

Improving The Employment Standards Act:  
The Collective Agreement for Un-unionised Workers  
By Marianne Cerilli  
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### Introduction

The Manitoba NDP Government must be commended for beginning a new round of improvements to the Employment Standards Act. The discussion paper includes in its scope a number of issues outstanding such as some benefit for part time workers, employment of under aged workers, and inclusion of agricultural workers. This paper will build on this scope. The changes to Employment Standards Legislation are framed as a modernisation of Code to match the realities of modern families and modern workforce. What this modern reality is actually less progressive as it is really about globalisation and the impact that globalisation has had on our workforce, work places, and workers paid and unpaid. This is paralleled by a continued move of women into the paid workforce throughout their lives, while still retaining the primary responsibility for the unpaid work of child rearing, elder care and “house work” in the home. Indeed most of the requirements of changes must accommodate the impact and intersection of these two trends, globalisation and the feminisation of the workforce. The reality is that globalisation has lead to the feminisation of poverty and double or triple duty for most women as they combine paid employment (still for only on average, two thirds of what men earn), family care work, and volunteer community work.

This paper will focus on the sections 3) Promoting Compliance, 2) Exclusion from the Code, and 5 & 8) Benefits to Part time Workers. When approaching these exercises of responding to government discussion papers it is always a good practise to ask the question, what is missing? Answering this question often leads to what really must be addressed. In this case the answer is addressing bullying and harassment, and whistle blower protection. The current government is on record in the form of election commitments and NDP policy in the form of resolutions, which this government is bound to uphold.

### Promoting Compliance

The Government’s improvements to the Employment Standards Act must include an incorporation of whistle blower protection, as they have promised many time, as well as new provisions to address workplace harassment and bullying. These two go hand in hand. Whistle blower protection is essential for democracy and a civil society, as it will help prevent corruption and abuses of power in the public and private sectors. It goes hand in hand with better harassment and bullying provisions as labour code and work place safety and health regulations because what often occurs is that when employees concerned about unethical practices in the workplace start raising concerns they become the target of bullying, and harassment. Workers need whistle blower protection so they are not driven from their jobs due to bullying and harassment, which is occurring every day in our province. We need leadership from our government to address this epidemic

of bullying and harassment in our workplaces. This must be educational and legislative change.

Also recommended is a Whistle Blower Protection Resource Program. This program could be funded jointly and operated jointly by the community, government, labour and business sectors. It could be run by an organisation like the Worker Organising Resource Centre, or the Centre for Applied Ethics at the University of Manitoba. The Whistle Blower Protection Program must be an independent multi-stake holder program that brings together the following:

- Legal Advice for those impacted by workplace corruption, unethical demands, and harassment, bullying, especially in the context of whistle blowing.
- Counselling support and referral for workers experiencing the impacts of harassment, bullying and job insecurity related to whistle blowing.
- Whistle blower planning for those needing support in their workplace.
- Training and support in workplace ethics, conflict and dispute resolution, legal rights and requirements.

This program would augment and support the new whistle blower protection provisions of the Employment Standards Act and focus on assisting workers to address bullying and harassment. The focus would be how to support co-workers, reduce impacts on family and friends, engage workplace bystanders, and how to get help when you are concerned about workplace ethics.

The new harassment and bullying legislative provisions to the Employment Standards Act would have consequential amendments to the Work Place Safety and Health Act by making harassment and bullying a violation of both the Employment Standards Act and the Work Place Safety and Health Act. This would make bullying and harassment actionable under that legislation as well.

Education about the Employment Standards Code and these new provisions is essential. The first step on enforcement and compliance, especially in a complaint driven process, is informing people of their rights and the procedure for securing these rights. The Workers of Tomorrow Program must be expanded to include curriculum outcomes and requirements related to workplace education in our schools. As well there must be similar education materials and programs developed for adults, particularly new Canadians, Aboriginal People, women, and other marginalised groups who are more susceptible and vulnerable to workplace injury, bullying and harassment. (See Appendix A)

Education does not replace enforcement and consequences for violations of the Employment Standards Act. Enforcement of new and existing provisions must have a new model. The quasi-judicial model using mediation and arbitration similar to the system in the Residential Tenancies Act is worth consideration. This model is not flawless but can be strengthened to ensure those affected by violations of the Employment Standards Act have due process, representation and advocacy. Currently a

successful appeal does not necessarily result in restitution. The provisions for restitution must be legal requirements with further penalties for non-compliance.

### Exclusion from the Code

The provisions to bring the Employment Standards Act to the agricultural sector will be met with complaint however it is long overdue. All agricultural workers on and off the farm need to be covered. The use of migrant farm workers outside the Code has no place in Manitoba, Canada.

Another group that deserves recognition in the Code is the in a unique situation for workers in the voluntary, not for profit or community sector. This sector employs a large percentage of our workforce and they are low paying jobs, with no benefit, that are often part-time. These community workers are the workers who do the bulk of the caring and compassion work of our society and they are largely un-unionised. They are the least likely to have a pension, do the most volunteer overtime, and are often exploited. This community sector workforce is predominantly women. It includes the entire childcare workforce, arts, amateur sport, cultural organisations, churches, recreation agencies, many health and social services. This sector relies on the Employment Standards Code (ESC) and is expected to uphold it however the funding for this sector is insecure project funding that relies on volunteer fundraising. The reality is that many community sector agencies need better financial support and infrastructure to meet their responsibilities under the Code. For more information on these issues consult the Voluntary Sector Initiative.

### Part Time Benefits, Unpaid Leaves and Work Life Balance

People work part time often due to job availability, health limitations and other family responsibilities. It is high time the government keeps its many commitments to extend all benefits to part time workers not just holiday pay and better leave provision. Part time workers need pension provision, health and dental benefits, as well as EAP programs, particularly those in sectors outside the Code. (Also see Appendix B Paper for Is Work Working)

This review of ESC must also consider employer responsibilities to provide family friendly work place policies. The trend to shift work, has given families more flexibility, but it has taken a toll on marriages and family dynamics. The social safety net must include a continuum of support services. Childcare is part economic policy and part social policy. The childcare system must keep up with the changes in the workforce to ensure part time care, including subsidies, and part time licensed spots. These are two changes that are essential for part time workers, predominantly women. The women's movement has up to this time focused on women's access to the workforce, however a new generation of women and men are now pressing for men to have greater access to the home. Many families with children are choosing to balance their lives by more equitably sharing paid work and responsibility for unpaid work. This must be supported in law.

## Conclusion

As I write this I am in the midst of bargaining a first collective agreement for contract faculty at the University of Winnipeg as a member of the UWFA bargaining team. It makes me realise that, as the government in holding this consultation on Employment Standards it is accountable to them. This includes ensuring the institutions that they are responsible for funding have the resources to uphold the Code, this includes public sector institutions and the many community agencies that they fund. The trends towards part time, contract and piecework have affected every sector of the economy, including public institutions. The new ESC must clearly push back against this trend by re-regulating the workplace to keep up with the impacts of globalisation, privatisation and de-regulation.

In my career I have also worked as a youth advocate, employment counsellor, high school guidance counsellor, MLA and now I mentor women in advocacy part time at a women's centre. All of these jobs have brought me face to face with people experiencing the stress and trauma of work place insecurity. The over riding theme has been ending the paternalistic nature of workplace relations and power imbalance between worker and employer by ensuring workers have rights, know their rights and have the tools to secure those rights. The new Employment Standards Code must incorporate all NDP resolutions and commitments to ensure these workplace rights are the new reality in Manitoba.

IS WORK WORKING? WORK LAWS THAT DO A BETTER JOB

DISCUSSION PAPER



Tous, sont-ils protégés également?  
Is everybody protected equally?

## Preface

**“Is Work working?” is a project aimed at identifying the gaps in our laws and polices that leave some workers unprotected, exposed and vulnerable - outside of the “umbrella”. Last year, many Canadian students participated in the Roderick Macdonald contest aimed at engaging students in law reform. The illustration on our cover was an entry in this contest. It represents admirably the many themes of this discussion paper.**

**The choice of this subject emerged from consultations with the public and the Advisory Council of the Law Commission. At issue in this report is the way in which labour law concepts may be outdated and failing to respond to the changing nature of employment relationships. Canadians expressed their concern to us about the ways in which the inadequacies of our labour laws and polices may have precipitated further vulnerability in the Canadian population.**

**Vulnerability is experienced in many ways: through inadequate pay, unhealthy or dangerous working conditions, insufficient hours, exploitative atmospheres, lack of benefits, inability to effect change, powerlessness and marginalization. In this Discussion Paper, the Law Commission begins with a study of different types of “vulnerability” at work and then discusses the ways that our ideas about labour regulation have changed. New conceptual approaches are warranted when, as here, a model of regulation is being undermined by the reality of working relationships. In general, work arrangements today are characterized by a greater degree of flexibility and increasingly, they do not fit the norm of 9 to 5 full-time, long-term employment with the same employer. There are advantages to the new arrangements that are emerging. Nevertheless, the idea that flexibility of labour arrangements is good for everyone must be tempered with the recognition that the costs of such unbridled flexibility are often transferred to individual workers. Ultimately, the Law Commission is interested in looking for new ways of understanding the employment relationship that would respond better to the needs of all Canadians who work.**

**We have been fortunate to benefit from a fruitful partnership with Canadian Policy Research Networks. CPRN contributed its comments and expertise and those of its wide network of academics, practitioners and concerned citizens to our project. We are very thankful to President Judith Maxwell and to Ron Saunders, the Director of the Work Network, whose insights and advice on this project were invaluable.**

**Our researchers in residence, Professors Michael Smith and Leah Vosko provided the essential research to move this project forward. Their insights were extremely important to the pursuit of a better understanding of employment relationships in the 21<sup>st</sup> century.**

**Other researchers and policy experts also contributed to the Law Commission’s project: Judy Fudge, Eric Tucker, Christine Bruckert, Colette Parent, Pascale Robitaille, Guylaine Vallée, Richard Chaykowski, Gay Stinson and Kerry Rittich.**

**The Law Commission of Canada is a small agency with a large mandate: to engage Canadians in the renewal of the law. It is thanks to the very dedicated staff of the Law Commission that we are able to fulfill this mandate. The Commissioners are grateful for the work performed by all members of the staff at the Law Commission of Canada in producing this discussion paper.**

**In particular, we would like to thank Karen Jensen, Senior Research officer at the Law Commission, the primary author of this discussion paper and the person who has lead this project and allowed it to come to fruition.**

**The Law Commission hopes that this report will generate a thorough examination of the ways that we manage work relationships in our society and stimulate innovative thinking about how we might diminish vulnerability in the workplace. Your feedback will help inform future research and consultations and assist in the preparation of our final report.**

**We invite you to reflect on the way in which vulnerability is currently experienced in the workplace, on the diagnostic posed in this discussion paper and the many ways in which law reform could contribute to enhancing productive, respectful and fair work relationships. We look forward to your comments and reflections:**

By mail :

By fax:

By email:

Via the Internet : [www.lcc.gc.ca](http://www.lcc.gc.ca)

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## DISCUSSION PAPER

### INTRODUCTION

Work is vital to our well-being. The majority of us must work in order to meet our material needs. But work is much more than a means to satisfy our physical needs and those of our families. It is vital to our emotional, spiritual and social well-being as well. Decent work that makes appropriate use of our abilities, that challenges us to live up to our potential and provides us with a sense of purpose and an opportunity to contribute is of pivotal importance to human beings.

Work may be done for remuneration (paid work), for love (parenting and other forms of care giving), or for the benefit of one's community (volunteer work). All these forms of work contribute, directly or indirectly, to shaping the nature of the society in which we live. And, the way society regards and rewards the work we do has a significant effect on how well we can take care of ourselves and those close to us. It also has a significant effect on our sense of dignity and pride and on the extent to which we can participate in and contribute to society.

The law plays an important role in determining what kinds of work are recognized, valued and rewarded, and equally, what kinds are devalued, ignored or prohibited. The law also plays a role in shaping the balance of power in the workplace, in determining the distribution of rewards and in determining access to rights and benefits on the job. Moreover, labour and employment laws have a significant impact on the costs involved in running a business in this country. In short, the law directly affects the ability of Canadians to achieve personal and economic well-being from the work that they do. It also has an impact on the productivity of the nation.

The Law Commission of Canada undertook its examination of Canada's labour and employment laws in response to concerns that were raised by the Commission's Advisory Council. This group of Canadians expressed the view that Canada's labour and employment laws and social policy may not be keeping pace with the changes that are taking place in the world of work. They voiced their concern about the number of Canadian workers whose personal and financial well-being is being jeopardized by the

work they do and who are finding very little protection and relief in Canada's labour and employment laws and policies.

Specifically, the following concerns were raised about the regulatory framework surrounding work and the reality of Canadian working lives:

- (1) Over a third of the Canadian workforce is engaged 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;
- (2) The existing laws and policies may not be achieving a fair distribution of the costs and rewards of participation in the labour force. For example, in the year 2000, almost 2 million adult Canadian workers earned less than \$10/hour. Many of these workers and their families are impoverished in spite of the fact that they have a full-time, full-year job. Approximately, 670,000 workers, most of whom are women, are attempting to sole-support their families on less than \$10/hour.<sup>i</sup> Many of them have great difficulty moving out of low-paid work;
- (3) The existing regulatory framework may not adequately ensure that workers have a voice in their workplaces. Unionization is on the decline and alternative forms of employee representation have not expanded to improve workplace democracy;
- (4) The resources dedicated to the enforcement of existing laws and regulations as well as the methods and practices of enforcement may be insufficient to achieve the intended goals. For example, certain groups of workers such as young workers, immigrant and refugee workers of colour, some visible minority workers and stigmatized workers report that the existing laws are poorly enforced and that they experience extremely poor and exploitative work conditions which they feel powerless to change;
- (5) Existing laws and policies dealing with work are still organized around the concept that "someone" (not the worker him or herself) is providing the childcare, homecare and elder care for the worker. In reality, however, most workers are struggling to meet the increasing demands of work and family/home obligations with few resources and supports to assist them. Sacrifices are being made which may well be undermining the short-term and long-term well-being of Canadian workers and society as a whole.

The Canadians we met with expressed the concern that the deficiencies in Canada's labour and employment laws and policies might well be resulting in the depletion of one of the nation's most important natural resources – our workforce. Workers who cannot make ends meet, who cannot afford dental care and vision care or adequate childcare for their children will experience long term adverse health and personal consequences. Their level of retirement planning is likely inadequate and their health and the well-being of their children may also be affected. This has implications for society both in terms of costs as well as lost productivity. Productive workers must be healthy and able to adapt positively to change.

At the same time, it was recognized that business and governments are under a great deal of pressure. The liberalization of trade has forced many businesses to reduce costs in order to be competitive. Concerns over the size of government and public spending have put pressure on governments to down-size. The result is that employers in both the private and public realms have felt that they have little choice but to reduce labour costs in whatever way possible. Work laws requiring employers to assume full responsibility for Canadian workers' well-being are seen as unrealistic and a threat to the survival of many businesses. The view was that innovative changes are needed which are solidly based on the notion of collective or shared responsibility for worker well-being.

With these concerns and issues in mind, it was suggested that the Law Commission undertake a project to answer the following questions: (1) what are the gaps and weaknesses in the current regulatory framework that have rendered some groups of workers particularly vulnerable? and (2) what are some innovative options for the reform of Canada's labour and employment laws and policy changes that would reduce worker vulnerability, enhance productivity and more equitably distribute the rewards and costs of participation in the labour force?

The first step in the process was to commission research to address these questions. The next step was to synthesize the results of this and other existing research in the present document in such a way as to encourage public input into the above-noted questions.

Part one of this document examines the problems regarding Canada's labour and employment laws in the context of four workers' lives. These four case studies are based on the composite profiles of individuals whose work or personal characteristics/circumstances put them into one of the following categories: self-employed and part-time workers, temporary agency workers, marginalized workers and

stigmatized workers. We have chosen these four categories because the research tends to suggest that many workers in these categories experience a high degree of vulnerability as a result of some of the gaps and deficiencies in the regulatory framework that were identified above.

In the case studies, we look at the impact of the law on the lives of the four vulnerable workers as well as their families. Following each case study, we present a discussion of the empirical data and an examination of some of the laws dealing with each category of work and worker. This discussion is not a complete inventory of the regulatory framework. Readers looking for more details about the current labour and employment regulatory framework are invited to go to our website [www.lcc.gc.ca](http://www.lcc.gc.ca) and consult the *Overview of Current Labour Law Concepts and Rules*.

Three of the four case studies involve female workers. This is meant to reflect the fact that a disproportionate number of vulnerable workers are female. For example, research has demonstrated that although women accounted for 46% of the labour force in 2001, they constituted 63% of those in precarious jobs.<sup>ii</sup> Sixty-nine per cent (69%) of workers earning under \$8 per hour in 2000 were women.<sup>iii</sup>

There are reasons for the gendered nature of precarious work. For the most part, standard employment arrangements are geared toward workers who either have minimal or no childcare, eldercare and/or homecare needs or who have someone else (paid or unpaid) who provides these services for them. Typically, those kinds of care and support services have been provided by women and typically, these services have been undervalued and underpaid. Thus, not only are female workers concentrated in service and care work in the paid labour force where the earnings are typically lower than male-dominated work, they are also often attempting to accommodate participation in the paid labour force with care and support responsibilities in the home, family and community. Many do this through non-standard work arrangements which are associated with lower levels of protection and benefits.

Following our analysis of the empirical data and the impact of the law on the lives of the individuals and families in our four case studies, we turn to an examination of the underlying rationale for the current framework of laws and policies relating to work. The protection of workers rests on a series of choices that society makes about who should be protected and why. These choices are based on values and beliefs about people, society and the allocation of the costs and benefits of social living. It is worthwhile to periodically reflect on the values and goals that underpin the regulatory framework to determine

whether they continue to be relevant and fair and whether they justify the consequences that flow from the application of the law.

In the third and final part of this paper, we explore some of the options for reforming Canada's labour and employment laws. The choice to provide better protection to vulnerable workers does not necessarily tell us how such protection should be provided. Even if there is agreement that better protection should be provided to these workers, there can be considerable controversy and disagreement over the choice of tools for providing effective protection to workers and on the impact that such regulatory practices would have on the competitiveness of the Canadian economy. Thus, in the final section of the paper, we discuss a number of proposals for law reform that have been suggested in this area. The options vary in the degree of change required: from developing better practices of enforcement and extending the scope of existing protections to more workers to changing the way we regulate work altogether. The point of this section is not necessarily to propose solutions to the problem of protecting vulnerable workers, but rather to elicit feedback from readers about the essential ingredients of law reform in this area. We think that people find this easiest to do when there are concrete proposals on the table. The proposals for change provide the basis for a broader discussion about what might be needed to ensure that Canada's work laws provide adequate protection to vulnerable workers.

It is hoped that the present discussion paper will stimulate a critical examination of the consequences of Canada's work laws as well as the values and assumptions that support these laws. We would like to ask Canadians to reflect on the changes that would be needed to promote the well-being of all workers and thereby contribute to the productivity and prosperity of the nation.

## PART ONE -- WORK AND VULNERABILITY TODAY

### CHAPTER ONE – SELF-EMPLOYED AND PART-TIME WORKERS

In the past two decades, there has been an increase in non-standard forms of employment: part-time employment, term employment, temporary employment, casual employment, on-call employment, work obtained through temporary employment agencies, and self-employment or independent work. Such jobs are referred to as “non-standard” because they are different from that standard model of salaried employment that grew out of the industrial revolution and was later enshrined in labour legislation. For a long time, non-standard or atypical forms of work were considered marginal because they involved only a few individuals or were considered to be just a means of earning extra income. But recently, not only have the number of these kinds of jobs increased, but for many they are a long term reality, a way of participating in the labour market intermittently or permanently for much, if not all, of their working lives.

By most estimates, the percentage of the labour force that is engaged in non-standard work is now up to approximately 33 - 37%.<sup>iv</sup> In many ways, non-standard work has filled an important need in the labour market. Often it provides a degree of flexibility that benefits workers, businesses, families and even communities. Many workers are better able to accommodate the needs and interests of their families and communities through non-standard work arrangements while employers benefit from being able to tailor the terms of their labour contracts to the precise needs of the business.

