I want to say a few words about the process and procedures that the Manitoba government has established for your review of the employment standards code. Second, I will offer some brief observations on the changes that have taken place in the economies of Manitoba and Canada in recent decades and the ways in which these changes have eroded the impact and importance of employment standards in the lives of working people. And third, I will comment on some of the most serious inequities that exist in the present code and in the application and enforcement of the code.

1. Process and Procedures

The last time we had a comprehensive review a revision of the employment standards code in Manitoba was in the 1970s. Since 1999, the government has come under increasing pressure to bring employment standards into line with the needs and requirements of contemporary workers. Finally, in the 2005 Speech from the Throne, the government announced its intention to “modernize” employment standards.

We expected that to get a sense of what needs to be done to remedy 30 years of neglect of employment standards, the government would have established a review process designed to promote participation across the province (in Winnipeg, Brandon, Thompson, yes, but also in Virden, The Pas, Portage la Prairie, Steinbach, Morden, etc.) by both the many thousands of workers who depend on employment standards for basic rights and the many thousand more who are denied even these basics under the existing legislation.

But, of course, this didn’t happen. Instead, the government opted for a “quick and dirty” process that is intended to minimize participation by working people (and, therefore, minimize the fuss) and encourage submissions from all the usual suspects, including: small number of organizations with particular axes to grind, such as the Chambers of Commerce and other business associations; various organizations that try and influence the development of government policies; trade unions; etc.

We believe it is important that this review try and get beyond the traditional sources of input on the issues and bring forward recommendations that will set **standards** for workplaces and labour markets in Manitoba that will provide workers with respect, dignity and justice and make this province a model for all other jurisdictions in Canada – and the whole of North America.

2. The Context

In the 30 years since the last review of employment standards in Manitoba, we have had two depressions in the early 1980s and 1990s, both of which resulted in high and protracted unemployment in both decades. Over the period 1953 to 1973 the unemployment rate

averaged 5.0%. In subsequent periods the unemployment rate increased to 7.2%-79, 9.4% in 1980-89 and 9.5% in 1990-99. There were, as well, other changes in the labour market including an increase in the rate of part-time employment from 15% in 1981 to 18.5% in 2005 and an increase in the rate of self-employment from 13% in 1981 to roughly 16.5% in 2005.

While we are still debating the causes of the dismal economic conditions experienced by workers over the 25-year period 1975-2000, there is no mistaking their consequences. In general, these conditions severely weakened workers and trade unions in their relations with employers and resulted in major shifts in income, wealth and power from workers and people at the bottom of the income distribution to already wealthy and powerful in society.

The tragic results of these transfers are reflected in the following trends.

Food Banks, Homelessness, Loan Sharks

Ever since the depression of the early 1980s, we have witnessed growing numbers of adults and children using food banks and living nomadic-like existences in the streets and shelters of cities. As well, we have witnessed a remarkable proliferation of near-banks that are geared up to provide credit arrangements for the poor and others who are not welcome in traditional financial institutions.

These trends reflect the shredding of the social safety net by federal and provincial governments, the relaxation of rent controls, the proliferation of part-time, casual, temporary and other forms of non-traditional jobs, and the abandonment of poor people and poor neighbourhoods by banks and other institution.

At the heart of the problem, however, is the lack of growth in real wages and earnings of people at the bottom of the income distribution. Faced with the erosion of real wages that are already low people are driven to food banks, substandard housing and dependence on pawn shops, cash for cheques outlets, etc.

Bloated Incomes for the Rich and Wealthy, Shrinking Incomes for Low-Paid Workers and the Poor

It was recently reported in the media (Eric Beauchesne, "Top salaries skyrocket in Canada", **Winnipeg Free Press**, June 24, 2005) that a study by economist Michael Veall (McMaster) and Emmanuel Saez (University of California, Berkley) found that the richest 2,300 individuals (0.01% of income recipients) "received two per cent of all the income in Canada." The study also reports that in the 1920s and 1930s "the top 1 per cent of Canadians raked in about 15 per cent of all income. However ... this share dropped sharply during the Second World War and continued to fall until 1980, when it hit about 7.5 per cent By 2000 the top 1 per cent's share of the total Canadian personal income pie was back up to about 13 per cent" (**Globe and Mail**, June 23, 2005).

This growth in wealth for the upper 1 per cent of the income distribution has, of course, been achieved through a redistribution of income from the bottom of the income distribution, a redistribution resulting from state policies and the systematic and concerted exercise of power by the people with power.