Some non-standard workers are able to combine flexibility with adequate to excellent financial remuneration and work conditions. However, there is growing evidence that many other non-standard workers are not faring as well. Among the problems associated with non-standard work are the following: poor pay, little job security, lack of access to important statutory benefits and protections (such as Employment Insurance, employment standards protections, workers compensation, the right to collective bargaining), and lack of access to employer-provided benefits such as dental, life and disability insurance, among others. Although the phenomenon of non-standard work has been growing for many years, labour and employment legislation, which was originally designed to provide conventional employees with a minimum of social protection, has not been updated to reflect these new realities.

Text boxes:

**Research indicates that many low-paid workers are employed full-time, but an increasing number of low paid workers are in non-standard work – temporary, part-time, casual or other non-standard forms of employment that are characterized by low-wages and few benefits.<sup>v</sup>**

**About one in three low paid workers across Canada works part-time, another 29% are in temporary jobs (which can be seasonal, casual or contract positions), and about one in four has multiple jobs in order to get more hours of paid work.<sup>vi</sup>**

**The following is a case study of one worker who moved from a standard employment arrangement to several different forms of non-standard employment.**

### **The case of Ginette Leduc – Part-time Worker and Independent Consultant**

Ginette Leduc is a 32 year-old Canadian woman. After graduating with a Communications degree from the University of Montreal, Ginette worked for 8 years with a major telecommunications company as a communications officer. She was responsible, among other things, for the publication of a company newsletter.

**Four years into her job, Ginette met Uri. The two decided to get married and shortly after that their daughter, Patricia, was born. Ginette took six months of topped-up maternity leave as was provided for under the collective agreement and Employment Insurance legislation in force in 1991.**

Shortly after Ginette went on leave, Uri was laid off. Rather than looking for another job, Uri decided to start up his own business. He and Ginette had often spoken about the advantages of having a home-based business that would allow them the flexibility and autonomy to both meet the needs of their family as well putting their professional skills to profitable use. So, although he pursued some leads about jobs in other businesses, Uri devoted himself to getting his own business up and running while Ginette devoted herself to getting Patricia up and running.

When she went back to work, Ginette asked if she could work a four-day work week in order to spend more time with Patricia. This request was granted and as Patricia grew, this provided Ginette with the time to volunteer in Patricia's pre-school. It also gave Ginette one day a week that she could devote to her sick mother.

**Then, one day in 1994, Ginette received word from her supervisor that her employment was being terminated. The supervisor explained that the company was facing stiff international competition and all non-essential operations were being reduced or shut down. The news could not have come at a more difficult time. Ginette was three months pregnant with their second child, her mother was seriously ill and although Uri's business was beginning to make money, he was working 50 – 60 hours a week.**

The silver-lining in the cloud, if there was one, was that Ginette's supervisor informed her that she would be offered a contract to continue to produce the newsletter that she had been writing. The supervisor could not guarantee how long this would last, but it looked reasonably secure for another year or two. She stated that Ginette could perform the work from home. In essence, she would be doing most of the tasks she had been doing while employed, but she would have more flexibility with respect to work hours.

Ginette estimated that the work would take about 15 hours a week and thought that this would be ideal as it might give her more time than she had had in the past to care for her mother and to attend to the demands of a three year old and a newborn. The difficulty, of course, was that all of the benefits and advantages of paid employment were now gone. Those benefits had been crucial to well-being of the whole family because Uri, as a self-employed worker, no longer had a benefit package through his employer. As an independent contractor, Ginette knew that she would not have access to the maternity leave provisions of the Unemployment Insurance program (as it was then called) and she knew too that the extended health care plan, disability and life insurance, dental care and employer contributions to her pension plan were gone. However, given her circumstances at the time, Ginette felt she had no choice but to accept the contract with her former employer.

The couple's combined income was about \$35,000/year when their second daughter was born. In spite of their difficult financial circumstances, Ginette felt fortunate to have the time to attend to her children and her mother. In fact, she



felt that were it not for the financial difficulties they were having, their life style would be quite good.

Discussion

## **Growth of the Self-Employed Work Force**

Ginette and Uri are part of a segment of the work force that grew significantly during the 1990's. Self-employment rose steadily in the 90's and then hit a plateau in the early part of the new millennium. Thus, in 2000 the self-employed represented 16% of all workers, down from a high of 19% in 1998 but up from 11% in 1976.<sup>vii</sup>

## **Self-Employment and the Law**

Once a worker becomes self-employed, he or she is denied a whole series of rights, protections and benefits that have come to be associated with the standard employment contract. This is because the legal status of being an employee is the requirement for most employment-related protections at common law and under legislation, the statutory regimes of collective bargaining, and a range of social benefits from employment insurance to pensions. Thus, the legal definition of the term "employee" determines whether one will receive labour protection. People who work for pay but who are self-employed are treated for most legal purposes as independent entrepreneurs or contractors who, unlike dependent employees, are not seen as being suitable for labour protections.

There are numerous tests that have been developed for determining whether a worker is an employee or an independent contractor. In a case decided in 2001, the Supreme Court of Canada acknowledged that there is no one conclusive test, which can be universally applied to determine whether a person is an employee or an independent contractor.<sup>viii</sup> The central question is whether the person who has been hired to perform the services is performing them as a person in business on his or her own account. In making this determination, the level of control the employer has over the worker's activity will be a factor. However, other factors that must be considered include: whether the worker provides his or her own equipment; whether the worker hires his or her own helpers; the degree of financial risk taken by the worker; the degree of responsibility for investment and management held by the worker; and the worker's opportunity for profit in the performance of his or her task.

Over time, the tests for determining whether a worker is an employee have been modified to embrace a wider range of workers who have been seen by the courts to be in need of protection. The Supreme Court has endorsed this purposive approach to the determination of employee status. However, uncertainty regarding employee status is still common as a worker may be considered an employee for some purposes and independent contractor for other purposes. It is not uncommon for workers to be told that 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.

In Ginette's case, the transformation of her work from employment to self-employment means that if she was a member of a collective bargaining unit while she as an employee, she likely will no longer be included in the bargaining unit as a self-employed worker. As a result, she will no longer be guaranteed the wages and other work conditions and benefits provided for under the collective agreement that governed her previous employment relationship. Moreover, it is uncertain that she will be able to avail herself of the protections offered under Part 3 of the *Canada Labour Code* that are intended to benefit workers within the federal jurisdiction (such as telecommunications) who are not covered by a collective agreement. Although adjudicators are increasingly attempting to extend employment standards protections to workers who are economically dependent on their "clients" and who do not fit the standard definition of employee, this is by no means certain. It is likely that Ginette would have to engage in a legal battle to establish that she should be entitled to these protections. However, if she does this, her "client" may no longer be so willing to renew the contract with her. This is a powerful disincentive for most workers to seek employment standards protection.

Similarly, Ginette would not likely benefit from the protections provided to her against workplace health and safety dangers and would not likely receive compensation in the event of a work-related illness or accident unless she had been paying her own premiums for coverage. In order to obtain credit toward her eventual receipt of benefits under the Canada Pension Plan, Ginette would need to pay contributions at the full rate while as an employee she was only required to pay half with the other half paid by the employer.<sup>ix</sup> Finally, as a self-employed person, Ginette would not likely qualify for employment insurance or maternity

and parental leave unless she were somehow able to convince an adjudicator that she was, in fact, a disguised employee.

### **Questions:**

#### **Are the existing supports and laws for self-employed people adequate?**

If not, what do you think workers like Ginette Leduc might need in order to reduce their vulnerability in self-employed work arrangements and in the labour market generally?

#### **Are there other ways in which the law has a positive or negative impact on the well-being of self-employed workers?**

#### *Self-Employed Workers: Entrepreneurs?*

The common understanding about self-employed people is that they are entrepreneurs who have willingly traded the legal protections and benefits of the employment contract for the autonomy, flexibility and likelihood of great financial gain inherent in self-employment. While this is sometimes the case, studies reveal that, as is often the case, reality is much more complex than common understanding.

**In fact, self-employed workers range from people like Ginette who are essentially disguised employees in that they are doing the same job they did when they were employed, to independent professionals and owners of incorporated businesses. At best, some types of self-employment provide a high degree of autonomy and flexibility as well as financial gain; at worst, self-employed workers are treated as employees without the benefits and rights that go along with that status.**

**Certainly, with respect to financial remuneration, there would appear to be solid evidence that a significant percentage of self-employed workers experience relatively low levels of economic security. Based on figures for 2000, 25% of the self-employed have incomes of \$20,000 or less and 22% have incomes above \$60,000. Fully 47% of all self-employed women have incomes of \$20,000 or less while self-employed men are much more evenly distributed across income groups.<sup>x</sup>**

**Self-employed people can be employers who hire other paid employees or they can be own account, which means that they do not hire anyone else. Most self-employed people**

(63%) do not have employees and are, therefore, “own account self-employed” workers. When the data on self-employment is broken down to look specifically at how own-account self-employed workers fare, we see that, contrary to popular understanding, these workers are very poorly remunerated. Sixty per cent (60%) of unincorporated own-account self-employed women had incomes of less than \$20,000 in 2000, a finding magnified by the fact that a majority of self-employed women fall into this category (unincorporated, own-account). Many self-employed workers like Ginette Leduc, are not reaping great financial rewards for their decision to become self-employed.<sup>xi</sup>

The following data regarding average annual incomes underscore the point that the promise of great financial gain is elusive for many self-employed people.

**Average annual incomes of self-employed workers in Canada:**

**Men (Non-visible minority): \$23,882**

**Men (Visible minority): \$19,941**

**Women (visible minority) \$15,641.**

**Women (Non-visible minority): \$15,314<sup>xii</sup>**

There is also evidence that the level of retirement preparation of the self-employed is inferior to employees. At the rate that they are going, Ginette and her husband, are unlikely to be able to adequately prepare to meet the financial challenges of retirement.

## **Disguised Employment**

Relatively few self-employed workers conform to the stereotype of the entrepreneur. Like most self-employed workers, Ginette Leduc in our case study would appear to more closely resemble an employee than an entrepreneur. She will continue to work with the same people, using the tools and resources provided to her by her former employer and will likely continue to take direction on her work from her employer or supervisor. Indeed, research reveals that, with regard to control over work, the majority (67%) of self-employed workers with strong ties to former employers report the same degree of control over the content of their work that they had as employees. Indeed, a considerable

proportion of the self-employed work in either client locations or locations supplied by the clients; fully 30% of own account self-employed work in such situations.<sup>xiii</sup>

Based on this kind of data, some have concluded that self-employed workers with strong ties to their former employer more closely resemble paid employees. While control over work schedule improves for some former employees, the level of control over work remains the same for the majority. This kind of self-employment arrangement has been termed “disguised employment” by organizations like the Organization for Economic Cooperation and Development (“OECD”) and the International Labour Organization (“ILO”). Disguised employment occurs when an employer treats a worker as though he or she is an independent contractor or self-employed person in order to avoid the responsibilities and costs associated with being an employer. These responsibilities include, among others, paying into the employment insurance system, the Canada and Quebec Pension plan, informing workers of health and safety risks, paying into the workers’ compensation system, making income tax payroll deductions and recognizing and negotiating with the collective bargaining agent chosen by the workers. The costs include paying the employers’ portion of the benefit and perquisite programs provided to employees of the firm. Analysts increasingly recognize the overlap between paid employees and the self-employed, prompting organizations like the OECD and the ILO to call on countries to scrutinize the growth of “nominal” or “disguised” self-employment and devise policies designed to extend social protections and benefits to this segment of the self-employed.

Questions :

How can we facilitate a proper treatment of “disguised employees”?

Should there be legislative controls placed on employers’ freedom to dismiss workers and hire them back on contract?

What would be the implications of extending labour and employment protections to disguised employees?

## **Access to Benefits and Group Insurance Plans**

Most self-employed people and their families have no access, through their workplace, to extended benefits packages, which include a range of benefits such as hospital and physio-therapy care, dental care, prescription drugs, vision care and life and disability insurance. Therefore, these workers must either purchase, or acquire through a spouse, extended benefits that paid employees normally obtain through their employer.

Purchasing a benefits plan on the kind of income that Ginette and her husband generate would be impossible. Analysts speculate that self-employment is more common among couples than singles because a spouse with steady paid employment provides economic support for household members. But sometimes, as in the case of Ginette and her family, there is no choice about obtaining the benefits package through the spouse. Fully 25% of the self-employed have a spouse who is self-employed, 78% of whom are partners in the same business. In such instances, spousal coverage is not an option. This has implications for the well-being of the entire family.

Access to Benefits Denied:

**Most self-employed people do not have access to the following statutory and non-statutory benefits that are typically available to employees :**

- **Employment Insurance (including parental leave benefits);<sup>xiv</sup>**
- **Workers' Compensation coverage;**
- **Life and Disability Insurance;**
- **Extended Health Care plan (including assistance with the costs of vision care, prescription drugs, physiotherapy, hospital and ambulance expenses, psychologist's services, wheel chairs, etc.);**
- **Dental Plan**

## **Unpaid Work**

It is also important to examine the relationship between the unpaid care and volunteer work that Ginette provides and the paid work that she renders. In a very real sense, she is making a significant immediate and long-term financial sacrifice in order to provide unpaid care services to her children and her mother.

According to a 1998 study, the value of unpaid work in Canada in 1998 per person was \$12,256. Women spend over 28 hours/week at household work alone (17 hours for men). However, the division of these tasks seems to be changing: there is a gradual movement away from traditional roles or tasks in 1998 compared to 1992. With 1 billion hours in 1998, informal unpaid work outside the household was valued at \$10 billion. Women spend more time, on average, in unpaid work than they do in market work. The author of the report stated that only 37% of females' productive time occurs in the market and is therefore captured in conventional economic statistics. The remaining two thirds (29.7 hours per person per week) is unpaid and remains "hidden". Thus it would seem that women are still bearing the lions' share of the load for household work (although this appears to be changing slowly) and they are working in the paid labour force in greater numbers than ever before.<sup>xv</sup>

Those who, like Ginette Leduc, are able to make the decision to work part-time in order to better perform those unpaid work obligations may find themselves penalized. Those workers who have no choice but to work full-time and also manage home, child and elder care in their "off time" often struggle with unmanageable loads.

Questions:

What can and should be done to better accommodate and value the unpaid work that is done by many workers?

What are the implications of not valuing unpaid work?

## **Part-Time Work**

Some Canadians are working part-time, not through their own choice, but because they cannot find full-time work. Others are working part-time in order to better manage their responsibilities in the paid and unpaid labour force. Either way, part-time workers often face penalties for working part-time. For example, although most labour and employment laws in Canada apply equally to full-time and part-time employees, in all jurisdictions except Quebec employers are free to treat part-time employees less advantageously than full-time employees provided they meet the standards provided in those laws. In other words, with the exception of Quebec, there is no requirement for equality of treatment as

between part-time and full-time employees. Like self-employed workers, part-time workers are often ineligible for non-statutory employment benefits such as dental and extended health care plans and pensions. In addition, part-time employees are excluded from the benefits of certain labour and employment laws and policies, either directly or indirectly by operation of qualifying requirements based on total work time. So, for example, in Newfoundland, vacation entitlements depend upon having worked a defined number of regular hours in year, and as a result, part-time workers will often have insufficient hours to claim vacation leave (although they can still earn vacation pay).<sup>xvi</sup>

Questions:

Are there other issues with respect to the regulation of part-time work that are of concern?

Should the laws ensure equality of treatment as between part-time and full-time employees?

What would be the consequences of such a change?

Summary

As a part-time employee in a large federally-regulated company, Ginette received certain employment-related benefits, rights and protections. Once she became self-employed, many of these protections and benefits disappeared. Her choice to become self-employed was not entirely voluntary, yet like many workers, she appreciated the fact that there might be more flexibility and autonomy as a self-employed worker.

The research that was done for the Law Commission suggests that although the added measure of flexibility and autonomy may be appreciated by some, it comes at a cost both to the individual and to society. There is evidence to suggest that self-employment does not necessarily bring a sufficient degree of financial security for many to permit them to save for retirement or to purchase the benefit plans that are needed. Moreover, the lack of access to statutory benefits and protections such as employment insurance, maternity benefits, workers compensation and employment standards protections is a serious hardship for some workers.

Nonetheless, it must be noted that self-employment provides a vehicle for some workers to realize a greater degree of professional and personal satisfaction than would otherwise be possible within the confines of the employment relationship. Similarly, engaging the services of self-employed workers may allow employers to obtain the necessary labour at a lower cost and without commitment to long-term employment relationships. This may



**make an important difference to the financial well-being of the business. Thus, self-employment is clearly of benefit to some workers and enterprises, but not to all.**

**In the same ways, other forms of non-standard employment such as part-time work provide both employers and employees with distinct advantages. However, there is evidence that a significant number of non-standard workers are not reaping the benefits of non-standard work and are, in fact, suffering significant financial and personal hardship as a result of these arrangements and the lack of protection afforded by the law.**

## CHAPTER TWO – TEMPORARY AGENCY WORK

**Temporary work is another form of non-standard employment. It is work that is limited in duration and offers very little, if anything, in the way of security of employment tenure. Many temporary workers would be classified as self-employed workers or independent contractors for the purposes of labour and employment rights, benefits and protections. Thus, they would share the same concerns and issues as Ginette Leduc in the previous chapter.**

**However, within the category of temporary work, we also find the subcategory of workers who are affiliated with temporary help agencies. This is temporary work that is mediated or brokered by an independent agency whose purpose it is to sell the labour of temporary workers. We have chosen to focus on this subcategory in this chapter because there is evidence that this subcategory of workers is particularly vulnerable.**

Catherine O'Donnell – Temporary Agency Worker

Catherine O'Donnell is a 30-year old mother of four children living in St. John's Newfoundland with her husband and family. Her husband, Hugh, is a fisherman who was injured on the job several years ago and has had a lot of trouble getting back to full-time work. Catherine has her grade twelve diploma and has completed one year of a two-year program at a community college in administrative support. She has been working for the same personnel agency for five years and although she would like to have permanent work, there would appear to be few prospects for this kind of employment right now. The O'Donnell's fourth child is severely disabled as a result of a birth injury. He requires special programs, assistive devices and other supports. This puts quite a strain on the family's personal and financial resources.

Catherine has, in the past, felt fortunate that the manager of her agency was very understanding when she was unable to take an assignment because of the pressures at home. To Catherine, this was the real advantage of temporary work: she could refuse an assignment from time to time if she needed to. However, there is a price to pay for this flexibility; Catherine does not receive any supplementary benefits, sick days or vacation pay. Furthermore, in talking with

some of the staff in the places where she has worked, Catherine has learned that she is paid less than the permanent staff.

Until recently, Catherine was prepared to accept the costs of working with a temp agency in exchange for the flexibility it provided her and her family. However, in the last seven months she has become caught up in a nasty legal battle that has made her reconsider the advantages of temporary work. Catherine was on the same assignment for eight months working in a small family-owned business where she was responsible for running the office. Initially, she loved the feeling of being part of “the family”, sharing with them the joys and disappointments of contracts won and lost. However, by the fourth month Catherine was beginning to resent the large amounts of unpaid overtime that she was putting in. When she approached the owner of the company to ask that she be paid for at least some of the overtime or receive time off in lieu of pay, she was surprised at his angry response. The owner told her that if she could not handle the job, then he would put in a request for another “girl”. When Catherine spoke with her manager at the temporary agency about the problem, she was told that, due to the length of the assignment and the fact that it was the company that was paying her salary, the company was her real employer and therefore, she would have to file a complaint against the company with the Labour Standards Division.

Upon filing her complaint, Catherine was promptly relieved of her assignment with the family-owned company. She has had a few brief jobs, but she suspects that the temporary agency is now viewing her as a “whiner” and is reluctant to assign her to any of its major clients. Furthermore, between dealing with the complaint and the ensuing legal battle over who the real employer is and her family, Catherine feels as though she does not have the where-with-all to work full-time. Still, the family finances are in bad shape and the likelihood of turning to welfare is looking more and more real.

Discussion

Temporary employment agencies play a useful role in the economy, especially in the labour market. Among other things, they allow businesses to efficiently deal with temporary difficulties in a practical manner by supplying qualified, rapidly available labour for an agreed price, relieving the employer of the need to engage in the time-consuming and costly tasks of screening, interviewing and hiring additional staff. From the worker's point of view, temporary work may be a useful way of familiarizing oneself with different kinds of work before making a career commitment. It may also offer the kind of flexibility that is needed when family demands like those of Catherine O'Donnell make full-time permanent work difficult to sustain.

### Size of the Temporary Agency Industry

It would appear that the advantages of using temporary agency staff are such that temporary agencies have become a permanent feature of the labour market. It is difficult to estimate the size of the temporary agency workforce, but there is evidence that there were approximately 1,300 temporary agencies operating in Canada between 1990 and 1993 and that the size of this industry has at least remained constant, if not grown.<sup>xvii</sup> Moreover, an increasing number of employers are using temporary agency workers on a long-term basis. Although this type of three-party relationship may have some advantages for all parties, it does create some problems and may easily lead to abuses that not all agencies have been able to avoid.

### Problems with Temporary Agency Work

The first of these problems is demonstrated by our case study. In spite of the case law in this area that has attempted to clarify the law, workers are often uncertain about the identity of their real employer. Is the agency responsible for ensuring that Catherine O'Donnell is paid for the overtime she worked or is it the owner of the business where she has been performing her duties? The contract is between the temporary agency and the temporary worker and as such, the client business would not appear to have any contractual responsibility toward the worker. However, decisions such as *Pointe Claire v. Quebec (Minister of Labour)*<sup>xviii</sup> call this point into question. In that case, the Supreme Court of Canada held that the client business and not the temporary agency was to be treated as the employer for the purpose of labour relations legislation in Quebec. In general, a determination of who the real employer is will depend upon the purpose of the law in question. It will also depend, to some extent, upon the length of the assignment. Unfortunately however, the uncertainty regarding the identity of the real employer may

work to the disadvantage of workers like Catherine. Although temporary agency workers are employees and, as such, are generally covered by employment standards legislation guaranteeing certain minimum working conditions (although not in all cases), they must often engage in time-consuming and sometimes costly litigation to determine who their real employer is. As in the case of Catherine O'Donnell, this may have a very negative impact on their relationship with both employers and further increase their vulnerability in the workplace.

The second difficulty that has been identified with the temporary agency employment arrangement relates to wage discrepancies between equally qualified workers who perform similar or equivalent work with the same establishment. Research in this area reveals that permanent workers enjoy higher average hourly wages than temporary help in every occupational grouping surveyed.<sup>xix</sup> A big part of the difference relates to the “mark-up”, that is, the portion of the service fee that goes to the temporary help agency. Temporary help workers also have limited access to extended benefits, in comparison to their counterparts engaged in permanent employment and other temporary (non-agency) work. Only 8.2% of temporary help workers, versus 64.3% of permanent workers reported having extended health coverage in 1995. Very few have paid sick leave or dental coverage.<sup>xx</sup>

Moreover, although the flexibility of the temporary assignment is, for some workers like Catherine O'Donnell, of great benefit in permitting them to balance family and work demands, the reality is that many temporary help workers are pressured to accept each and every assignment that comes their way.

Most temporary workers are engaged in temporary work because they are unable to find permanent work. However, the nature of the temporary employment agreement is such that they are usually prohibited from taking a position with a client company even if offered one. In reality, provided the client firm pays the agency a “buy-out” fee, they may hire a worker permanently. However, the buy-out fee acts as an effective financial disincentive to hiring temporary workers on a permanent basis. Moreover, agencies make use of other kinds of mechanisms to restrain client firms from hiring temporary workers on a permanent basis. This is a particularly significant issue for immigrants who will work for temporary agencies in order to gain the required “Canadian experience”, but are then thwarted from using this Canadian experience to obtain permanent employment.

**Additionally, the fact that temporary help workers are dispatched to different and multiple worksites makes it nearly impossible for them to organize collectively. Some temporary workers are covered under collective agreements when they are placed on assignment in a unionized workplace and these workers then tend to have higher wages than their counterparts who are not covered by collective agreements. However, the majority of temporary workers in Canada are not covered by a collective agreement and the barriers to organizing these workers are significant.**

**Finally, certain employment standards and benefits have eligibility requirements based on length of employment that many temporary agency employees are not able to meet. These include general holidays with pay, vacation leave, notice of termination and rights to severance pay. Pension benefit laws require private pension plans to vest benefits in employee plan members only after a stipulated maximum time, which is most often two years. As a result, many temporary employees are not legally protected against the loss of pension benefits upon the termination of their employment.<sup>xxi</sup> In addition, rules regarding qualifying requirements under public retirement and disability plans and the national Employment Insurance program effectively exclude many temporary workers from benefits entitlement.**

Questions:

- Does the law respond adequately to the problems associated with temporary agency work adequate?
- If not, what would need to change?
- Are there other problems with temporary agency work that have not been identified?

Summary

**Temporary agency work provides numerous advantages to both employers and workers. However, it also creates a set of conditions for workers that often cause hardship and a high degree of vulnerability. The triangular employment relationship between the agency, client firm and the worker creates uncertainty with regard to the employment responsibilities of each party. Wages for temporary agency workers tend to be lower than for permanent employees, benefits and access to unionization are often non-existent and work conditions less than favourable. In addition, temporary agency workers are effectively**

**prevented from obtaining permanent work in many of the client firms. Thus, while not all temporary agency workers are vulnerable, there are those who are in need of enhanced protective measures.**

## CHAPTER THREE – LOW-PAID AND MARGINALIZED WORKERS

**There are certain characteristics and circumstances that make some workers more likely to be marginalized within the labour force than others. Marginalized workers are more likely to experience low pay, poor or dangerous work conditions, insufficient hours, limited career mobility, little job security and few or no benefits. Among those workers who are most likely to be marginalized we find: young workers, workers from visible minority groups, single mothers, disabled workers, and poorly educated workers. Many of these workers are in standard employment relationships and therefore, in theory, should have access to statutory benefits, rights and protections. However, in reality, most marginalized workers lack effective access to the rights and benefits that were designed for them.**

**In the following case study we examine the situation of two workers whose personal circumstances have resulted in marginalization. We explore some of the reasons that the laws and social policy are failing to provide marginalized workers with effective protection and support.**

### Case Study: Kuc and Samuel Yaul – Young Refugee Workers

Samuel and Kuc Yaul, aged 20 and 17 years respectively, are originally from Sudan, an African country torn apart by a bitter civil war. In 1999, their father, mother and sister were killed by government troops. Samuel, Kuc and their younger brother and sister fled Sudan on foot to a refugee camp in Kenya where their brother and sister have remained. Samuel and Kuc were given the opportunity to come to Lethbridge, Alberta as refugees in 2002.



Samuel and Kuc have attended a basic ESL course and are beginning to develop a mastery of the English language. Because of the extent of the conflict and poverty in Sudan, neither of the two has had the benefit of extensive formal education. However, the brothers are both hard-working and extremely interested in advancing their education. They would like to eventually receive education and training in the area of computer technology.

At present, both Samuel and Kuc are working at two jobs. During the day, they are employed as shelf stockers at a major retail chain in Lethbridge, Alberta. The duties of their position involve receiving merchandise in the stock rooms, transporting stock to the appropriate storage area, bringing stock in for display, moving it within the store and locating stock items as requested by sales associates, among many other duties. For their work, Samuel and Kuc earn \$5.90/hour, the minimum wage.

Although the job is demanding and physically exhausting, the men feel lucky to have it. A year ago Samuel was nearly fired for agreeing to meet with a union representative to discuss an organizing campaign. At the time, he thought that it would be a good idea to have someone who could speak up for the workers. He knows that in Canada it's illegal to work overtime and not be paid for it, yet the stock associates regularly stay late to compact boxes and to work on special requests for management without being paid. So, when someone stopped him outside the store last year to talk about his work and the possibility of getting help, he agreed to talk. For that incident, he was called into his supervisor's office and told that if he took the matter any further both he and his brother would be fired. For several weeks after the encounter, Kuc and Samuel's shift hours were reduced.

After a year and a half of working all sorts of shifts and long hours, Samuel and Kuc finally managed to secure regular work hours during the day. This permitted them to take part-time jobs working for an office-cleaning company in Lethbridge. Although the job pays only a dollar per hour more than the retail job, Kuc and Samuel considered it to be a great stride forward to be able to accommodate the two jobs within their schedules, as now they are sometimes able to send money to their brother and sister in Kenya.

The cleaning work is very spotty. Kuc and Samuel are only called in to work when one of the regular workers is sick or can't make it to work for some reason. They receive very little notice and are expected to respond immediately to a call to come in to work. As a

result, Kuc and Samuel never plan to do anything in the evenings so that they can be free to come in to work if called.

Like the work that Kuc and Samuel do at the store, the cleaning work is physically demanding. The two men work at a blistering pace for 5 hours, arriving home to their one-bedroom apartment after having put in a 13 – 15 hour day. Lately, the owner of the company has been making life more difficult for them and this has Kuc and Samuel worried. On several occasions he has said that their work is not good enough. Last month he docked \$100 from each of their pay checks saying that they didn't complete their work properly.

Samuel has been having serious trouble with his back and is beginning to wonder if he can continue with the heavy physical work that he has been doing. He and Kuc have been discussing the possibility of sharing one cleaning position so that they can each have every other night off. However, this would make things very tight for them and their family living in Kenya. So, for the time being, they are continuing to work both jobs, but are increasingly anxious to get an education and find an alternative to their current work.

## Discussion

As young workers, Kuc and Samuel face the same challenges that many other youth experience in entering the labour force for the first time. However, added to this are the challenges of the language barrier, their membership in a racial minority, Kuc's disability and their lack of education. Also of note in the case study is the fact that Samuel and Kuc are prevented from becoming involved in a union-drive. All of these factors are likely, to varying degrees, to marginalize their position in the labour force.

### *Low Pay*

One of the key characteristics of marginalized work is low pay. By law, employers are required to pay employees minimum wage. Minimum wage varies from province to province. Overall, at any given time, about 4.6% of Canadian employees are working for minimum wage. Most (60%) of minimum wage earners are working part-time. But 2.4% of Canadian employees are full-time minimum wage workers. Although this is a small percentage it represents, nonetheless, almost a quarter of a million workers. Whether or not full-time wage earnings indicate hardship depends on the other income sources of the individual in question, along with the income of other family members. About 15% of minimum wage earners are unattached individuals or lone family heads – that is, about

126,000 Canadians.<sup>xxii</sup> As has been noted, it is a reasonable bet that many of those workers confront severe hardship.

The number of workers earning minimum wage is small compared to the number of workers who are classified as low-wage workers. An estimated 2 million adult Canadian workers earn less than \$10 an hour.<sup>xxiii</sup> Almost two thirds of low-wage earners are women. About one third of these low-wage workers are the only wage earner in their family. This would mean that approximately 667,000 workers, most of whom are women, are attempting to support their families on less than \$10 an hour.<sup>xxiv</sup> It is likely that these people are living in extremely impoverished circumstances.

### ***Making Work Pay***

The incentives to continue struggling in low-wage and marginal work instead of seeking social assistance are weak. At least when an individual is receiving social assistance he or she is eligible for supplementary health insurance which provides assistance with dental and prescription drug costs. With the exception of Quebec, this is not the case for most low-wage and marginalized workers. As Judith Maxwell has pointed out, there are other ways in which the policy cards are stacked against exit from low-wage work. For example, increases in earnings are taxed back in a variety of ways that discourage the extra effort. Moreover, when a second wage earner in the family enters the labour market costs are incurred for necessities like child care which may well absorb all of the income earned by the second wage earner.<sup>xxv</sup>

Questions :

- Are the supports that are presently provided to low income workers (with and without children) adequate?
- What other options could be considered?
- If not, what else is needed?
- Are there adequate supports now to help low-wage workers train for, find and remain in decent employment?
- If not, what else is needed?

### ***Poor Work Conditions***

Along with low pay, marginalized work is characterized by poor work conditions. This encompasses a range of situations from violations of employment standard norms such as non-payment of overtime and statutory holidays to harassment and abuse on the job. It encompasses dangerous and exploitative work environments and a range of other conditions that make workers' lives miserable.

**What distinguishes marginalized workers from non-marginalized workers is their relative powerlessness to effect changes with respect to these poor work conditions. Although many of these workers are in standard employment relationships and should, therefore, have access to a wide range of labour and employment protections and benefits, many lack *de facto* access as a result of: (1) lack of control in the workplace; (2) lack of awareness of their rights; and (3) models and practices of enforcement and compliance that may be outdated and ineffective.**

The effectiveness of complaint-driven enforcement mechanisms is contingent upon the ability of the individual worker or his or her bargaining agent to take action. Workers who are unrepresented and who lack real bargaining power in the employment relationship have very limited ability to take action against violations of labour standards. Moreover, many workers are unaware of the protections that they do have. The vast majority of employment standards complaints are made once the employee has already left the workplace, a fact that demonstrates the real and/or perceived threat of reprisal against employees who complain about their employment while on the job. As in the case of Samuel Yaul, it is not uncommon for workers to be told that any kind of resistance to or complaint about work conditions will be met with dismissal. Few workers are willing to take that kind of risk. Even if they might be willing to take the risk, many of them find the complaint procedure confusing and intimidating.

**Added to these issues, is the problem of reduced spending on enforcement and compliance. Budget cuts at all levels of government have meant that even where there is a willingness and desire to assist vulnerable workers, the resources are simply insufficient to allow for the timely investigation and resolution of complaints. The result of all of these factors is that a number of workers lack real protection against violations of labour standards.**

Questions:

- How can we ensure that the current labour laws are fully enforced?
- Are there other systems of compliance and enforcement that might be more effective with marginalized workers?

Who are the marginalized workers?

## Young Workers

Young workers are often highly marginalized. In a High School contest to encourage young workers to express their views on work and law reform, youth expressed a high degree of anxiety over their work situations. Many feel exploited on the job and powerless to speak out against abuses of their rights and pressures from employers. They feel unsafe on the job and a high number have been involved in workplace accidents or know someone who has. They are often unaware of their rights and when they are aware, they feel unable to ensure that these rights are enforced.

Text Box:

Excerpt from the work diary of a young worker:

“Initially I thought that having a part-time job would be an excellent learning experience. To my surprise, it was nothing like I expected. By the age of 16, I was working two jobs to make enough money for school, bills, pets, etc. I was working everyday, sometimes up to 12-hour shifts with no breaks. I was only being paid \$6.40 with no raise in sight. Many part-time jobs today are no longer part-time. Teenagers are losing their prime socialization years, becoming ill, stressed and in many cases, seriously injured. I believe that the time has come to enforce youth and human rights more thoroughly. Why is it that because we’re young we are stripped of being human. We are not slaves, we are people and it’s time we start being treated with some respect.”<sup>xxvi</sup>

Young people under the age of 18 who apply for work or are employed are not protected against unfair treatment under the human rights legislation in some provinces. In addition, in some provinces, minimum-wage laws permit student workers to receive lower wages than non-student workers. There are arguments for and against a lower wage for youth. However, as Samuel and Kuc experienced, it is not uncommon that young workers will not be paid at all for the work they have done. Many youth also face long working hours, lack of paid and unpaid time off and other violations of basic employment standards. Even though they may be covered by protective legislation, many young workers lack the knowledge and power to do anything when faced with the kind of discriminatory and illegal behaviour of demonstrated by Kuc and Samuel’s employer. These issues are particularly acute for youth like Samuel and Kuc who are challenged by other forms of disadvantage such as poverty, lack of family support, language barriers, disability, etc.

A number of provinces have launched extensive campaigns to educate young workers about their right to safe work. However, as one young worker noted, the solution to the

problem is not just the education of young workers; extensive outreach to employers is also required as well as more rigorous enforcement of occupational health and safety standards.<sup>xxvii</sup>

**Text Box:**

“Last year a friend of mine, Jen was threatened on the job. She worked at a grocery store as a cashier and was only sixteen years old. During one of her regular shifts, about eight o’clock at night a man came in, of course to buy some food. He came to her cash isle, put his hand in his pocket and told Jen that he had a gun and would shoot her if she did not give him the money from the cash register. Jen of course obeyed and emptied all the money from the register into grocery bags and gave it to him. He then just walked out. The grocery store called the police, but the man was never found.

[...]

What made me really confused about this was that Jen had to return to work two days later. Yes she had people ask her if she was all right, but it didn’t make sense that she returned to work so early. Jen should have been given a few weeks off. If it were me, I would still be so freaked out. Who knows that this couldn’t happen again? The guy might have come back because he got away with it before. You would at least think there could have been more security around the store. I have always wondered why there was nothing done about Jen’s safety and why she was not given some help or someone to talk to after this horrifying experience.<sup>xxviii</sup>

Questions :

- What can be done to address the poor and dangerous working conditions that young workers face?
- What are the best ways of preventing accident and workers’ injuries?
- What would need to change in order to improve the work world for youth?

## **Visible-Minority Immigrants/Refugees**

Samuel and Kuc are also members of another group that often experiences a high degree of vulnerability in the workforce – immigrants and refugees from visible-minority groups. A number of studies have shown that, over the 1980’s and 1990’s, workers of colour who are immigrants have faced increasing difficulties closing the employment gap with native-born Canadians compared to earlier generations of immigrants.<sup>xxix</sup>

In 1996, average income from employment for immigrants coming to Canada between 1986 and 1990 was 18% lower than the earnings of non-immigrants. For those arriving after 1990, earnings were 36% lower.<sup>xxx</sup> The poverty rate among recent immigrants and refugees was more than twice the rate among Canadian-born residents.<sup>xxxi</sup>

According to Statistics Canada, in 2000, new immigrants had a low- income rate of 35%, nearly twice the average rate for metropolitan areas overall.<sup>xxxii</sup>

Full-time, full-year visible minority workers earned 14% less on average than all other workers.<sup>xxxiii</sup> Visible minority immigrants to Canada in the 1990's earned much less, averaging just over \$15,000.<sup>xxxiv</sup>

One of the issues is likely the language barrier. Another issue may be discrimination on the basis of ethnic origin and/or race. Human rights statutes provide prohibitions against discrimination generally, whereas pay and employment equity legislation provide specific rights and obligations only with respect to employment. Federal and provincial human rights legislation require workers like Samuel and Kuc to lay complaints against their employers when they believe they have been victims of discrimination. This kind of complaints-driven system has been criticized for its ineffectiveness in eliminating discrimination. The obstacles to making complaints are particularly felt by workers in Samuel and Kuc's position.

Employment equity was designed to address the issue of systemic discrimination and the representation of four historically disadvantaged groups in the workforce: aboriginal people, women, people with disabilities and members of visible minority groups. It requires the employer to identify and eliminate employment barriers and that the employer take steps to ensure the adequate representation of qualified members of the designated groups in the workforce. The only employment equity statute in Canada is in the federal jurisdiction and it applies only to Crown corporations and federally-regulated firms employing 100 people or more. Therefore, the Act would not apply to either of the companies for which the Yaul brothers work.

## Text Box:

**“From a broad, socio-economic perspective, there can be no doubt that it is better for the Canadian economy as a whole to help people off social security and into gainful employment ... Both experience and research suggest that a diverse workforce in which qualified individuals with various experience, skills and cultural backgrounds interact, often outperforms a homogenous workforce.” (Canadian Bankers’ Association)<sup>xxxv</sup>**

## Questions :

- Are the programs, laws, policies are currently in place to assist immigrants and refugees to train for and obtain decent work?
- What changes might be needed?

## ***Disabled Workers***

**Disabled workers are often marginalized. During the working-age years 15-64, persons with disabilities are almost twice as likely to experience low income as others (26.6% versus 13.9%).<sup>xxxvi</sup> Employment is also a great challenge, with employment rates ranging from 45.7% for youth with disabilities to 51.2% among core-working ages, to 27.3% among older workers with disabilities. These rates are all substantially lower than those of persons without disabilities.<sup>xxxvii</sup>**

**Once they have secured employment, people with disabilities are often faced with an uphill battle to ensure that the appropriate accommodations are made to allow them to work properly. While all human rights statutes require that employers take steps to provide reasonable accommodate to disabled workers, the reality is that there is still a long way to go to ensuring that workplaces are truly accessible to all disabled workers.**

## Questions :

- Are there adequate supports now to help people with disabilities train for, find and remain in decent employment?
- Could we imagine on-going training linked with employment opportunities?