The other side to this coin of bloated incomes and wealth for Canada's rich is stagnant wages for the low-paid and an increase in both the numbers of adults, children and families living in poverty and the depths of their poverty.

In a recent study of the status of low-paid workers (workers, excluding full-time students earning less than \$10 an hour) – **Does a Rising Tide Lift All Boats? Low-paid Workers in Canada** – Ron Saunders concludes that low-paid workers have been left behind despite rising real output and incomes since 1981: “The same percentage of full-time workers who received poverty wages in 1981, receives poverty wages today.” More specifically, Saunders reports, amongst other things, that:

- * More than 16% of full-time workers, aged 15-64 were low paid in 2000 – the same proportion of workers as in 1981;

- * 22% of women are low-paid, as compared to 12% of men;

- * Women with low education in low-paid jobs with low education find it difficult to move to jobs which are not low paid;

- * About 25% of recent immigrants and 33% of visible minority immigrants are low paid as compared to 16% of Canadian-born workers;

- * 23% of lone-parents are low-paid;

- * Aboriginal workers, working full-year, full-time earn 23% less than non-aboriginal workers.

In sum, Saunders says that we have in Canada (and Manitoba) “a persistent under-class of full-time workers with multiple disadvantages, unable to access the economic and social benefits of work that other workers take for granted.”

As regards the issue of poverty in general, Manitoba has the dubious distinction of being at or near the top of poverty league tables for the country as a whole. According to the **Manitoba Child and Family Report Card, 2005**, in 2003, the child poverty rate was 22.1%, the second highest rate in Canada and the same rate we had in '1989. The **Report Card** also notes that:

- * “For both two parent and female led lone parent families, Manitoba has the highest average depth of poverty in Canada.”

- * “In 2003, 23,200 families with children where at least one member worked full time, full year were living below the LICO. At 13.9% Manitoba has the highest proportion in Canada.”

The information reported in the **Report Card** is supported by the results of studies of food bank users. For example, the most recent study of food bank use in Canada, which looked at use in March 2005 as compared to March 2004, revealed that food bank use had increased 9% in Manitoba. At the same time, use in the country as a whole had declined slightly. The study also revealed that 46% of food bank users in Manitoba and Saskatchewan were children (the highest rate in Canada), and 14.6% of food bank users were people working in full-time jobs (also the highest rate in Canada).

In summary, I would say that it seems that the people who run this country are so dazzled by the success they have had in addressing the concerns of corporations and the very rich and the very wealthy they have forgotten the consequences of changes in the distribution of income that favours the few at the expense of the many.

This outcome is morally reprehensible and it undermines collective compassion and social solidarity. Moreover, as Robert Hunter Wade argues (“Does Inequality Matter?” **Challenge**, September-October 2005) there is solid evidence that increasing income inequality results in “higher poverty, higher unemployment, higher crime, lower average health and [lesser access for working people and the poor] to public services and state rule-setting forums.” And most students of the causes of The Great Depression have cited the great inequality that existed in the distribution of income in the 1920s as a major factor bringing about the collapse of the world and national economies.

We would suggest that we need action now both in Ottawa and in Winnipeg to counter the negative trends in our economy that emerged in the 1980s and have since become both pervasive and persistent.

Some Proposals for Changes to the Employment Standards Code

We cannot, of course, transform our social and economic institutions simply through changes to the employment standards code. However, we believe that bold changes that the code that improve benefits and strengthen the rights of all Manitoba workers can do much to improve the lot of working people and their families.

I don't intend now to address all of the concerns we at CCPA have about the limitations of the current code – that will come later, in our written submission. However, I will touch on a number of issues of particular concern to CCPA.

Extending Coverage to Paid Agricultural Workers.

Statistics Canada estimates that in 2004, 29,600 persons were employed in agriculture. Of this number, 8,000, 27.0% of the total, were paid employees (which includes individuals working in intensive livestock operations – hog barns, feedlots, etc. – grain farms, horticultural enterprises, etc.). The exclusion of paid agricultural workers may have made some sense back in the 1940s and 1950s when agriculture was dominated by small, mixed farms. Now, however, the agricultural sector is much more concentrated – fewer farms, larger size – and large farms tend to be much more specialized. In the last seven years alone, total employment in the agricultural sector has declined by some 9,500, the number of paid employees by 700. Over this same period, paid employees as a proportion of total employment in agriculture increased from just over 22% to 27%. Moreover, and more importantly, workers in agriculture have the same needs as workers in other industries and should, therefore, be placed on a par with workers in other industries. The inclusion of agricultural workers should be a blanket one. In the case of hog barns, for example, a pregnant employee in a three-employee hog barn should have the same access to maternity leave as a pregnant employee in a six-employee hog barn. The same is true of vacation time, statutory holidays, overtime, etc.