## **Poorly Educated Workers**

**Samuel and Kuc are justified in their determination to further their education and gain specific skills in an area like computer technology. It is 3 times more likely that someone with high school education or less will be low paid than someone who has a university**



education.<sup>xxxviii</sup> The problem for Samuel and Kuc will be to obtain the education and training and then make the transition to work in this area. They will need a very high level of social support if they are to move out of the low-income trap.

According to a 2004 study completed by Statistics Canada, less than one-half of Canadian workers who had a low-wage job in 1996 had managed to climb out of it by 2001.<sup>xxxix</sup> One of the deciding factors in escaping the low-income trap is education. Those with a university degree are almost twice as likely to move up (69%) as those with high school or less (38%).<sup>xl</sup>

However, policy shifts and the withdrawal of funding for skills-development programs throughout the 90's have resulted in a significant decrease in the support available to low-wage workers like Kuc and Samuel who wish to train for better paying work. There have been similar reductions in language-training opportunities for people who do not speak one of the two official languages. Most training and support for education is tied to unemployment. Some bursaries are available for post-secondary training, but most people are required to take out loans in order to undertake training of the kind that Samuel and Kuc are wanting. In an uncertain labour market, the prospect of repaying a substantial loan for education is daunting for many.

Questions :

- What can be done to assist poorly educated workers to train for decent work?
- How are schools, colleges and universities responding to the needs of immigrant and refugees?

## **Non-Unionized Workers**

Samuel's suspicion that the workers in the store would be better off if they were unionized is born out by research. Unionized jobs are associated with higher wages, better benefit coverage and more career mobility.<sup>xlii</sup> Unionized employees are typically better protected from employer-reprisal when they complain about violations of their rights on the job.

Research demonstrates that only 20% of unionized workers are low-paid relative to 38% of those who are not unionized.<sup>xliii</sup> Furthermore, those workers who were unionized in 1996 were also significantly more likely to move up than their non-unionized counterparts (62% relative to 41%). Those workers who changed union status from being non-unionized in 1996 to unionized in 2001, had a 64% probability of moving out of low-paid work.<sup>xliiii</sup>

**Workers in unionized jobs are almost twice as likely as their non-unionized counterparts to be covered by extended benefits packages.<sup>xliv</sup>**

**Yet, in spite of the apparent advantages of unionization, Canada and the United States have experienced declining levels of unionization in the past twenty years. There are many reasons for this phenomenon including: the decline in the manufacturing sector (where trade unionism has been traditionally strong) and the concomitant expansion of the service sector (where unionization is low); changes in attitudes towards unions - some employers complain that unions elevate the cost of labour and make the decision-making process more cumbersome and inefficient while some workers complain that unions do not do enough for them in return for the dues they demand; new personnel management techniques; and increased global competition. There have also been accounts of the anti-union activities of certain retail giants and fast food companies that are of a more aggressive nature than that experienced by Samuel Yaul in our case study.**

Questions :

- Are unions or some kind of employee participation scheme essential to the improvement of the work conditions of vulnerable workers like Samuel and Kuc Yaul?
- If so, what needs to change? What are the implications of such changes?

## **Summary**

**Samuel and Kuc Yaul are examples of workers who experience multiple dimensions of vulnerability. As young workers, they face a higher than average likelihood of poor and/or dangerous work conditions, low wages and abusive and discriminatory treatment on the job. The likelihood of these unfavourable conditions is further increased by their status as refugees and as members of a visible minority group. When factors such as the language barrier, their low educational achievements and the lack of unionization in the sectors where they work are added, the Yaul brothers come out in a very weak position in the labour market.**

## CHAPTER FOUR – STIGMATIZED WORK

Those whose work is seen to be of minimal moral or social value are often extremely vulnerable to poor work conditions. For example, sex and skin trade workers (prostitutes and exotic dancers) often experience a high degree of exploitation and violence in their work. However, because of the legal framework surrounding the work and the attitudes of society toward sex and skin trade work, many of these workers are powerless to do anything about the conditions under which they work.

**The reason that we have decided to look at this relatively small category of workers is not only because they would appear to be among the most vulnerable groups of workers in that their work often puts their well-being at extreme risk and therefore, their situation cries out for attention, but also because the choice to engage in this form of work raises fundamental questions about the adequacy of the alternatives that exist in the low-wage economy. Although the choice to become an exotic dancer or to engage in any other kind of stigmatized work may be influenced by the worker's limited options in the labour market, it is by no means determined by these conditions. Some individuals choose to work as strippers because they like the work. Still others choose it because it is the best option among a relatively limited array of work options.**

In the following case study, we examine one woman's search for self-sufficiency and economic security through work as an exotic dancer.

Safa Peshtar – Exotic Dancer

**Safa is a 26 year-old single mother of two children. Safa has a severe learning disability that made it an enormous struggle for her to complete her education. Safa dropped out of school after Grade 10 and moved to Winnipeg where she worked at a series of waitressing, sales and cleaning jobs. She married Roger when she was 20 and had two children with him. Safa was very much looking forward to staying at home with the two children until they were in school. However, when she and Roger split up, Safa had to rethink her plan. After a month of unsuccessful efforts to find better work, Safa returned to her job as a waitress at a local restaurant and bar. There, she earned minimum wage, but even with tips, the money was not enough to support herself and her two children.**

Just as she was considering turning to social assistance, Safa met up with an old high school friend named Pascale. Pascale and her two-year old daughter needed a place to live and so, to reduce the cost of her rent, Safa agreed to let Pascale and her daughter share her townhouse. Pascale worked as an exotic dancer at an upscale club in Winnipeg. She offered to help Safa to get started dancing at the same club. Although initially reluctant to do a job that she was sure her parents would disapprove of, Safa was later surprised to find that the work was not so bad. In fact, she really enjoyed some aspects of the work and the extra money really helped to make ends meet. Safa and Pascale worked out an arrangement so that one was always available to be with the three children while the other was working at the club. The two women were pleased with the arrangement and trusted each other's ability to deal with their children.

Then, one day Safa was injured while dancing on the stage at the club. She slipped on some water and broke her leg. It was a serious break requiring surgery and a long period of recovery. That was when the wheels fell off the smoothly running operation that Safa and Pascale had created. Safa was no longer able to dance and required a lot of help to look after the children, take care of the house and get to and from appointments with the lawyer, doctors, teachers, etc. She was in a great deal of pain and was short-tempered and irritable. She resented looking after Pascale's daughter while Pascale worked and found it extremely difficult to cope with all three children. Finally, Pascale and her daughter moved out and Safa was left on her own to try to cope with the two children, her health problems and the added financial stresses created by not having a roommate or partner. As she struggled, the words of the emergency room nurse dragged her down even further: "Well, if you hadn't decided to go prancing around on a wet stage with only your high heels on you wouldn't be in this kind of pain would you?"

Discussion

## **The Challenges of Single Parenthood and Low Wage Work**

Safa, like many single mothers, has found the challenge of caring for and supporting a family while working in low-wage jobs to be difficult to manage with the resources at their disposal. Many single mothers have difficulty finding stable jobs and once they do find a job, they are exposed to unsuitable work conditions. Low wages, long commutes, and lack of benefits characterize the jobs they often hold. In addition, finding adequate child care for work hours that do not fit the 9-5 model and may involve split shifts, on-call work, night work and over-time is difficult. The absence of a second earner poses a severe

problem in those families and the single mother is often forced to work shorter hours or to work close to schools

Safa Peshtar's case illustrates the challenges that many women in her circumstances face. As a single parent with a disability, Safa's work options were limited. Even with tips to top up her minimum-wage salary, she did not make enough money as a waitress to provide for her family.

As has been noted, not all people who choose to work as exotic dancers do so under such constrained conditions. For many dancers, the choice to become an exotic dancer is not as heavily influenced by economic factors as it may have been for Safa and others like her. However, given that limited employment options confine many women to job choices that they might not have otherwise made, it is worthwhile considering whether there are adequate supports and programs in place to assist women like Safa to train for other career options. Certainly, all workers who depend upon their physical strength and youthfulness to earn their livelihood are in need of such programs at some point in their careers.

#### *Training and Skill Development Programs to move out of Low-Wage Work*

It has been observed that as government-funded programs changed or disappeared in the market-driven economy of the 90's, training options for women also virtually disappeared.<sup>xlv</sup> As a result, large numbers of low-income women now lack the assistance and support needed to train for better paying work. There is a wealth of knowledge and experience about what is needed to break through the low-wage barrier. However, putting this knowledge and experience back into practise would require the dedication of significant financial resources.

### **The Work Conditions of Exotic Dancers**

Many exotic dancers are routinely exposed to a variety of work conditions that would seem, by most standards, to be barely tolerable. In addition to the various fees that dancers pay, many clubs issue fines. Dancers have been known to be fined (usually \$10-\$20 per "offence) for just about everything, including loitering in the change room, leaving the club during the shift, bringing in outside food, using drugs, and refusing to perform a "super-special" or a free dance. There would appear to be no limits to the reasons for imposing a fine. If the fine is not paid, the dancer is not allowed to work in that club.<sup>xlvi</sup>

The work conditions and the nature of the occupation are such that dancers are exposed to numerous health and safety hazards. The unsanitary conditions of the change rooms, washrooms, and other areas of the club can lead to a variety of health problems including rashes, infections and diseases. One of the biggest concerns is the dance stage area. A dancer's common fear is falling while on stage as did Safa in our case study. There is other apparatus on the stage area that is often not properly secured nor hygienic.

With the advent of lap dancing in the 90's, interaction with clientele has become a more serious health and safety issue. Some argue that the nature of the physical contact that occurs during lap dances has led to a blurring of the boundaries between stripping and prostitution giving rise to assertions that this form of exotic dance is harmful and should be banned. Others, however, disagree with this position. Nonetheless, although lap dancing has been banned in a number of municipalities, it is still performed in numerous clubs.

Aside from the specific issue of lap dancing, dancers endure constant sexual and racial harassment in their work environment. Most dancers, due to the nature of their work, expect some of this harassment. The introduction of table and lap dancing has meant that dancers are in close proximity to patrons and this has led to increased physical contact by patrons. Patrons will pinch, poke and grab dancers. Dancers will attempt to impose limits on what is and is not acceptable for themselves. However, their capacity to effectively decline propositions or limit physical contact without alienating their customers is sometimes limited.<sup>xlvii</sup> In addition, dancers are often harassed and propositioned by club staff members and owners.

Possibly for moral reasons, the distaste for exotic dancing has likely contributed to an unwillingness to address the many labour protection issues illustrated by cases such as that of Safa Peshtar. It may be that we are worried that by making exotic dancing a safer occupation through appropriate regulation and enforcement, we are condoning it and making it a more attractive occupational option. Would we be participating then, in the oppression of women? On the other hand, is it an effective mechanism to constrain choice by ensuring that the work remains unsafe and exploitative? If exotic dance work is going to be done regardless of whether one is in agreement with it or not, is it not the more just response to address the labour issues?

The question then is this: why not treat exotic dancing as a form of work like any other and provide dancers with the same protections as other workers? Such a policy change would shift the emphasis to regulating the exotic dance industry, rather than the dancers themselves using employment standards, human rights, occupational health and safety and workers compensation laws to help improve conditions and protect rights.

### **Exotic Dancers: Employees or Independent Contractors?**

Exotic dancing, as an occupation, has undergone some of the same changes over the last two decades that have been experienced in other occupational areas. During the second half of the 1970's, strippers were employees of a particular establishment who, for remuneration of between \$300.00 and \$600.00 per week, were required to provide five strip-tease sets lasting four songs each during a six-hour shift.<sup>xlviii</sup> However the recession of the 90's, with its high rates of unemployment, had a destabilizing effect on employment relations in general. Many women, especially those whose professional qualifications were limited, found themselves employed in the service sector, working in non-standard labour arrangements - part-time, temporary or seasonal jobs, with low salaries, limited job security and in poor working conditions. Exotic dance workers were no exception. Since the 1970's, many workers have moved from being salaried performance artists with a guaranteed income to freelance dancers whose only source of income is derived from performing for individual customers.<sup>xlix</sup>

According to some, the vast majority of dancers in the erotic dance industry now work as freelancers. Freelancers enter into verbal agreements with the club to pay a bar fee of between ten and twenty dollars, to abide by house rules, and to stay in the bar for a minimum of four hours and to perform between one and five three-song sets on-stage. Clubs in some areas also have policies requiring dancers to pay the bar a portion of their earnings from private dancing. A club may also oblige dancers to participate in occasional special events, wet T-Shirt contests or beauty pageants.

Most club owners and managers characterize exotic dancers as independent contractors and not employees. If taken at face value, this means that exotic dancers have the same kinds of limitations with respect to access to labour protections, rights and benefits that other self-employed workers face. Furthermore, by classifying dancers as independent contractors, club owners avoid numerous expenses such as CPP and EI contributions, workers' compensation premiums, and various other payroll taxes and services. This means that Safa Peshtar, in our case study, would have difficulty accessing benefits under

workers' compensation legislation in Manitoba to provide her with some assistance and income support during her recovery from her accident unless she had previously paid full premiums as independent contractor. However, as in the case of some self-employed workers, there may be good reason to challenge the classification of all exotic dancers as independent contractors.

In fact, many freelance dancers could meet the test for employee status because of the high degree of control that owners have. Nevertheless, there is a great deal of uncertainty and an exotic dancer, like any other worker with minimal bargaining power, risks not only losing her status as a dancer at a particular club if she complains about her work conditions, she also risks being labeled a troublemaker and thus, being banned from other clubs as well. Moreover, the stigmatized nature of the work that exotic dancers do is such that many would be unwilling to risk public exposure by complaining about their work conditions.

Strip clubs are, in fact, highly regulated work sites. However, the regulations often have the effect of increasing the vulnerability of the workers. Dancers, newly designated as "exotic entertainment parlour attendants", can face fines or even imprisonment for not purchasing the required license. Zoning regulations often intensify the competition among workers and further stigmatize the work they do, preventing them from challenging the work conditions that are imposed.<sup>1</sup>

Questions to Consider:

- Should exotic dancer workers receive the same kinds of labour protections, rights and benefits to which other employees are entitled?
- Are there adequate supports for dancers wanting to leave the occupation and find other work that pays a living wage?
- What can be done to improve the work conditions of exotic dancers?

## Summary

For some individuals, exotic dancing may be the best option among an array of relatively unattractive choices. However, like most occupations, there are those who have a wider range of options but have chosen dancing because it is work that appeals to them and matches their skill set. They find the work to be rewarding and interesting. Still others find it oppressive and dangerous.



Generally speaking however, exotic dancers put up with very difficult work conditions. They are subjected to a wide range of occupational health and safety risks. They endure violations of employment and human rights standards. The argument could be made that many, if not most exotic dancers should have access to the full range of labour and employment protections that are available to other employees. However, in reality the uncertainty of dancers' employment status, their lack of power in the workplace and the stigmatized nature of their labour means that real access to these protections and benefits is almost nonexistent.

## PART II

### Society, Law and Work

#### Chapter 5 – The Evolution of the Regulatory Framework

The four case studies illustrate some of the ways in which the current regulatory framework is failing to provide adequate protection and support to four categories of workers: self-employed workers, temporary agency workers, marginalized workers and stigmatized workers. It must be noted that not all workers in each category will experience a high degree of vulnerability and insecurity in their work. However, in our view, based on the research that we have reviewed, there are a significant number of workers in each category who are lacking important rights, protections and benefits.

There are a number of ways in which the law and social policy has failed many of the workers in these categories. Among these are the following: (1) the laws and social policy have not kept pace with the changing ways in which employers have structured the work relationship and with the changing reality of people's lives, with the result that there are now large numbers of workers who are inadequately compensated and who lack access to important rights, benefits and protections; (2) the existing laws and regulations are not enforced to the extent necessary to provide workers with adequate protections; (3) there are inadequate supports provided to workers (especially the low-skilled) to make transitions out of non-standard or low-paying work arrangements and to train for better work; and (4) existing laws and policies fail to adequately accommodate unpaid work obligations.

**Why has this happened? Why is the law failing to provide adequate support and protection to vulnerable workers? Evidence of the kind provided in this paper suggesting that the law is not responding adequately to the needs of a significant number of Canadians prompts us to examine the reasons for this failure. In this chapter we trace the developments in the regulatory framework that have resulted in an overall trend toward**

the deregulation of the labour market. This trend toward deregulation may be a significant factor in the weakening of protection and support for vulnerable workers. The chapter examines some of the norms supporting this trend toward deregulation and poses some questions about these norms.

*The Evolution of Labour and Employment Regulation: From Active Regulation to Passive Deregulation*

In order to understand how it is that certain categories of workers have found themselves lacking adequate legal protections, we need to put the regulation of work in historical context. After the Second World War until the mid-1970's, the scope of labour-market regulation expanded with the growth of the economy.<sup>ii</sup> The growth of unions and collective bargaining as well as the growth of well-paying public sector work all helped to increase the incomes and economic security of millions of workers. Legislation was passed extending the gains made by unions in enhancing the well-being of workers to unrepresented workers. It has been noted that in some respects, the laws and policies of this period were progressive and egalitarian, improving the economic security and equality of some groups of workers – primarily those engaged in standard employment. Legislation was passed requiring the payment of overtime and a minimum wage, establishing no-fault compensation for work accidents and regulating workplace health and safety conditions among numerous other measures designed to protect workers.

However, the economic and political climate changed in the mid-70's. The scale of business profits, which had financed the demands of workers and communities in the post-war period, diminished. Shrinking profits, increased competition from foreign markets with lower costs and the demands of a more confident and empowered workforce for better treatment on the job prompted business to look for ways to avoid the costs associated with the highly regulated standard employment contract by creating non-standard arrangements that would be less costly. Employers increasingly adopted strategies in the 1970's and 1980's that would enhance the flexibility they could have with respect to the management of their labour costs. Thus, there was an increase in the contracting out of jobs and reliance upon non-standard forms of work in order to shrink the core staff and avoid the costs associated with the standard employment contract.

The result of this period of turmoil and change was a general move towards the deregulation of the labour market. Many were of the view that the post-war regulatory structure had become an impediment to economic growth and prosperity in that it placed excessive demands on employers to compensate workers beyond competitive rates. The

concern was (and still is, to some extent) that if the costs of protecting and compensating workers were too high, employers would not be able to resist the pressure to relocate to countries where labour costs are lower. The flight of capital, or the threat of the flight of capital, placed pressure on the State to “deregulate” the labour market.

Some have suggested that the call for deregulation to enhance competitiveness takes both active and passive forms.<sup>lii</sup> The example provided of overt or active deregulation in Canada is the changes to employment standards legislation that were introduced in Ontario in 2000 which increase the number of hours employees are permitted to work per week and allow employers to ‘average’ overtime hours so that employees’ entitlement to overtime compensation is reduced.

Although overt attempts to diminish labour market protections attract more attention, it is suggested that passive labour market deregulation may have more of an impact on workers. Passive deregulation occurs when changes to labour and employment laws are not made to reflect changes in the economy and in the nature and organization of work. An example of this would be the failure to raise the minimum wage as the cost of living increases, with the result that its real value is eroded over time. Another example would be the failure to change work laws to reflect the growing numbers of workers in non-standard employment arrangements who lack protections. Finally, deregulation may also be occurring through lack of adequate enforcement. This is done by restricting the resources provided for enforcement of existing labour and employment legislation and regulations.