Prorated Benefits for Workers in Non-Traditional Jobs (Part-time, Casual, Temporary, etc.)

The following table provides some comparative data on part-time and temporary employees for Manitoba and Canada.

The numbers show that in Manitoba, part-time workers account for about 20% of the total, temporary workers, 10.5%. These two categories are not, of course, mutually exclusive and it is likely that many temporary workers are working part-time. However, combined the two categories account for somewhere between 20.4 and 30.9% of total employees.

It is evident as well that part-time employees earn about a third less than a full-time employees and temporary employees earn about a fifth less than permanent employees.

Average Hourly Wages for Selected Employees, Canada and Manitoba November 2005

Characteristic	Manitoba	Canada
Total employees	492.4	13,746.6
Average hourly wage	\$17.37	\$19.44
Full-time	392.1	11,190.9
Average hourly wage	\$18.65	\$20.81
Part-time*	100.4 (20.4)	2,555.7 (18.6)
Average hourly wage	\$12.37	\$13.47
Permanent	440.8	12,045.5
Average hourly wage	\$17.77	\$19.99
Temporary*	51.7 (10.5)	1,701.1 (12.4)
Average hourly wage	\$13.96	\$15.56

*Figures in brackets show % of total employees.

Source: Statistics Canada.

Presumably, most workers in non-traditional jobs have the same needs as their counterparts who are permanent and working full-time. Therefore, they should get the same benefits as individuals in traditional jobs (or, to look at it another way, we should be using exemptions, exclusions, etc. to subsidize non-traditional jobs).

The Rule of Law in the Workplace

One of the main functions performed by unions on behalf of their members is to establish the rule of law in the workplace through the grievance-arbitration procedure. So important is this that the **Manitoba Labour Relations Act** mandates the inclusion of such procedures in collective agreements. The question this raises is: If the establishment of the rule of law is so important for unionized workers, why do we not require the same rule of law for non-unionized workers under the **Employment Standards Code**? The answer is, I think, that the failure to entrench this right for non-unionized workers cannot be justified.

Conclusion

This completes my verbal submission on behalf of CCPA-Manitoba. In this submission, we have recommended the inclusion of agricultural workers under the legislation, the provision of prorated benefits for workers in non-traditional jobs and the establishment of grievance and arbitration procedures in non-unionized workplaces .

We shall address other issues in a written submission which will be filed with you prior to January 16, 2006.

JANUARY 12, 2006

CANADIAN CENTRE FOR POLICY ALTERNATIVES – MANITOBA PRESENTATION TO EMPLOYMENT STANDARDS CODE REVIEW COMMISSION, PART II

In our previous presentation to the Commission in Brandon on December 7, 2005, we commented on the context for the review of Employment Standards and identified what we consider to be the most inequitable aspects of the existing code. In this presentation, we will focus more specifically on the broad themes specified in the document, **Employment Standards Review 2005: Employment Standards for Modern Workplaces and Modern Families (Discussion Guide)**. Our comments are informed by two assumptions, namely that: (i) the purpose of this review is to define and implement changes to employment standards that will result in a marked improvement in the working conditions and rights of working people in Manitoba; and (ii) the Manitoba government wishes to be a leader in Canada and North America in setting standards that will promote a high-road, high-wage economy.

1. Hours of Work and Overtime.

(a) Hourly Workers

The existing provision governing the payment of overtime at time and one-half after 8 hours in a day and/or 40 hours in a week should be retained.

It is suggested in the discussion document that it would perhaps make sense to transfer responsibility for granting an hours of work variance from the Labour Board to the Director of Employment Standards. We disagree: this power should remain with the Labour Board to ensure that the issuance of such variances does not become subject to undue political interference.

We would further recommend that such variances be restricted to a maximum period of one year and only issued if supported by a majority of employees in a Board supervised vote to determine employee wishes.

(b) Salaried Employees

Salaried employees should have the same protections, rights and benefits as hourly workers on all matters including overtime pay. The legislation should be amended to make this explicit. This will ensure that employers do not treat their salaried employees unfairly and do not have any incentive to convert hourly jobs to salaried jobs as a means of inducing or compelling workers to work overtime hours without overtime pay.