Thus, it may be that the socio-economic changes that have occurred over the past three or four decades have resulted in a shift in the attitudes and values regarding the appropriate role of labour and employment regulation. The traditional view of labour and employment policy and regulation involved altering the balance of power between workers and employers, redistributing risk and resources among workers and establishing the basic terms and conditions of work. Labour and employment laws were seen as a way of ensuring that the employment contract was fair and non-exploitative. As concern over the profitability and competitiveness of business in the global economy has taken a more dominant role in shaping labour and employment policy and regulation, the functions that regulation previously served are being questioned and even displaced. As a result, it may be that there has been a shift from the protective and supportive role of labour and

employment regulation to its role in facilitating the efficient use of human capital. Furthermore, it could be that the individuals in our four case studies are representative of groups of workers who are suffering the consequences of this shift in attitude.

The shift in the attitudes regarding the appropriate role of labour and employment regulation is structured around certain norms and assumptions which merit careful examination. We will deal with a number of them in turn.

*1: The Efficiency Costs of Protecting Workers*

One of the key norms supporting the move toward deregulation is that State intervention in the form of onerous and costly regulatory requirements to promote worker well-being diminishes competitiveness and efficiency. The ultimate result of a diminished capacity to compete in the international market will be job loss and lower standards of living for all.

It may be useful to examine some of the assumptions supporting this norm. First, one needs to analyze the claims that so-called equity measures – regulations designed to promote fairness and worker well-being – are costly and detract from Canada's competitiveness. Labour experts like Gunderson and Riddell state that there is little empirical evidence on the extent to which labour and employment regulations increase labour costs and the extent to which these costs are offset, at least in part, by the benefits gains in terms of increased productivity and decreased costs in the form of sick leave, etc.<sup>liii</sup> There is certainly considerable support for the notion that enhanced labour protections may, in fact, increase productivity and competitiveness because healthy, secure workers are generally absent less, are more motivated, make fewer mistakes, have fewer accidents and generally perform better. Furthermore, there are a number of studies that support the conclusion that investment is attracted to, not repelled, by adherence to core labour standards. More research is needed to determine the extent to which the costs associated with equity measures may be offset by productivity gains to determine the validity of this claim.

However, even if we accept the notion that protecting workers is costly, we need to also examine the assertion that the cost of providing protection to all vulnerable workers is simply too high for employers and/or the State to bear. The question that follows from this assertion is this: if the costs of protecting and supporting workers are too high for employers and the State to bear, what makes us think that the vulnerable workers themselves are any more capable than the State or employers to bear these costs?

Although they may be transformed into other kinds of costs, the costs of participating in the labour market do not disappear. For example, maintaining wage levels at a rate below the poverty line may well assist employers to keep labour costs to a minimum, but what are the costs to individual workers, their children and to society in general? To what extent do these costs count as part of the equation when the decision is made not to raise minimum wage? There is empirical evidence of the link between unemployment and poverty and stress, health deterioration, child abuse, spouse abuse, suicide, accidents and increased demands on social services. These costs should also be considered when considering the efficiency costs of regulating the labour market.

Questions to Consider:

*2. The role of the market in determining the basic terms and conditions of work for workers*

The traditional view of of labour and employment legislation is that State intervention is necessary to compel employers to take measures that promote fairness in the workplace and worker well-being. According to this view, in an unregulated free market, employers will not necessarily be motivated to ensure that all workers are assured of minimum standards of work.

The notion that has gained ascendancy of late is that the market should be given more latitude to set the basic terms and conditions of work for some workers. It is contended that market forces often do promote worker protection and well-being. In order to attract and maintain high quality labour, it is necessary to offer workplaces that are safe, healthy and fair. Hence, certain groups of workers such as self-employed workers are not covered by legislation governing the basic terms and conditions of work. The assumption is that market forces will work effectively to set the appropriate terms and conditions of work for these workers. Is this always the case?

One of the arguments in favour of not increasing minimum wage is that by elevating the wage above the market rate, we are inhibiting employers' ability to compete in the international market and thereby endangering the jobs of the very workers we are seeking to protect. Raising minimum wage has the effect of raising wages for low-wage workers above the market rate. This has a negative effect on competitiveness, it is argued.

Questions to consider:

Should we allow the market to determine the basic terms and conditions of work for all workers, or only some and on what basis should we make this decision?

### *3. The Role of Employee Associations and Unions*

**Related to the notion that less restraint should be placed on the market to set the terms and conditions of work is the idea that third party intermediaries such as unions and employee associations create additional deficiencies that are ultimately harmful to the economy and to workers themselves. Some are of the view that unions and enhanced employment protections are not needed as employers and individual employees can work out, in a non-confrontational way, a mutually advantageous work arrangement without the need of any third-party intervention. However, this model of industrial peace may be based on certain assumptions about the balance of power between employers and workers and about the compatibility of interests which may not correspond with reality in every case.**

**As we saw in the case studies, some vulnerable workers lack the power and experience to be able to assert their needs and interests in the presence of a powerful employer. If the employer is not willing to accommodate their interests and needs regarding important issues such as wages and workplace safety, vulnerable workers may have no recourse. The enforcement and compliance mechanisms for labour and employment standards may be inadequate to provide effective protection for these workers.**

Questions to consider:

What are the appropriate roles for unions and employee associations to play in the protection of workers' interests in the new economy?

### *4: Labour Market Flexibility*

**Although countries have implemented it differently, the “flexibilization” of the workforce has arguably become the dominant trend in labour market regulation. Employers have found that, in the global economy, they require increased room to manoeuvre in managing their workforce. They need to be able to hire and fire employees as needed, to limit the duration of their contracts to suit their production schedules and to keep labour costs as low as possible by not paying into employee insurance programs and providing benefits. In addition, employers need employees with increased skill levels, who are willing to take**

**responsibility and initiative and who will cooperate with the employer as partners in production. The “flexibilization” of the workforce means that economic security for employees is expected to come not from long term attachment to particular firms or employers, but from the possession, refinement and successful marketing of skills by the individual worker in a constantly shifting labour market.**

Flexible work arrangements are said to be of great benefit to workers also. It allows them to balance work and childcare, elder care, training and other life commitments. The assumption is that workers voluntarily choose flexibility and autonomy over security and subordination and that they do, in fact, experience real flexibility and autonomy. As the case studies point out, this is not always the case.

While there are workers, typically those who are well-educated and highly skilled, who are in a position to take advantage of the deregulation of the labour market and increased flexibility of work arrangements, there is evidence that a significant number of workers are not faring well in the competitive labour market. The disadvantaged workers are not well-positioned to negotiate contracts on an individual basis. This intensifies the differences in working conditions between the relatively powerful elite worker and the disadvantaged worker.

**In a study conducted by the Contingent Workers’ Project, the author of the Report stated:**

**Much is made about non-standard workers, particularly women, having more flexible time to be with their families. This study suggests that where employment flexibility actually assists an employee with their family responsibilities, it is likely to be accompanied by fairly high earnings. The study participants were dealing with a very different reality – unpredictability and a constant process of re-scheduling rather than flexibility. Forty-three percent didn’t know their schedules in advance, 45% worked split shifts; and temporary workers reported being constantly on call. This has a profound impact on workers’ abilities to maintain healthy friendships, intimate and familiar relationships, and stable child or elder care arrangements. They find it difficult to support their children at school, get involved in any community involvement, or to participate in a regular course of study.<sup>liv</sup>**

**The respondents in the study appreciated some aspects of contingent work: they had some form of work, some were able to keep their skills updated, and some liked not having to get completely involved in workplace dynamics. However, many of these**



**workers did not experience flexibility in any real sense.<sup>iv</sup>**

**Similarly, although part-time work may provide flexibility for some workers who have an alternate source of income whether through their partner or otherwise, there is evidence that a large number of part-time workers are not seeking flexibility. Rather, they are taking whatever work they can find and are hoping to cobble together a full-time work week based on multiple jobs. That is, they are involuntary part-time workers; they would like full-time work but cannot find it.**

**For some self-employed workers, the push toward autonomy and flexibility has been very much a double-edged sword. There is evidence that many workers, initially welcome the idea of increased independence, autonomy and flexibility that comes with a non-standard work arrangement such as self-employment, only to find that the financial pressure of saving for retirement, paying for dental care, vision care and other health-related care to one's family and living with the insecurity of contract work seriously undermines the value of the flexibility and autonomy of non-standard work.**

**Thus, it becomes clear that not all workers are in a position to take advantage of the increased flexibility and autonomy that comes from the new work arrangements. Workers that are in an advantageous position in that they are well-paid and have other family and community supports and resources to rely on may be in a position to benefit from these arrangements. Others may need additional supports to be able to benefit from flexible work arrangements.**

##### *5. Fiscal austerity and reductions in the size of government*

**The pressure exerted by business to deregulate and to reduce labour costs in order to enhance competitiveness has been paralleled by a movement in countries like Canada to reduce the size of the public service and public spending in general. Concerns about the**

deficit, tax rates and government inefficiency and waste have prompted all levels of government to drastically reduce budgets, downsize the public service and reduce the services offered to the public. Included in these reductions are the budgets to ensure compliance and enforcement of labour and employment-related laws and regulations. Also, included are measures that would enhance or restructure existing protections to include a broader range of workers. As a result, there is a certain reluctance on the part of governments to consider any proposal that would increase public spending and government infrastructure to better protect vulnerable workers.

As has been noted by others, financial prudence and caution have good rationale and impose strong requirements. The cost of providing public goods, protecting fundamental rights and protecting vulnerable workers can be quite high and there is good reason to carefully examine the wisdom of state expenditures in that regard. However, people like Nobel prize winner Amartya Sen, has stated, financial conservatism – important as it is --- cannot stand on its own in solitary isolation as a rationale for either action or inaction. It must fit into the broad framework of social objectives that a country has set for itself.<sup>lvi</sup> One of the questions then is to what extent have the needs of Canada's most vulnerable workers taken a back seat to the goal of debt reduction and public service downsizing.

Government fiscal austerity may have disproportionately negative consequences for some of the most vulnerable Canadian workers. To the extent that fiscal austerity or the privatization of public services affects employment in the public sector, it is likely to reduce access to better protected and remunerated forms of employment. This has an impact on women, immigrants, people from visible minority groups and others who have difficulty accessing jobs in the private sector. Unless some compensatory action is taken, then no matter how beneficial this reduction in the size of the public sector may seem to some, it will have ramifications for vulnerable workers and for society as a whole. Will the cost of dealing with those issues exceed the savings generated by reducing the size of government? These are questions worth considering.

## *6. Unpaid Work*

The current regulatory model is structured around the assumption that workers can either afford to hire someone else to do the unpaid work involved in home care, child care, elder care, etc. or that someone else in the home provides that care for free. As we have seen in the case studies, this assumption is clearly not borne out by the evidence. In fact, large numbers of Canadian workers are struggling to combine work in the paid labour force with

**unpaid work obligations or are working in non-standard work arrangements in order to accommodate their unpaid obligations. The result for many is crushing work loads, work-life imbalances that result in serious health consequences and work arrangements that are far less than satisfactory.**

**Non-marketable forms of work are, in fact, those most crucial to humankind.<sup>lvii</sup> It is this unremunerated work that bears the real burden of economic life and markets. Disregarding these close ties between work inside and outside the market is tantamount to disregarding both the circumstances of peoples' lives and those of the market, and setting a course for disaster. Treating labour as an infinitely flexible resource compromises not only workers' living conditions but also the conditions under which their children are brought up.**

Questions to consider: Is a regulatory model that fails to take unpaid work obligations into account sustainable?

## **Summary**

**In this chapter we have traced the evolution of the current labour and employment regulatory framework. We have seen how there may well have been a shift in the attitudes and beliefs about the appropriate role of the State in regulating work. The shift has been away from the regulatory intervention of the State to promote worker protection and toward greater emphasis on use of market forces to regulate the use of labour. While deregulation has had a number of positive consequences for employers and highly qualified workers, it has left gaps and deficiencies in the regulatory structure that seem to have worked to the serious disadvantage of many workers.**

**It may be that we have arrived at a point in the evolution of labour and employment regulation where it is appropriate to ask some hard questions about these results such as the following:**

Are the gains that have been made as a result of the deregulatory shift worth the costs incurred by vulnerable workers, their families and ultimately society?

Is this shift consonant with the basic values of most Canadians?

Does the regulatory structure as it now stands, appropriately reflect core Canadian values?

Are we willing to allow the traditional functions of labour and employment law and policy to be displaced by the economic drive towards deregulation?

**To answer these questions we must articulate some of our basic values and beliefs about the appropriate role of the State in regulating the labour market. In other words, we must ask ourselves: what are society's interests in regulating work? What are the core values that we are trying to promote and protect? These are the questions that we take up in the next section of this document.**

**All laws have a normative basis. That is, they are supported by or reflect a set of values and beliefs about human nature, social living and the goals of life. Laws will have more or less popular support depending upon the extent to which they reflect the values and beliefs of most people in society. In a democratic society, law and policy should reflect, to the greatest extent possible, the norms and values of the whole society and not a particular subset of people within that society.**

One of the ways in which Canadians influence the shape of the laws is by electing politicians that they believe share their values and beliefs. But, there are other institutions and vehicles within civil society that provide people with an opportunity to express their views about the kinds of values that they want to see reflected in their laws. The Law Commission of Canada was designed to provide people with just such an opportunity. It is on the basis of this mandate to engage Canadians in the renewal of the law, that we are asking Canadians to indicate the core values that they would like to see reflected in Canada's work laws. It is our view that any proposed changes to Canada's work laws should be based on the fundamental values and beliefs of Canadians.

To stimulate a discussion on the normative basis of work laws and policy, we draw on the work of the Canadian Policy Research Networks ("CPRN"). In the fall of 2002, Canadian Policy Research Networks invited a representative sample of Canadians to express the core values that they want to see reflected in the laws and social institutions of this country.<sup>lviii</sup> We think that the results of this research serve as a useful point of comparison for the readers of this discussion paper. We invite you to consider whether and to what extent you see yourself and your community of interest reflected in these values. Are there other core values that are not expressed here that you think should be reflected in Canada's work laws? What weight would you put on the various values expressed in this section?

## *A Vision of Canada in the 21<sup>st</sup> Century*

Those who participated in the Citizens' Dialogue expressed an overall vision of a productive and humane Canada, one that is committed to promoting individual and shared responsibility for personal well-being and productivity. The kind of Canada that these Canadians wanted combines market and social goals in a way that does not make concerns about social justice and equality subservient to, or of lesser priority than market interests. The participants expressed a general belief in the power of the market to serve public as well as private interests and therefore, they supported measures to improve the efficiency and strength of the market. However, they insisted that improving Canada's position in the global economy should not be at the expense of social justice and equality.

Is this vision of Canada in the 21<sup>st</sup> century consistent with your own vision? Would you put more emphasis on other values than the ones that are expressed in this vision statement?

Do Canada's laws and policies about work reflect this vision of Canada? If not, what changes would be needed?

There are no straightforward answers to these questions. There are those who believe that in order to fulfill Canada's commitment to justice and equality, fundamental changes are needed to better protect and support workers such as those in our four case studies. Still others believe that any changes that would result in a further restriction of employers' ability to manage their workforce as they see fit would undermine the competitiveness and productivity of the Canadian economy and ultimately harm the very workers they were designed to benefit.

The goal of the present chapter is to explore some aspects of this debate in the context of a discussion about core values. Clearly, as a society we have an interest in the productivity of our workers, the efficient use of human resources and the competitiveness of our nation. But, are the values of productivity, efficiency and competitiveness more important than our interest in the protection of vulnerable workers? Are these values really in conflict and if so, do trade-offs have to be made? How are conflicts of this nature resolved? Who gets to make the decisions about the trade-offs? What mechanisms are in place to allow for a full debate on these issues? These are some of the questions that we consider in the present chapter.

## **Productivity as a Means, not an End**

The Canadians in the CPRN study placed a high value on a strong market economy. They wanted Canada's laws and social policy to contribute to the productivity of the nation and to work with market forces instead of against them. They preferred to see more use of market instruments or other alternatives to command and control regulation in the regulation of corporate behaviour.

Arguably, labour and employment protections and benefits do, in fact, contribute to the productivity of the nation. Productive workers are great assets to the economy. They ensure the competitiveness of the industry and, very importantly, its continued revitalization. We are beginning to understand some of the characteristics of a "productive worker": he or she is well trained, generally interested in the work and not injured or sick. Many worker protection laws ensure that employers preserve the "productivity" of the worker. Preventing workplace injury serves to ensure that workers are not sacrificed by one careless employer. Samuel Yaul's back injury is not only a burden to Samuel and his family but also to his community and society in general. Samuel may be prevented from fully contributing as a worker because of this back injury. Similarly, helping the Yaul brothers to learn to read, write and speak one of the official languages is a service to Kuc's future employers. Finally, rewarding employees (financially and otherwise) is the best guarantee of their continued interest in the job. So in fact, many labour protections have an economic basis and aim at maintaining a productive workforce.

However, there are clearly circumstances in which measures to promote worker well-being would clearly seem to undermine the efficiency of the market. So, for example, laws that are designed to redistribute the rewards of work through mechanisms such as minimum wage or pay equity are often viewed as being in conflict with the promotion of market efficiency.

There is little debate that the power of market forces to ensure the well-being of workers is limited. An unregulated market will not necessarily promote the social and economic goals and interests of civil society. For example, there is ample evidence that market forces on their own will not eliminate discrimination against certain groups of people. State intervention of some sort may, therefore, be necessary to accomplish these goals. There may be ways of intervening in the market to achieve those social goals that are less disruptive and more compatible with market forces. However, it is inevitable that there will

be times when the values of efficiency and equity will be in conflict. What is to be done in cases of apparent conflict such as this?

There are those who advocate an integrated approach to the analysis of dilemmas like this.<sup>lix</sup> An integrated approach to the evaluation of the utility of a particular measure must include a consideration of the impact of the measure on all of the various actors and institutions in society. Thus, as we discussed earlier, what may appear to be an efficiency enhancing measure may, in fact, turn out to create greater “inefficiencies” when viewed in broader context. Workers who are unable to parent properly or who have health issues arising from their work conditions may create “inefficiencies” which undermine the cost-savings achieved by a particular measure.

Moreover, it has been suggested that the dilemma must be viewed in the context of the ultimate goal of our market economy. Many Canadians contend that the end goal of a strong and productive economy is not the generation of more wealth for its own sake. Rather, as Brian Langille has stated, the point of all our striving for productivity, increased domestic product per head and internationally competitive markets is to provide a means for expanding people’s capabilities to live longer, better and more meaningful lives.<sup>lx</sup> This integrated approach to the evaluation of labour and employment laws allows for the importance of market forces without viewing them in isolation or permitting them to take precedence over the ultimate goal of human flourishing for all.

Are the values expressed above consonant with your values and those of your community of interest?

When there are trade-offs that have to be made to accommodate the competing interests, goals and values of various groups, how should that be done?

Is it helpful to view productivity as a means to an end rather than as an end goal?

What are the implications of this approach?

## Social Justice and Equality

Equality, justice and fairness were considered by the participants in the Citizens’ Dialogue to be the bedrock of the Canadian community. The central requirement, as they saw it, was providing equal opportunity and levelling the playing field for people who have been born with or have experienced very limited advantages and opportunities. For this reason, the participants found working poverty so offensive, and insisted upon the importance of a “living wage”. They also believed that access to education and training should receive priority attention in part because it is a way to achieve greater equality of opportunity.



**However, as has been discussed, concerns about fiscal austerity have greatly reduced the training and skill development opportunities for a large number of disadvantaged workers.**

To what extent should the values of social justice and equality be reflected in Canada's labour and employment laws?

Do the current laws and policies adequately reflect and promote the values of social justice and equality?

## **Decent Work that Meets Basic Needs**

**Some Canadians believe that work should provide the ability to satisfy the basic needs for food, clothing, education, housing, health care and other fundamental requirements for security and dignity of the person. The participants in the Citizens' Dialogue articulated a vision of a "working society" where everyone who can work gets a chance to earn a living wage. They believed that when people are working full time they should be able to earn a "living wage" to support themselves and their families. Unfortunately, as the gaps and deficiencies in Canada's current laws and policies prevent all Canadians from having their basic needs fully met through paid work.**

**Related to the issue of the living wage is the belief that Canadians have a right to decent work conditions. Many Canadians believe that workers should be free from discriminatory treatment, harassment and unsafe work conditions and they should be paid for overtime, receive paid holidays and vacations, and other such minimum standards for decent work. Indeed, Canada is a member of the International Labour Organization, which has declared the right of workers to work in conditions of freedom, equity, safety and human dignity.**

**While many Canadians believe that workers should be entitled to minimum standards for decent work, there is disagreement over the core components of these minimum standards and the extent to which State and third party intervention is permitted to ensure that these conditions are present in all workplaces. As we have seen, there is also a prevailing view that the promise of financial reward may compensate some workers for not having these minimum conditions met as in the case of self-employed workers. Finally, there may be those who are concerned that improving the work conditions for workers such as exotic dancers might not be in the best interests of society.**

Should all workers be entitled to work that meets certain minimum standards and that provides the means to satisfy basic needs?