(c) Incentive-Based Workers

(d) Managers

It may be helpful to use the same definition of excluded employees as is used under the **Manitoba Labour Relation Act**, namely “a person who is employed in a capacity that, in the opinion of the board, would make it unfair to that person, the employer or a union to include the person in a unit for collective bargaining purposes because (a) the person performs management functions primarily , or (b) the person is employed in a confidential capacity in matters relating to labour relations.” The advantage to this definition is that it establishes a sharp distinction between hourly paid, salaried and incentive-based employees and managers. In situations where the issue is subject to dispute, the Labour Board should resolve the issue.

2. Exclusions from the Code: Agricultural Workers

We addressed the issue of exclusions in our previous presentation. Our argument there, which I'll repeat here, is that all paid workers should be covered under employment standards legislation. Agricultural workers (in hog barns, on feed lots and grain farms, in horticultural facilities – green houses and the like - and market gardens) and workers in the fishing and fur industries; domestic workers, sitters and companions in private homes, commission salespersons and so-called independent contractors should all be covered by the Code.

In some jurisdictions attempts have been made to include some of the workers in these groups. In Saskatchewan, for example, employment standards now apply to hog barns with more than six employees. But there are problems with this approach. Since most hog barns employ more than six employees, this seems to create an incentive for owners and managers of hog barns to find ways to maintain employment below the threshold.

This is not good enough. The exclusion of certain categories of workers from coverage or adopting some variation of the Saskatchewan solution as applied to hog barns would be discriminatory and would deny many thousands of workers protections, rights and benefits available to other workers.

No greater good is served by the denial of justice to these workers. On the contrary, we suggest that denying justice to these workers is an affront to common standards of decency and fair play in our society.

(3) Promoting Compliance.

The discussion paper concedes that Manitoba has made very weak efforts to secure compliance with employment standards on the part of employers. We don't

commit adequate resources to policing the standards and investigating alleged violations of the code. The penalties for contravening the code are an insufficient deterrent to deliberate and systematic non-compliance.

There are a number of measures that would reduce non-compliance, increase the effectiveness of employment standards and improve conditions in the workplace.

To create a culture of awareness on the part of both workers and employers about the importance and purposes of employment standards, and to establish significant incentives for all employers to treat workers with greater respect and dignity, we should:

- (i) Require employers to post a summary of employment standards in prominent places in the workplace with a list of phone numbers that employees should call if they believe their rights have been violated and/or they have been denied benefits to which they are entitled;
- (ii) Increase penalties for employers who contravene employment standards;
- (iii) Publish the names of firms and employer/managers who violate the code along with a statement of the particular violation (s), the number of employees affected; and the amount of money involved;
- (iv) Establish a series of advertisements for the print and electronic media designed to explain to workers their rights under employment standards, labour relations, health and safety and related legislation. For example, in February

advertisements advising individuals of their trade union rights might appear in the media and be followed in March by advertisements advising individuals of their right to refuse to do unsafe work.

- (v) Have personnel from the Employment Standards Branch visit classrooms in the high schools to tell students of their rights as employees under the code (this is done at present under the Safe Workers of Tomorrow Program).

3. Termination Notice.

The brief summary of the issues relating to termination in the discussion document highlights significant disparities between the rights and benefits of workers in the federal and some provincial jurisdictions.

In revising this section we should ensure that workers are treated fairly and justly in termination decisions and rewarded for their contribution to their employers.

In particular, we would propose that:

- (i) A standard minimum notice period of 30 days for terminations be established for determining entitlements of employees and that these not be subject to waiver by employees. Employers will, of course, be free to establish notice periods that exceed 30 days.
- (ii) A new requirement that when a worker's employment with a particular employer ends, the worker be paid one week of normal wages for each year of employment, pro-rated for part-time workers.
- (iii) The provision permitting employers to collect a financial penalty from workers for failure to give proper notice be eliminated.
- (iv) Provisions strengthening the right to appeal for workers who have been fired by ensuring they are advised at the time they are fired that they have recourse to an appeal. Further, if the Board upholds the appeal, they be given the option of reinstatement in their job.

3 (b) Group terminations

The issue of group terminations is not explicitly addressed in the discussion document but it is an issue that merits consideration. In particular, we recommend that the code include mandatory procedures to address all situations where 20 or more workers are scheduled to lose their jobs within a three-month period. Currently, the code stipulates procedures for terminations involving 50 or more workers. This threshold is not particularly helpful in towns and villages where major employers are likely to employ fewer than 50 workers. The impact of 20

jobs lost in a town of 1,000 is equivalent to a job loss of 800 in a city the size of Brandon. Moreover, in these situations the creation of a joint planning committee or industrial adjustment committee would be especially helpful in devising strategies to offset the impact of job losses on the workers and on their communities.