If not, who should be exempt?

On what basis should they be exempt from these protections and rights?

**Text-box:**

**There was general support in the group for a working society, a society that does encourage people to work, but also supports people to work, meaning that... you should be able to live off your income and that involves either raising minimum wages or giving extra support for people at the lower end of the income scale. We want to encourage work – we also want to make work something that gives people dignity and a living income.<sup>lxi</sup>**

## Promoting Self-Reliance and Personal Responsibility

**As we have seen, the current regulatory framework is based on the notion that individual workers have full responsibility for their own well-being. Any economic security they may have comes from being able to upgrade, market and sell their personal set of skills. To a certain extent, this is consonant with the general attitude of participants in the Citizens' Dialogue who felt that all but the most vulnerable members of society must take personal responsibility for their well-being and that any program designed to assist workers must encourage self-reliance and personal responsibility.**

**Alain Supiot has stated that there are three components to work: freedom, security and responsibility. All three are necessary. If we remove security, as we have done for many workers, then they are made entirely responsible for their own destiny.<sup>lxii</sup> The evidence suggests that there are significant numbers that are not able to do this. They lack the supports necessary to insure against risk and to achieve security in a highly competitive labour market. This is why Supiot suggests that new forms of security must be invented which are no longer offered in return for subordination to an employer (because increasing numbers of workers are not in an employer-employee relationship), but rather are provided to assist workers in making responsible decisions with respect to their careers.**

Do you think that the values of self-reliance and personal responsibility should be reflected in Canada's labour and employment laws?

Are those values adequately reflected and promoted in the current laws and policies?

What do you think about the view that workers need support in order to achieve self-reliance and to take responsibility for their careers?

## Support for those in Need

**Another value that was identified by participants in the Citizens Dialogue was compassion. They stated that governments, individuals, business and communities, all have a responsibility to assist those who are vulnerable or marginalized. They stated that everyone is entitled to a fair chance to become more self-reliant, and the most vulnerable should be supported, even if they cannot give back.**

**The participants suggested targeting support for the most vulnerable – poor children, youth, single parent families, the elderly and those with disabilities.**

Are these values and ideas consistent with your beliefs?

Are they adequately reflected in current laws and policies?

What would have to change in order to reflect your values on this issue?

### Promoting Healthy Families

**The participants valued social institutions and laws that promote healthy families. Healthy families require healthy parents who are not stretched too thin from trying to keep up with the demands of paid labour and unpaid work obligations. This may require policies and laws that are more “family-friendly”. This, in turn, likely involves more than merely granting requests for flex-time.**

Are these values and ideas consistent with your beliefs?

Are they adequately reflected in current laws and policies?

What would have to change in order to reflect your values on this issue?

### Summary

The participants in the Citizens’ Dialogue generally favoured approaches to labour market regulation that struck a balance between the market and other institutions in society that provide social support and protection to workers. Many Canadians would appear to be unwilling to sacrifice the well-being of vulnerable workers to the interests of business in enhancing its international competitiveness and productivity. There is a view that market efficiency and flexibility are important principles and indeed, disregarding these principles may well undermine the benefits of a measure designed to improve worker well-being.

However, according to some, efficiency and flexibility should not be the only guiding principles for labour market regulation. Rather, these values should be placed in the context of the overall goal of enhancing human capability to lead fulfilling lives. We are interested in hearing your thoughts and views on the values expressed here and on the implications for law reform.

Certainly, the values we hold and the priority we give to them have important ramifications for the way that policy and regulatory options are evaluated. For example, if human flourishing is the goal, then more attention may need to be paid to the costs to families, communities and other institutions in society of increased responsibility for the risks and costs associated with work in the labour force and unpaid work in the home and community. It may be that more support would be required to enable workers to assume this increased risk and responsibility in the workforce and in the unpaid labour force. It is with these thoughts and questions in mind that we turn now to an examination of some of the options that have been suggested to address the gaps and deficiencies in the current regulatory framework.

## Part III - Work Laws that Work Better

### Chapter 7 - Regulating and Enforcing

Even if labour market flexibility remains an important aspect of Canada's competitive strategy, there are a variety of ways to provide workers with the kinds of supports needed over the course of their working lives to ensure their economic security and well-being through labour market participation. It may be crucial in the new economy to revise and reform our labour market institutions. Indeed, a range of responses may be needed. As our case studies point out, the group of workers who might be called "vulnerable workers" is a diverse one with different sources of vulnerability and needs. As a result, any kind of policy or law reform response must be sensitive to these differences.

**In addition, the overall achievements of the market are deeply connected to other political and social arrangements and institutions within a given society.<sup>lxiii</sup> Our well-being is dependent upon the interaction between the various institutions or systems in our society such as the democratic system, the educational system, the media, the market, the public distribution system, to name but a few. We need to view them in an integrated perspective, to see what they can or cannot do in combination with each other in order to evaluate their effectiveness in achieving the end goal of human flourishing.**

What follows is a discussion of some of the policy options that might be considered. The intention is to stimulate a discussion about creative options for providing better, cost-effective support to vulnerable workers.

#### *Enhancing Compliance and Enforcement*

As is illustrated by the case of Samuel and Kuc Yaul, there are some workers who are entitled to statutory protections and benefits, but who are, in fact, unable to enjoy real access to these protections. These workers lack the power and the knowledge that is needed to ensure the enforcement of the regulations designed to protect them.

One of the first and least radical steps towards ensuring better protection of vulnerable workers might be to examine alternative practices of enforcement and compliance. There may be some merit to compliance mechanisms such as the audit system. Research is needed to determine what other methods of ensuring compliance work best in different contexts. It also seems likely that a very important aspect of the problem lies in the issue of worker bargaining power and representation. Unless this issue is also addressed, the effectiveness of any compliance mechanism may be diminished.

Finally, there is general support for the notion that more resources may need to be dedicated to enforcement and compliance. Put simply, there may be a need to consider placing more compliance and enforcement officers in the field.

**Questions:**

- **Are there ways in which enforcement of the laws regarding workers' rights, and protections could be enhanced?**
- **Is there a role for the media, educational and financial institutions in this area?**
- **Would third party representation, "watchdog" associations or ombudsmen be helpful?**
- 

*Providing Protection to Temporary Agency Workers*

Temporary agencies fill an important role in the labour market. The flexibility and efficiency associated with the use of this type of labour has important benefits for both employers and workers. Thus, it would not be helpful to prohibit use of temporary agencies as has been done in some countries. Rather, it might be possible to simply suggest changes that would address some of the problems created by this employment relationship that make temporary workers vulnerable.

Experts in the area suggest that many aspects of the current legislation could be improved:

- clarify the employment-related responsibilities of each party to the contract;<sup>lxiv</sup>
- create a comprehensive set of protections in areas such as occupational health and safety;<sup>lxv</sup>
- guarantee equal treatment with respect to wages and conditions of employment for workers engaged in substantially similar work whether they are permanent or temporary workers;<sup>lxvi</sup>
- introduce some form of precarity pay to take into account the insecure nature of temporary work;<sup>lxvii</sup>
- improve anti-discrimination laws and their enforcement to prevent false representations and other abuses committed against immigrant and migrant workers whose participation rate in this industry is high;<sup>lxviii</sup>
- make the buy-out fee (the practice whereby the agency charges the customer a fee to hire workers permanently) and other mechanisms to restrain firms from hiring temporary agencies illegal.<sup>lxix</sup>

Above all, most people urge recognition of the fact that although there may be clear benefits for employers to reduce their labour costs and to maintain a flexible labour force through the use of temporary workers, the costs do not disappear; they are, in many cases, simply transferred to the workers themselves. The question is whether these workers are able to bear the costs and if not, to what extent efforts should be made to support temporary agency workers so that the costs of participating in the labour force do not become so great that, like Catherine O'Donnell, they feel obliged to turn to the social security system for support.

**Questions:**

- **Are the suggested changes to the law desirable?**
- **What would be the implications of such changes?**
  
- **How can we better support the work of groups that help temporary workers?**



## Chapter 8 – Modernizing Labour Law Concepts

**Many of our labour concepts are outdated. They have not kept pace with new developments in society. Several suggestions can be made to modernize our labour law concepts, sometimes by changing them altogether, sometimes by simply ensuring that they continue to fulfill their objectives.**

### *The Living Wage - Providing Support to Low-paid Workers*

Many argue that the failure to increase the minimum wage has prevented the legislation from having its intended effect of ensuring that workers have their basic needs met.

Canada does have policies and programs that address the issue of work and poverty. All provinces have some form of minimum wage requirement that varies in its precise amount from province to province. Several provinces have a lower minimum wage requirement for youth in order to encourage the hiring of youth. Financial support is provided to workers after job loss (including, in some cases, retraining) to assist workers to re-enter the labour force as quickly as possible. These are but a few of the programs and regulations that are aimed at helping individuals to achieve economic security through work. The question is whether these programs and policies are achieving the objectives and if not, what improvements or alternatives should be considered.

There is considerable debate about the merits of increasing minimum wage as a means of providing better support to low-wage workers. On the one hand, some argue that the minimum wage is an important policy tool for addressing wage inequalities as well as an essential element in addressing poverty. By this reasoning, the minimum wage should be set at a rate where basic needs may be adequately met. On the other hand, there is an argument that a minimum wage is a “job killer” since a minimum wage that is set too high can artificially increase the cost of labour to the detriment of the very people it is designed to help.

Increases in the minimum wage would reduce the demand for workers (as firms find substitutes for the now more costly labour) and might also increase the supply of workers (as some would be encouraged to consider jobs that they would not previously have found attractive).

#### TEXTBOX

It is worth noting one particular program that was part of an experiment to reduce welfare dependency and to provide support to single mothers who, as we identified earlier, are one of the categories that are most susceptible to vulnerability in the workforce. The Canadian Self-Sufficiency project tested the benefits of providing in-work benefits to single parent welfare recipients. The project involved a long-term experimental program comparing a large group of single-parent welfare recipients to whom the in-work benefits were provided with another large group who continued to rely on welfare alone. Welfare recipients were offered the program rather than being compelled to participate in it. The short-term results have been very positive. The employment rates among those who took-up the program have been about double the rate of those who did not do so. Findings from the Canadian self-sufficiency experiment, and others, suggest that the likelihood of benefit dependence can be reduced by suitably designed income transfer programs, that provide employment incentives, though whether there are *long-term* positive effects on labour market outcomes for those targeted by the programs is not currently clear.<sup>lxx</sup>

Various policy instruments are available to raise the incomes of low-paid workers and to increase their self-sufficiency. They include:

- Tax measures targeted at low income workers (including child tax benefits);
- Wage supplements to workers;
- Better access for employed workers to training programs;
- Universal daycare programs;
- Increases in the minimum wage;
- Living wage programs.

#### Questions:

- **What are the merits of using minimum wage as tool for ensuring that workers are able to have their basic needs met through work?**
- **Are tax measures effective in providing support to vulnerable workers?**
- **Are there other instruments that are better suited to assisting low-wage workers?**

### *Expanding Labour Laws*

As the preceding discussion has shown, one of the central problems in the new economy is that workers are deprived of many important employment rights, benefits and protections because their work arrangements do not conform to the standard employment model. Many labour and employment experts suggest that access to labour and employment protections, benefits and rights should not be limited to employees alone. If the goal of improving the welfare of workers is accepted as a legitimate aspect of both economic development as well social justice, then expanding the scope of labour protection may be necessary.

Indeed it has been recommended that labour protections, social insurance legislation and non-wage benefits should be extended to a broader range of workers.<sup>lxxi</sup> A number of proposals have been made to expand the scope of labour laws. They are as follows:

- (a) develop a new, more inclusive legislative test to determine whether or not a worker is an employee or adopt a new, more extensive definition that extends coverage to all workers who are in “employee-like” work arrangements;
- (b) develop a completely new concept to replace the term “employee” that would determine the personal scope of employment and labour legislation. It might leave only independent entrepreneurs without coverage, ie. those with business assets and the opportunity to capture residual profits.
- (c) Extend all dimensions of labour regulation to all workers defined as persons economically dependent on the sale of their capacity to work, unless there is a compelling reason for not doing so.

The latter approach involves the most radical break from the use of the employment contract as the primary vehicle for the delivery of labour protection. If this approach were to be adopted, the challenge would be to develop alternative mechanisms or platforms for the delivery *and enforcement* of these rights in ways that would make them truly accessible to all people who work for a living, but also cost-effective.

**Questions:**

- **What would be the obstacles to enlarging the scope of our labour laws?**
- **Would a new concept such as “worker” help? Is it necessary to also provide help for workers in asserting their status and eligibility to protection?**
- **Are there ways in which the definitional battles can be minimized? Could standards or best practices be developed with different sectors?**

## **Chapter 9 – Rethinking the Employee –Employer Relationship**

It may be that the new employment reality means that, for many purposes, the contract of employment is not the best focal point since many vulnerable workers find themselves outside the legal definition of employee. Should public policy and laws that are aimed at protecting workers use a different concept to articulate its intervention? Is there a different way of delivering the rights and benefits required to promote human flourishing? What other and better “platforms” exist?

The following section of this discussion paper examines some of the potential alternative platforms for the delivery of rights, benefits and protections that have traditionally been associated with the employment contract.

Potential Alternative Platforms:

### ***I. Canadian Residency***

**In Canada, we already have publicly-funded medical care and health insurance as an example of a “benefit” that attaches to Canadian residency and is not, as it is in the United States, dependent upon employment or the lack thereof. Arguably, this has created a significant competitive advantage for Canada. Thus, it may be said that we are not unfamiliar with the idea that providing the infrastructure to develop and maintain human capability requires, at times, a total detachment from the employment contract.**

**There might be other benefits and protections that could reasonably attach to the platform of Canadian residency. These might include such things as dental and vision care, childcare, education and training, pensions and possibly others such as basic drug plans. There is no doubt that the cost of publicly funding these kinds of programs would be extremely high. However, it may be possible to devise creative financing options that would provide workers with a choice of participating, for a cost, in a given program. Moreover, it is important to consider whether the productivity gains which might be realized as a result of making these kinds of investments in the health and well-being of the workforce might offset some, if not all, of the costs associated with the programs.**

## **II. Worker/Professional Organizations**

It has also been suggested that worker associations could facilitate the delivery of benefits and the protection of rights in ways that cannot be as efficiently accomplished by other mechanisms.<sup>lxxii</sup> Worker associations mean both formally recognized bargaining agents as well as “non-union representation vehicles” such as professional associations (medical associations, bar associations for lawyers, engineering associations) and employee associations.

“Unions are often more effective at devising readjustment programs because their focus is broader than that of the departing or shrinking employer ... I think there are tremendous opportunities in such areas, particularly in partnership with government.”<sup>lxxiii</sup>

The construction industry provides an example of how unions, employers and government can work together to create new models to suit the new employment realities. In that industry, as in many others, workers are greatly affected by job uncertainty, the risk of unemployment at the end of a major project, intense bouts of overtime followed by slack periods, considerable seasonality and an irregularity in the receipt of benefits. Rather than unions succumbing to strife and labour turmoil to resolve grievances and advance the interests of workers, there has been a marked tendency in this industry to develop joint labour-management councils with multiple parties. These joint councils have created major initiatives to smooth out employment difficulties such as new dispute resolution procedures and multi-employer benefits plans. They have tackled seasonality issues and tried to create more stable employment situations for more workers.<sup>lxxiv</sup>

Outside the traditional union sector are organizations that have been called “human capital organizations”. For example, nursing associations are a human capital organization because they provide training, various insurances, professional discipline, certification, etc. These kinds of organizations may be able to provide benefits and entitlements in a more efficient manner than other potential vehicles.

Finally, with respect to pensions, it has been suggested that unions or worker associations may provide a potential vehicle for the portability of pensions. As workers shift from one workplace and employer to another, they need to be able to move their pensions with them in order to have some degree of economic security in their old age.

However, as we have discussed, there has been a general erosion of the strength of trade unions over the past few decades and they have not generally been replaced by other kinds of worker associations. Most labour observers have cited the absence of centralized and coordinated bargaining across labour markets as the major impediment to unions' abilities to retain and expand membership.<sup>lxxv</sup> Hence, they call for changes to labour laws that would allow for sectoral bargaining, among other changes. The value of employee associations of some nature in providing an effective vehicle for the delivery of benefits and in ensuring the protection of worker rights is an idea that might merit consideration.

### **III. *Social Drawing Rights – The Life Cycle Approach***

There is now a move towards the recognition of a worker's membership in the labour force *over the course of a lifetime* as providing the legal status upon which a particular set of rights and benefits are accorded.<sup>lxxvi</sup> This is an occupational status that does not refer to a specific employment contract. Rather, it extends beyond the immediate contractual commitment to a particular job to cover the diverse forms of work experienced during one's lifetime, including non-marketable forms of work such as child and elder care. "Social drawing rights" would facilitate the worker's ability to move in and out of the paid labour force in order to accomplish certain social purposes such as occupational training, child or elder care and volunteer work.<sup>lxxvii</sup> The rights release time and provide continuity of income during periods of non-participation in the paid labour force.

The idea is that workers would have an opportunity to draw down rights or credits that they have accumulated during the course of their working lives. Thus, a worker may decide to draw on accumulated credits in order to receive income support while working part-time in the labour force in order to care for his preschool children at home. Or, a worker like Samuel Yaul may draw on the rights he has accumulated in order to receive financial support while attending school. Instead of the worker alone having to face the costs that are inherent in exercising a given freedom, the worker has the right to utilize collective funding for that purpose up to a certain level.

The funding for social drawing rights is provided by various sources: the State; firms; trade unions; social security agencies; professional bodies; insurance companies; and workers themselves. The loan or grant provided through the

social drawing rights program may be supplemented by technical assistance where this can help the workers' initiative to succeed (setting up a business, for example).

The advantage of the social drawing rights system is that it recognizes both the autonomy of the worker and his or her need for support. Workers are given real freedom to choose flexible work arrangements and to upgrade their skills because the financial security and support necessary to exercise that freedom is there. Social drawing rights spread the risks involved in exercising the freedom to move in and out of the paid labour force and thereby make it a real, as opposed to imaginary, freedom. In this way, workers are not being told to take responsibility for their own economic security without being given the support to do so. Importantly, there is a collective responsibility to fill the pool of social drawing rights, so that the risks involved in the flexible labour market are more equitably borne by all, including the worker him or herself. Thus, the system, which puts the responsibility on workers to make responsible decisions about when and for what purpose to draw on their rights, is consistent with both the notion of individual as well as collective responsibility.

It is important to distinguish this system of insurance against voluntary risk from the system that provides protection against involuntary risks such as unemployment or underemployment as a result of disability, injury, illness or job loss. A worker should not be forced to draw on accumulated credit for involuntary employment interruptions.

Kuc and Samuel Yaul might well obtain real benefit from a system such as this. In our case study, the brothers were unable to engage in the training they need to lift themselves out of long-term poverty. Yet, through the work they do they are contributing in very real ways to the Canadian economy and thus, it would make sense to ensure their access to vocational training without the requirement that they be unemployed or on welfare first.



**Certainly, reforms in the area of work law and policy will have an important bearing on the social security system and therefore, the two should be considered together.**

Questions:

- Is there merit to the notion of social drawing rights? Would this concept empower people to make responsible choices about the balance between career and family? Would the idea of achieving a work- family balance be helpful to the economy?
- What is the role of workers' associations and unions in protecting against vulnerability?
- What are the positive and negative features of the proposals canvassed in this chapter and the preceding chapters?
- Are there other reforms that might combine the positive features that you have identified?
- What would be needed in order to implement such alternatives?

## Conclusion

The well being of a society depends, in part, upon its ability to maximize the human potential for productive work. Individuals, families and society in general all fare better when everyone is provided with an opportunity to train for, find and sustain meaningful work. Work that provides enough compensation for a reasonable standard of living for workers and their families not only results in lower expenditures on items like health care, education, social assistance, and crime control, it also gives individuals and families a sense of dignity and social inclusion. Similarly, providing workers with real access to protections, rights and benefits on the job has benefits both for society and workers.

Nonetheless, the benefits of improving the work conditions of Canadian workers come at a cost. Although there is a lack of precise empirical data on this issue, the general view is that labour regulation costs a lot of money. Over the past three decades, Canadian businesses have experienced a host of competitive pressures that have necessitated cost reductions in all aspects of their businesses. Labour costs have been no exception. As a result, there has been increasing pressure to deregulate the labour market in order to provide employers with more latitude to reduce their labour costs.

However, in reality those costs have not been reduced; they have merely been shifted onto workers. Hence, when employers seek to reduce their benefit expenses and the costs of dismissing workers, for example, they are in fact, assigning those costs to the workers. Similarly, when minimum wage is not raised as the cost of living increases, the costs are shifted from employers to the individual workers. Citing the need for fiscal austerity, the State has been reluctant to assume many of these costs and risks that have been transferred to workers. The result is that significant numbers of workers are finding themselves increasingly burdened by the social and economic costs of participating in the workforce. Often those who are facing the brunt of the burden are those who are least likely to be able to carry it: single mothers, young workers, poorly educated workers, immigrant workers and disabled workers, to name just a few.

Certainly, we are faced with serious gaps between the labour protection that is currently offered through labour and employment laws and policies and the reality of many workers. These workers find themselves unprotected, “outside of the umbrella” of Canadian law. Our case examples illustrate the costs and risks that need attention. In our discussion of those case studies, we have tried, to the extent of the available data, to provide an estimate of the size of the vulnerabilities in question and the complexity of the issues involved. Our research into the four areas of vulnerability presented in this paper – self-

**employed workers, temporary agency workers, marginalized workers and stigmatized workers – have lead us to believe that a significant percentage of the workforce is finding their well-being to be seriously compromised by the work they do.**

There are a number of ways in which the law and social policy has been said to fail many workers: (1) the laws and social policy have not kept pace with the changing ways in which employers have structured the work relationship with the result that there are now large numbers of workers who are receiving inadequate compensation and who lack access to important rights, benefits and protections; (2) the existing laws and regulations are not enforced to the extent necessary to provide workers with adequate protections; (3) there are inadequate supports provided to workers (especially the low-skilled) to make transitions out of non-standard or low-paying work arrangements and to train for better work; and (4) the current laws and policies fail to adequately accommodate unpaid work obligations.

**Such inadequacies are not consistent with society's interest in its workers and their productivity, capacity and dignity. A humane and productive country is committed to promoting individual and shared responsibility for personal and societal well-being and ensuring that people have the capacity to lead longer, better and more meaningful lives. Respect for and attention to the efficiency of market forces is an integral component of this goal. However, if human flourishing and long-term productivity are the ultimate goals of labour market policy and regulation, more attention will need to be paid to the costs to families, communities and other social institutions of the increased burdens that are currently being borne by vulnerable workers.**

**We look forward to hearing your responses.**

## ENDNOTES

<sup>i</sup> See Judith Maxwell, (2003), *Smart Social Policy – Making Work Pay* (Toronto: Canadian Policy Research Networks, 2002), 4.

<sup>ii</sup> Cynthia Cranford, Leah Vosko and Nancy Zukewich, (2003) “Precarious Employment in the Canadian Labour Market: A Statistical Portrait,” *Just Labour* 3 (Fall 2003): 6-22.

<sup>iii</sup> Ron Saunders, (2003) *Defining Vulnerability in the Labour Market*, (Ottawa: Canadian Policy Research Networks), 4.

<sup>iv</sup> Vosko et al (2003); Saunders, (2003).

<sup>v</sup> Saunders, (2003) 7-14

<sup>vi</sup> **Stella Lord and Anne Martell, (2004) *Building Transitions to Good Jobs for Low-Income Women* (Halifax: Nova Scotia Advisory Council on the Status of Women) 2**

<sup>vii</sup> Judy Fudge, Eric Tucker and Leah Vosko, (2003) *The Legal Concept of Employment: Marginalizing Workers* (Ottawa: Law Commission of Canada)

<sup>viii</sup> *67122 Ontario v. Sagaz Industries Canada Inc.*, [2001] 2 S.C.R. 983.

<sup>ix</sup> CCH Canada 2002, para. 600.

<sup>x</sup> Fudge, Tucker and Vosko, (2003)

<sup>xi</sup> Fudge, Tucker and Vosko, (2003)

<sup>xii</sup> Fudge, Tucker and Vosko, (2003)

<sup>xiii</sup> Fudge, Tucker and Vosko, (2003)

<sup>xiv</sup> Employment Insurance is extended by regulation to some groups of independent contractors such as barbers, hairstylists, manicurists, taxi drivers and fishers. See: Fudge, Tucker and Vosko (2003), p. 81-82.

<sup>xv</sup> **From a paper by Malika Hamdad, Statistics Canada (2003) “Valuing Households’ Unpaid Work in Canada, 1992 and 1998: Trends and Sources of Change” Statistics Canada Economic Conference (May, 2003)**

<sup>xvi</sup> Commission for Labor Cooperation, (2003), *The Rights of Nonstandard Workers: A North American Guide* (Washington: Secretariat for the Commission for Labor Cooperation)

<sup>xvii</sup> Leah Vosko, (2000), *Temporary Work: The Gendered Rise of a Precarious Employment Relationship* (Toronto: University of Toronto Press)

<sup>xviii</sup> [1997] 1 S.C.R. 1015.

<sup>xix</sup> Leah Vosko, *Temporary Work*, 2000

<sup>xx</sup> *ibid*

<sup>xxi</sup> Commission for Labor Cooperation, 2003

<sup>xxii</sup> Michael Smith, *Casualties of the Labour Market: Equity, Efficiency and Policy Choice* (Ottawa: Law Commission of Canada, forthcoming)

<sup>xxiii</sup> Saunders (2003); and Christa Freiler, Laurel Rothman and Pedro Barata (2004), *Pathways to Progress: Structural Solutions to Address Child Poverty*, a study commissioned by the anti-poverty organization, Campaign 2000 (Toronto: Campaign 2000)

<sup>xxiv</sup> Between 1993 and 1998, fully 38% of people living in families headed by a lone parent experienced low income for four years or more, compared with 23% of unattached individuals. R. Morrisette and X. Zhang “Experiencing Low Income for Several Years” (2001) *Perspectives on Labour and Income* March 2001, Vol. 2, No. 3, page 7

<sup>xxv</sup> See Judith Maxwell, *Smart Social Policy – Making Work Pay*, p. 7

<sup>xxvi</sup> Kathleen Thomas, Grade 12, Belle River District High School, Ontario - Submission to the Law Commission’s 2004 Rod Macdonald High School Competition

<sup>xxvii</sup> Meaghan Harris (2004) Ancaster School “Is Work Working?” Submission to the Law Commission of Canada’s Rod Macdonald Contest.

<sup>xxviii</sup> **Meaghan Harris Harris (2004) Ancaster School “Is Work Working?” Submission to the Law Commission of Canada’s Rod Macdonald Contest.**

<sup>xxix</sup> Jackson and Robinson (2000) *Falling Behind: The State of Working Canada, 2000* (Ottawa: Canadian Centre for Policy Alternatives) at page 69

<sup>xxx</sup> Jackson and Robinson (2000)

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- <sup>xxx</sup> Kevin Lee (2000), *Urban Poverty in Canada: A Statistical Profile* (Ottawa: Canadian Council on Social Development)
- <sup>xxxii</sup> Andrew Heisz and Logan McLeod, (2004) “Low Income in Census Metropolis Areas” (Ottawa: Statistics Canada)
- <sup>xxxiii</sup> Jackson and Robinson (2000) *Falling Behind: The State of Working Canada, 2000* Ottawa: Canadian Centre for Policy Alternatives at page 70
- <sup>xxxiv</sup> Peter Li (1988) *Ethnic Inequality in a Class Society*. Toronto: Wall and Thompson Inc.; K.G. Basavarajappa and Frank Jones “Visible Minority Income Differences” in *Immigrant Canada* ed. By Shiva S. Halli and Leo Driedger (1999) Toronto: University of Toronto Press Inc.; Jackson and Robinson (2000)
- <sup>xxxv</sup> From the Canadian Bankers’ Submission to the Employment Equity Act Review (2002) which may be found at: <http://www.cba.ca/en/viewDocument.asp?fl=6&sl=72&tl=73&docid=50&pg=3>
- <sup>xxxvi</sup> Office for Disability Issues, “Disability in Canada: A 2001 Profile” which can be found at: <http://www.sdc.gc.ca/asp/gateway.asp?hr=/en/hip/odi/documents/PALS/PALS001.shtml&hs=pyp>
- <sup>xxxvii</sup> “Disability in Canada: A 2001 Profile
- <sup>xxxviii</sup> Statistics Canada, (2004), “Low-paid employment and moving up” 1996-2001 (Ottawa: Minister of Industry)
- <sup>xxxix</sup> Statistics Canada (2004) “Low-paid employment and moving up” 1996-2001 (Ottawa: Minister of Industry)
- <sup>xl</sup> *ibid*
- <sup>xli</sup> Smith, Michael (2004)
- <sup>xlii</sup> Statistics Canada (2004) “Low-paid employment and moving up” 1996-2001 (Ottawa: Minister of Industry)
- <sup>xliii</sup> *ibid*. **However, this finding applies to a relatively small number of low paid workers because only 16% changed union status in this way.**
- <sup>xliiv</sup> Statistics Canada (2002) “Unionization and Fringe Benefits” Perspectives on Labour and Income August 2002, Vol. 3, No. 8.
- <sup>xliiv</sup> Stella Lord and Anne Martell, *Building Transitions to Good Jobs for Low-Income Women* (Halifax: Nova Scotia Advisory Council on the Status of Women, 2004)
- <sup>xlivi</sup> Robert Weagle, (1999), “Human Resource Issues in the Exotic Dance Industry” (Kingston: Masters Thesis)
- <sup>xliivii</sup> Robert Weagle, (1999) at 53.
- <sup>xliiviii</sup> Chris Bruckert, (2002) *Taking it Off, Putting it On: Women in the Strip Trade* (Toronto: Women’s Press)
- <sup>xlix</sup> Report by the Dancers’ Equal Rights Association (Ottawa: 2004)
- <sup>l</sup> Colette Parent, Christine Bruckert and Pascale Robitaille, (2003) , *Erotic Service/Erotic Dance Establishments : Two Types of Marginalized Labour* (Ottawa: Law Commission of Canada)
- <sup>li</sup> Jim Stanford and Leah F. Vosko eds. *Challenging the Market: The Struggle to Regulate Work and Income* (Montreal: McGill-Queen’s, forthcoming).
- <sup>lii</sup> Kerry Rittich,, (2004), “Vulnerability at Work: Legal and Policy Issues in the New Economy” (Ottawa: Law Commission of Canada)
- <sup>liii</sup> Morley Gunderson and W. Craig Riddell, “The Changing Nature of Work: Implications for Public Policy” in W. Craig Riddell and France St-Hilaire, eds., *Adapting Public Policy to a Labour Market in Transition*, The Institute for Research on Public Policy, Montreal, 1-37.
- <sup>liiv</sup> Alice de Wolff, (2000), “Breaking the Myth of Flexible Work: Contingent Work in Toronto” (Toronto: The Contingent Workers Project)
- <sup>liv</sup> Alice de Wolff, 2000
- <sup>lvi</sup> Amartya Sen, (1999), *Development as Freedom* (New York: Alfred A. Knopf)
- <sup>lvii</sup> Leah F. Vosko *Confronting the Norm: Gender and the International Regulation of Precarious Work* (Ottawa: Law Commission of Canada, forthcoming). See also: Alain Supiot, *Beyond Employment: Changes in Work and the Future of Labour Law in Europe* (Oxford: University Press, 2001)

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<sup>lviii</sup> Mary Pat MacKinnon, Judith Maxwell, Steven Rosell, Nandini Saxena, (2003), *Citizens' Dialogue on Canada's Future: A 21<sup>st</sup> Century Social Contract* (Ottawa: Canadian Policy Research Networks and Viewpoint Learning Inc.)

<sup>lix</sup> Amartya Sen, 1999

<sup>lx</sup> Brian Langille, (2002), "Labour Policy in Canada – New Platform, New Paradigm" (Cdn Public Policy V. 28, No. 1 2002) 133

<sup>lxi</sup> *Citizens' Dialogue*, page vii

<sup>lxii</sup> Supiot, Alain *Beyond Employment: Changes in Work and the Future of Labour Law in Europe* (2001).

<sup>lxiii</sup> Sen (1999) page 142

<sup>lxiv</sup> Jean Bernier, Guylaine Vallée and Carol Jobin "Les Besoins de Protection Sociale des Personnes en Situation de Travail Non Traditionnelle" (Québec: Ministère du Travail, 2003). The Bernier Commission suggested that the employment agency and the client-business should be jointly and severally liable for any amount owing to the employee. As well, they stated that such liability should extend to cover occupational health and safety, industrial accidents and work-related illnesses.

<sup>lxv</sup> Leah Vosko, *Temporary Work*, 2000

<sup>lxvi</sup> *ibid*

<sup>lxvii</sup> *ibid*

<sup>lxviii</sup> *ibid*

<sup>lxix</sup> *ibid.* see also: Bernier et al (2003), recommendations 36 and 37.

<sup>lxx</sup> **There is a detailed evaluation of the Canadian program in David Card and Philip K. Robins, "Do financial incentives encourage welfare recipients to work?" *Research in Labor Economics* 17 (1998): 1-56.**

<sup>lxxi</sup> Jean Bernier et al, 2003; See also : Fudge, Tucker and Vosko (2003).

<sup>lxxii</sup> Daphne Taras "What are the Implications of the New Employment Paradigms for a Human Capital Strategy?" Paper prepared for the Minister of Labour Roundtable, Willson House (Meech Lake), 19-20 November 2001.

<sup>lxxiii</sup> Andrew Sims, "A Canadian Policymaker's Perspective on Nonunion Representation" in Bruce E. Kaufman and Daphne G. Taras, eds. *Nonunion Employee Representation*. (Armonk, N.Y: M.E. Sharpe, 2000)

<sup>lxxiv</sup> Taras (2001)

<sup>lxxv</sup> Rose and Chiason "Unionism in Canada and the United States in the 21<sup>st</sup> Century: The Prospects for Revival" *Industrial Relations*, 2001, Vol. 56, no. 134

<sup>lxxvi</sup> Judy Fudge, Eric Tucker and Leah F. Vosko "Changing Boundaries in Employment: Developing a New Platform for Labour Law" *Canadian Labour and Employment Law Journal* Vol. 10, No. 3, 2003; Brian Langille, "Labour Policy in Canada – New Platform, New Paradigm" (Cdn Public Policy V. 28, No. 1 2002) 133; and, Supiot, Alain *Beyond Employment: Changes in Work and the Future of Labour Law in Europe* (2001)

<sup>lxxvii</sup> Supiot, Alain *Beyond Employment: Changes in Work and the Future of Labour Law in Europe* (2001)

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LOOKING OVER YOUR SHOULDER  
&  
LOOKING AHEAD:  
DEMOCRACY AND MLA RENUMERATION

A BRIEF TO THE MANITOBA COMMISSION ON  
MLA PAY & BENEFITS 2004

By

MARIANNE CERILLI  
MLA RADISSON 1990-2003

ON BEHALF OF THE  
ASSOCIATION OF FORMER MLA'S OF MANITOBA

JANUARY 2004

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Looking Over Our Shoulder & Looking Ahead: Democracy and MLA Pay and Benefits  
A Brief for the Commission on MLA Remuneration, Pay and Benefits  
By Marianne Cerilli on behalf of The Association of Former MLA's of Manitoba

This brief for the Commission on MLA Pensions and Benefits will address a range of issues on behalf of former, current and future MLA's in Manitoba. It is written based on my experience as a MLA for almost 13 years, and I will acknowledge, it is therefore from a decidedly urban feminist perspective. Harry Enns, the former MLA for the Interlake will present the perspective of the rural patriarch, (though you'd like that Harry). The views presented here are influenced by my impressions from talking with other MLA's and former MLA's. I have joked about the Former MLA's Association being like politicians anonymous; hello, I am Marianne, and I am a political junkie. But I do think if this organization can be of some benefit it is to offer our experience and insight to assist the institutions of government become more human and inclusive places that are more democratic and accessible.

The issues addressed include:

- 1) Pensions and RRSP
- 2) Severance
- 3) Childcare
- 4) Maternity/paternity leave
- 5) Salaries
- 6) Staff salaries
- 7) Members Allowance Provisions
- 8) Health Benefits and Disability Insurance
- 9) Travel and Living Allowance

Before dealing with the specifics of these I would like to provide some context for the discussion. I am in a unique position right now. Combining the theory of currently teaching at the UofW and Uof M politics departments, courses in women gender and politics in Canada and globally, with my actual experience of working as an elected politician, as part of a caucus in opposition then in government and in a political party. I appreciated the chance to be a member of LAMC for a time and see how that level of government functions. This combination of experience puts me in an interesting position to write a brief like this. And is part of why I volunteer to do it.

Being a MLA is a non-traditional job for women. It carries with it all of the challenges for women pioneering in new terrain; that of forging a space in the still macho and Machiavellian world of politics. A "testosterone tabernacle" is what one textbook, "Still Counting", calls legislatures. The fact that only 20% of elected officials are women even though we make up 52% of the population is a concern for all of us in a democracy. The fact that as of yet there has never been a woman of color elected in Manitoba is also of great concern. As a first generation Canadian of Italian heritage elected just after my 29 birthday in 1990, I was an anomaly in the Legislature based on my relatively young age for a woman, my ethnic heritage as a first generation Canadian, and my gender.

I have the chance now of teaching about what I have just lived; the challenges of being a young woman in, what could be called, one of the foremost institutions of patriarchy. Of course when I went to work every day as a MLA I did not think of it that way. Being a MLA is a lot of things. Sports analogies flourish, and



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you have to be psyched up for it. Some would say politics like religion is a calling, and it must retain the same altruistic motivation. A famous quote, by someone I don't recall who, is "politics is the art of the possible", which shows there is a sense that politicians can't get too far ahead of the public or expect too much, either in this case financially, or in the opportunity to create change. Legislative drafting is likened to sausage making. This industrial view of the role of a MLA is particularly accurate when one considers public committees on Bills that sit into the wee hours of the morning; debate legislation, add and pass amendments then stir. In the age of "running government like a business" politicians are power brokers, trading favors, using a currency of influence, loyalty, silence or spin. Popular culture and political culture blur in the main stream media coverage of politics, movies, books etc. Even children's literature includes the bias and stereo-types. I have read many books to my now 5 year old daughter that show politicians as lazy or conniving or buffoons. (see attached examples) Popular culture is at once fascinated, repulsed or afraid of politics. In movies like "The Contender", one of my favorites, a woman is portrayed trying to hang on to her own ethics and soul in the throws of a bid for the vice presidency of the USA and the power players who would "make her". In that movie there is a quote that the "House of Democracy is her church". Politics has become more media driven and leader driven, it is seen as a strategic game of one-up-man-ship and tactics. This results in the chess-like approach to politics of "protect your King". The consequences of not doing this are being demonstrated by the treatment of Sheila Copps and her former cabinet colleagues. The point is, whether one sees politics as an art, a science, or a sport, a religion, or a business, many people these days do not see politicians or politics in a very good light.