4. Statutory Holiday Pay for Part-Time Workers

The section of the discussion document that deals with the issue of part-time workers identifies one trivial matter relating to their treatment under the existing code. We are concerned that this implies that this is the only matter relating to part-time workers that is being considered for revision. If that were true, this whole exercise would be a travesty, an insult to working people in Manitoba. But we don't think it is true and will, therefore, address this issue on the assumption that the intention is to revise provisions relating to part-time workers and workers in temporary, casual and other forms of contingent employment to bring their standards into line with other workers and into line with the needs of working people in this century.

We recommended in our previous presentation to you that all protections, rights and benefits provided workers by the code be extended to part-time, temporary and casual workers and all other workers currently denied benefits. In the case of pecuniary benefits and other entitlements with monetary implications, we recommended specifically that these be pro-rated in relation to hours worked for all workers in the province. As is shown in the following table, part-time and temporary workers are on average already disadvantaged in terms of wages. They should not be disadvantaged in relation to protections, benefits and rights provided under employment standards.

The following table compares average hourly wages for part-time and temporary workers with other categories of workers.

The comparison shows that part-time workers (100,400 part-time workers, 20.4% of the total) and temporary workers (51,700 temporary workers, 10.5%) are paid wages that are 71.2 and 80.4% respectively of the hourly wage of all workers.

Not only do workers in part-time and temporary jobs get lower wages than their counterparts in full-time and permanent jobs but also most of them are denied access to benefits available to other workers. Often part-time and temporary employees' work schedules are set arbitrarily by employers without regard to the interests of employees.

Saskatchewan brought in legislation in 1994 designed to provide some protection for part-time workers. The legislation required employers with ten or more workers in their establishments "to post part-time work schedules one week in advance, to provide rest and meal breaks to part-timers, and to provide pro-rated benefits to part-time employees" (Andrew Jackson, **Work and Labour in Canada**, Canadian Scholar's Press, 2005. p.65).

We're 12 years behind Saskatchewan on this matter; it's time we caught up and moved the standards forward a bit to require that part-timers get right of first refusal to additional hours that become available as production needs increase.

Average hourly wages of employees by selected characteristics, Manitoba, November 2005

Category of employee	Average hourly wage	As a Per cent of average for all employees
15 years and over	\$17.37	100.0
15-24	9.75	56.1
25-54	19.30	111.1
55 and over	18.51	106.6
Men	18.35	105.6
Women	16.39	94.4
Full-time	18.65	107.4
Part-time	12.37	71.2
Union coverage	20.99	120.8
No union coverage	15.22	87.6
Permanent job	17.77	102.9
Temporary job	13.96	80.4

Source: Statistics Canada, **Labour Force Survey**, November 2005.

As a final point in relation to this matter, we note that one of the sections in the discussion document is titled "Unpaid Leaves and Work-Life Balance."

The issue of work-life balance is also a critical factor in addressing issues relating to part-time, temporary and other forms of non-traditional employment.

One of the critical factors or preconditions necessary to a healthy work-life balance is regularity and predictability in hours of work and pay. In many situations involving contingent forms of employment, and indeed many full-time jobs in labour-intensive, low productivity

industries, employment is sporadic, hours of work unpredictable and pay and benefits inadequate. Moreover, many of these are dead-end jobs with no opportunities for training and career development.

The evidence suggests, moreover, that the behavioural traits of many workers who become trapped in these marginal forms change to fit the patterns of instability and irregularity that characterize their working lives. These effects are accentuated when the jobs are low-paid and provide no benefits, and when people are crowded into inferior housing in chaotic neighbourhoods. Often, individuals in these circumstances look to illicit activities and social services (food banks, etc.) to augment their incomes. Many young people who are faced with these employment options disappear into the underground economy.

Work-life balance? We suggest that shabby employment and labour standards that fail to address changing conditions in the labour market undermine work-life balance by generating perverse incentives that promote contingent employment and condemn thousands of workers and their families to instability and poverty.

6, 7 and 8. Wage Deductions, Child Labour and Unpaid Leaves

By all means we should make wage deductions, child labour and unpaid leaves explicit in the code. We believe it would be irresponsible to follow the Alberta example on child labour. If employers cannot find workers, they should raise wages and improve benefits, not employ children.

Conclusion

This completes our submission. In Brandon, we concluded our summary by asking that you and the people who will ultimately decide on the changes that are made to the code show some audacity and make bold, progressive changes that increase fairness. The alternative, which is to do little and make a few pedestrian adjustments to existing provisions, will simply condemn this province to a continuing exodus of workers and unacceptably high poverty.

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