This bad reputation is warranted in the case of some; some people seem to have lost their ethical compass and it does not matter what political stripe they are. The means to get the job done justifies the ends, for these folks when democracy and integrity are concerned. However, I would argue that the loss of the pension plan for MLA's was part of the dilemma that politicians face in this era of polls and populism over ideas and ideology, and politics as 'show biz'. The political culture leads politicians to pander to their own bad reputations. That is what happened in 1995 when MLA's in Manitoba sacrificed their pension for fleeting and perceived political Brownie points with the public. I would also say that the fair remuneration of politicians is essential to democracy and ensuring it is a viable option for people who want to take the plunge. I would argue that fair remuneration of MLA's is as essential for democracy as control of political party spending during elections. In a democracy the voice of a MLA is only as loud and clear as her ability to represent her constituents. She needs enough expense allowance to do the job she is required to do. This means coverage for travel, mailings and surveys, representation, office and staff support.

When students visit the Legislature for Question Period, to witness the session in progress they are always struck by the bad decorum and say things like "we are not allowed to act that way in school". They witness the "psychological warfare" in action. They have a hard time understanding it, the bullying, the bad decorum of name-calling, finger pointing, and childish heckling. They ask why is it like this? It is after all just a job, like many others, that is demanding and rewarding. I could argue that part of the same agenda of globalization, that is restructuring our political economy, is contributing to the mistrust of government, and it's role in the economy as wasteful and a liability or barrier. And therefore, the individual politicians that are part of the institution of government are also portrayed as mistrustful and a waste of money. When I would answer those students who are disgusted and dismayed by the antics of the legislature, I would say considered on the scale of evolution, this is how far we have come in "democracy" as a way to disagree on how to make rules and distribute resources in our society with out resorting to fist fights or worse.

Politics is both elevated to a high status, yet, as I have said, ridiculed in the press, popular culture and day to day interactions. The courses that I am teaching ask the questions what is it that makes politics so much about horse-trading and gamesmanship? Is it the individuals that succeed in the system their ego and ambition? Is it the system that creates the beasts? Text books on women and politics discuss the barriers to women in the structure of patriarchal politics, the hierarchy, the codes of confidentiality, party discipline, and how these define the way power is used and abused. For women free speech is limited to the majority rule of men as no caucus or cabinet, in Manitoba history, has had a majority of women and it does not look like that will happen for quite some time. The system itself is a paradox of proportions. Where if you don't support the system of privilege, and loyalty, or silence and allegiance you are compelled to leave? What

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kind of democracy is so intolerant of diversity of opinion? Feminist political scientists ask the question can there be anything other than mob rule?

I used to say after being elected that it is like juggling chain saws, there are multiple demands and dropping the handle on any of them can cost you your life, your political life any way. For some just being there is enough, for others risks are part of carrying forth an agenda to challenge the status quo. People in politics are constantly in potential positions of conflict of interest, or they often find themselves in no win situations of competing interests. For example the problems of supporting party or caucus policy that is in conflict with the interests of their constituency or their own personal beliefs. Yet we know that elected officials carry a public trust. In a representative democracy they are there to set an example of a standard of ethical judgement, to weigh alternatives and make the best decisions possible for spending public money and setting priorities on behalf of all of us. There are many paradoxes for elected officials; you are expected to be both decisive and consultative, inclusive and efficient, wise and humble, confident yet not egotistical, available yet not in-your-face. Maybe it is more like juggling chainsaws while walking a tight rope. The way many MLA's survive these competing expectations and demands is to be themselves; human, with all of their warts and bruises and to do the best they can given what they have to work with.

Add these demands the demands of family and friends and many people ask politicians why would you ever want to do it? In my opinion holding these conflicting demands is what makes one a good MLA and why we are a democracy instead of a dictatorship or monarchy where leaders don't have to worry about the mundane realities of everyday life like changing diapers or buying groceries. It is this insistence by the public, that politicians both be human and yet set an example that can make representative democracy work. The public insists elected officials remain connected to the community and the reality of people's lives while holding the power to make societal decisions. This tension is essential to representative democracy. Everyone gets into the Legislature thinking they speak for "The People". In the age of identity politics some get elected thinking they are there to represent the interests of their constituents and an identifiable group like farmers, or Aboriginal people. Most enter politics thinking they have something to offer, they want to make the world a better place. And of course we bring all of our biases about what that better place would look like. Better for whom one might ask?

However, many people think you have to be a little nutty to get into politics in the first place. My birth mother, when I told her at 28 I was going to run in the election in 1990 said, "why would you want to get into a dirty business like that?" What motivates politicians is a good question. Which brings us to the task at hand. When it comes to MLA's setting the laws about their own salaries and benefits, the easy and expeditious thing to do is to get someone else to do it so you don't have to deal with the political liability of justifying your own existence. MLA's and former MLA's can make representations for fair compensation in the context of consideration of the realities of the job.

I said at the outset I was going to deal with context. I bet there is not a lot of research on the impacts of holding elected office. By this I mean such things as:

- 1) Health impacts for the politician and their family due to stress
- 2) Impacts of separation due to travel demands and time away from home
- 3) Social stress that political disagreements in the community and political parties create
- 4) Effects on Marital break down, divorce or separation; especially for women MLA's with child custody
- 5) Impacts on childcare and children for sitting MLA's and their families
- 6) Conflict of Interest claims or impacts on future employment including that of spouse and family
- 7) Loss of income compared to previous career, and long term pension earnings
- 8) Difficulty re-entering the work force after political defeat or retirement
- 9) Impacts of combining parenthood and politics

No one ever said democracy was going to be free, or even inexpensive. How do we compensate those souls who are willing to let their name stand and get elected? What is fair and reasonable given the competition from other fields for people of strong character, caring and intelligence, (not necessarily in that order?) Now that there is some context to discuss the specifics of MLA remuneration lets have a look.

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**Pensions** are a particular concern to MLA's who come from middle income occupations, early in their work life, and those that have their income earning years disrupted by time off to care for children. In Manitoba this still more often describes the situation for women. 51% of women in Manitoba over the age of 65 live on incomes unable to provide adequate food, housing etc. That is 51% of elderly women in Manitoba live in poverty.

- 1) Considering the demands mentioned earlier on politicians in terms of family, media scrutiny and career implications and the insecurity of a political career, pensions for MLA's present many unique and unusual situations. Therefore pensions must be portable, and compatible with the teacher, civil service, municipal and other government funded and operated pension plans. This transition to portability for MLA pensions must not penalize MLA's in a catch 22, that if you are already collecting your pension it is not portable, and if you don't collect it you lose it. This is what I have been told by the Super Annuation Board. This is an ageist policy that discriminates against MLA's who were elected when they were young. Other pension plans do not have this limitation.
- 2) The flexibility and early age of qualifying for the pension, as was the practice before 1995 deserves consideration. I am sure members of the public, business community or media would say that politicians should be treated no differently and only qualify for their pensions when they are 55, or older. If that is the case stronger severance provisions must be available considering the problems of MLA's carrying political baggage which affects their ability to secure employment after they are defeated or resign. Also consideration is warranted that MLA's may enter the political field at a relatively young age and be faced with these circumstances at a young age. Politics is like high jump; most of us leave the competition with the bar on the ground.
- 3) The pension-qualifying period must also be made two years instead of the eight years or three terms, as is the case under the former pension plan. What rationale was employed to require 8 years service before qualifying is certainly out of date and out of step with pension plans. These requirements have resulted in long serving MLA's and Cabinet ministers receiving no benefits. Assumptions inherent in the existing systems of MLA pay are obvious. The assumption about the age that politicians will enter the fray is that it is a profession for later in life, and that MLA's would not necessarily be women. The rules suggest that MLA's would not be in their childbearing years. Maternity leave and pensions are necessary for women if independent and average income women are going to become MLA's.
- 4) The buy back provisions must be for buy back at the highest rate of pay of the pensionable period. There must also be consideration of the compounded losses of MLA's RRSP, which they will qualify for at 65 and the pension after 12 years of service. The RRSP Plan does not make up for the pension plan losses for those under the existing plan.
- 5) The issue of the date and salary level for calculating MLA's pensionable earnings for those under the old plan, for those who stopped being a MLA after 1995, must reflect the common practice of pension plans. For the vast majority of pensions the rule for calculating the pensionable earnings is the last five or best years. This must take into account also that the pension is not replaced by the RRSP. These retroactive issues for MLA's if not addressed by this Commission and the subsequent Legislative amendments to the Legislative Assembly Act, must be addressed subsequently by another process.
- 6) Attached to this brief is a copy of the brief to the Manitoba Pension Reform Commission in January of 2003 by Al Cerilli, President of Manitoba Federation of Union Retirees. I recommend the commission also get a copy of the brief to these same hearing presented by the Manitoba Federation of Labour.
- 7) Also of interest and relevance is the attached resolution passed by the NDP conventions on pension reform.
- 8) The issue of MLA's setting their own pension plan provisions speaks to the challenges for ethical politics. An open and public process where politicians through law will have to make the final decisions on their pensions and benefits still leaves the ultimate responsibility in the hands of legislators. There is a longstanding tradition of elected union leaders setting the provisions for their own pensions after demonstrating that they are fair and the provisions are transparent and accountable.

**Severance provisions that only allow MLA's to qualify if they are defeated are punitive and anti-democratic as it encourages MLA's to stay on and run in an election only to collect their severance. For the already mentioned reasons of the**

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**difficulty of finding subsequent work for many MLA's upon retirement or for their family, this requirement must be eliminated. The one-year salary for each year served should be available to all MLA's after sitting one year. However a MLA with a three month career could have as much difficulty re-establishing another livelihood as a MLA who has been elected for 30 years. So considerations have to be made on this severance serving the purpose for which it is intended; to bridge MLA's and allow them to respect the cooling off period that is required by law and custom of cabinet ministers in particular.**

**Child care** The fact that the Manitoba legislature until the 70's, I believe, did not have a women's washroom on the upper floors suggests that historically the inclusion of women has not been a consideration "under the dome". That might explain the non-existent provisions around maternity leave and childcare for MLA's. As many younger people, particularly younger women become elected in Manitoba the reality of combining career and family is a personal and political issue for MLA's. Not having access to childcare puts women MLA's who are the mothers of young children at a distinct disadvantage. Women MLA's if they are not to be put at a disadvantage for having children means that childcare must have the issues accessibility, flexibility and affordability addressed. It has long been known that women having children while pursuing a career are already at a disadvantage because they do not access the informal net works of men be they on the golf course, the pool hall, the Chamber of Commerce or the squash club. It is tough to go for beers with the boys to talk shop when you are leaking breast milk. Women are forced into double standards and double binds. Expectations that women put their children first are seen as both cultural and natural. New ideas, such as, that young children who do not see their parents for long periods of time can suffer from what is now termed "attachment disorder" are examples of the situation for women and to some extent, men having children while in office. The fact that career women still perform 75% of the house work and childcare even for two income, two parent families also speaks to the requirement for child care for MLA's. This is especially true for working class women who do not have the means to hire private nannies and must rely on public childcare, friends and extended family.

Another childcare barrier that affected me personally are the systemic barriers in the childcare system against part time child care. Glen and I tried to more equitably share parenting responsibilities and both work outside the home by having Mira in childcare part time, me working fulltime and Glen working part time and at home part time. This would allow me more flexibility to spend more time with Mira whenever I could. However, the funding for childcare spaces favors fulltime childcare and relies on families sharing a space to create half time care. When one family moves the other family is bumped if there is a wait list for fulltime care, which of course there likely is. The choice for families choosing part time childcare is to go with an unlicensed centre or babysitter; this is not a viable or desirable option.

The gender role reversal that many women in politics these days opt for, with Dad at home, is wrought with pitfalls. On a daily basis family Vs career choices and juggling takes place. Facing these competing demands MLA's with children takes money, energy, and support. The remuneration for MLA's must make childcare for MLA's a priority or political parties claiming they want more women elected are only paying us lip service particularly for young women. Other jurisdictions have childcare centers in legislatures. Given the hours that MLA's keep this is not an unreasonable request. Additionally my own experience has lead me to the conclusion that our childcare system generally, must be designed to meet the needs of parents as parents, as well as parents as workers. Flexibility of childcare so MLA's can maximize time off to spend it with their children is not only an issue for politicians in their personal lives but for women and families across the economy and province.

Being super mom is possible, but not without it's costs. The children of politicians will tell stories of the impact of their parent's career choices on their lives. I know many of them. How do we minimize the negative impacts of being elected on the children of politicians? Granted I am sure there are positives as well, however when elected parents look at this situation from the child's point of view, the question of

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remuneration for child care, maternity and paternity leave becomes even more complex. This explains why until recently women MLA's tended to be childless or older than men, and elected after their children were grown. There is also a huge class issue here for women from lower socio-economic status getting elected while being a mother, where cultural norms are even more compelling to put your children first. The barriers to women are financial, cultural/racial to explain why women of color and Aboriginal women are not elected in the Manitoba Legislature.

**Maternity and Paternity Leave.** Similar as with the issues of childcare, parental leave is now a pension and benefit issue for women. Historically because MLA's have neither been young women nor contributed to the EI funds MLA's therefore do not qualify for maternity benefits when they have a child. This results in those in the position of MLA's who are new mothers are required to squeeze some post pardom time off for the bonding and care of their child between the requirements of being a MLA. It can be described as having two full time 24-hour jobs. Many MLA's will tell you that when you are an MLA you are rarely off duty whether in a restaurant, the grocery store, getting your hair cut or at the Y.

Also with changes nationally to the eligibility for EI and Maternity/Paternity leave to include men and up to one year off with pay, MLA's are at a huge disadvantage, visa a vis the structure of combining parenthood and their work in politics. The lack of benefits for MLA's must be addressed. Even though on the one hand, currently MLA's can take time off to care for his/her newborn while collecting his or her full salary after having a child, on the other hand, the lack of benefits suggests that there are not increased demands with being a new parent that need to be valued and recognized. My comment about breast feeding holds true here and puts mothers and women MLA's at a distinct disadvantage visa vis male MLA's and fathers. Where as for fathers being a parent and a MLA is taken for granted and will not be seen to hinder their job performance and will actuarially help their status in the community as a respected citizen. For women, particularly unmarried women this is not the case. Having a baby while being a MLA is judged differently for women, than men.

**Salaries and Travel Allowance.** The financial remuneration of MLA's must recognize the numerous roles that they play, the long hours, and multiple demands, the impacts and hidden costs as mentioned earlier. The decision to increase MLA salaries, eliminate the pension and tax free portion put MLA's just over the highest tax bracket, resulting in a huge net loss. Travel time not only for rural MLA's has high hidden costs. Urban MLA's in Winnipeg MLA's must make numerous trips per day between to Legislature and their constituency and home to attend both community events and Legislative meetings. This is especially problematic when juggling childcare requirements. One way to address this is to examine the salaries of civil servant and people in the private sector who do similar work, hold similar responsibilities and have similar demands as MLA's. An ongoing issue is the loss of the tax-free portion of MLA salary and why it was removed, replaced and not accumulated to pensionable earnings. The idea that the tax on MLA salaries is the legislature taxing itself to some extent was one of the considerations. I am not suggesting a return to the tax-free portion of salary but want to point out the decisions of 1995 on these matters was political and the result of the fear of public criticism. The net effect on the salary balance of MLA's has been negative.

**Staff Salaries** The position of constituency assistant should become a full time salaried position for all MLA's equivalent to the politically appointed executive assistants of ministers. MLA's in the back bench and opposition struggle to keep talented and skilled staff because these constituency positions are a stepping stone or entry level position, to others positions in the government. They are paid very poorly and have little or no benefits. I have attached the job description I used when I was a MLA. Compare the duties and salaries of these this job to those in the civil service and you will see a pattern of exploitation. The salary for staff should not be contingent on the dispersion of the MLA to the extent that it is, with MLA's forced to choose between paying their staff a livable wage or renting a decent office. No other area of government is in this situation in the same way. The depoliticization of this issue must occur along with the depoliticization of MLA salaries. The commissioner must recommend this in his report.

**Members Allowance Provisions** is inadequate for MLA's particularly MLA's in areas where rent for offices is very high, the fact that MLA's are able to have a office, stationary and staff for under \$50,000. Shows some good frugality and budget wizardry. The result is that staff are usually poorly paid, offices are

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inaccessible and MLA's dip into their own funds to pay for constituency expenses. A survey of this practice would reveal some surprising practices to the public in how frequently MLA's use their own funds to do their job.

**Health benefits and disability insurance**, are still archaic and inadequate. The fact that for 20 years there has been talk of developing a fitness facility in the legislature for employees and MLA's is stalled by shortsightedness and politics. It can be viewed as the government setting an example for other Manitoba employers by providing all Leg staff with health and fitness encouragement. It would also be setting a personal example, for MLA's to employ some preventative healthcare. Anyone in as stressful and demanding a job as being a MLA needs regular exercises. Being a phys. Ed. Grad I have always thought that employers should be required to support employee health and fitness on a daily basis. Other health benefits such as coverage for dental, glasses and hearing aides, should be available at the level of the civil service commission, including access to a confidential EAP program and alternative health modalities and practitioners.

**Disability Insurance coverage** has been looked into by the LAMC. It is my hope that a disability coverage program that is so necessary is put in place before a MLA has a stroke or heart attack in office and is left destitute. Of course this has almost happened on a few occasions. The demands of being a MLA certainly warrant disability coverage of some kind similar to what is available to civil servants.

**Travel and living allowance.** I want to reiterate that the travel demands for local Winnipeg MLA's and those in the capital region under estimates the hidden costs and reality of the travel demands of moving between two offices one in the constituency and one in the legislature plus the requirement to travel for constituency business as well as legislative and caucus business. This needs to be accounted for. MLA travel should make them eligible for fleet vehicle use on an ad hoc basis so MLA's are not required to be two car families. Again this is a consideration that has class assumptions. For MLA's in the suburban areas having a car is essential, taking the bus, riding a bike or walking etc. are not viable options given the demands on MLA time.

In conclusion I would like tell a little story of a recent comment made to me. I was asked what is it like to be a real person again, now that I am not a MLA. My comment was I was a real person when I was a MLA. Although this comment to me was just part of making conversation, the attitude that it demonstrates is pervasive both among those that work in the Legislative Building, those in various sectors of the community, and among the general public. I believe it is only by MLA's both current and former talking openly and publicly about the reality of this occupation and the impacts on our life, health, family and career that the public will understand the nature of what politics actually is, and the job that they elect people to perform on their behalf. It is the fear of this public perception that has lead to the elimination of the pension plan for MLA's. A government bent on creating the impression of ratcheting back the public sector needed to bring in reductions to MLA benefits.

Another colloquial saying is that people get the governments that they deserve. How does this apply to the issue of MLA's pay and benefits? We have to be wary in Canada that our fragile democracy government and elections do not become creatures of the market. Where only the wealthy need apply because the costs for sunning elections, and the hidden costs for being a good MLA, the travel, maintaining two residences, the childcare, the healthcare, prevent working class people with families form competing on an equal basis. A number people I know of chose not to become candidates in the last election because it would have been foolish for them and their families on a financial basis. They couldn't afford to give up their best pension earning years, or their establishment in their careers.

One of the skills you develop as an MLA, particularly from going door to door and visiting people in their homes is the ability to trust your gut when voters tell you that they are going to support you. It may be that an elected politician who is unwilling to declare publicly what he or she should be paid can not expect voters to be forthright when indicating their support. This perhaps is part of the conundrum of politics; can people afford their own exceptions? Studies show that the majority of people consistently put maintaining and developing services by government, like health care and education are more important than tax cuts.

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MLA's making these decisions might do well to stop second-guessing what the public and media or business community might say is greedy. They might do well to stop pandering to their own bad reputations and instead talk about the realities of being a MLA so the public might support fair, transparent, and accountable MLA pay and benefits. How do we get the politics out of MLA salaries? Given that the final decision on this Commissions report still rests with MLA's it is obvious that we can't take away their law making ability. The solution is then lies in a process that is transparent, and clearly shows what MLA's do and what others who do similar work get paid. MLA's not selling themselves short to avoid some critical press and trying to create the illusion that there is no politics in the process, is a lot more trustworthy in my opinion, than just being straight up about what people should get paid. In the last round the millionaire's won, this time I hope there is more balance and recognition for the hard work, cost an immolation of the majority of MLA's and their families.