



Report of the Expert Panel on Modern Federal Labour Standards

June 2019



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Report of the Expert Panel on Modern Federal Labour Standards

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Executive summary

The nature of work in Canada and other advanced economies has changed dramatically in the past 50 years. Relatively fewer workers have full-time, permanent jobs while temporary, part-time and self-employed workers make up a greater proportion of the workforce. Income inequality, wage stagnation and declining unionization rates are raising important questions about how workers are faring in today's economy and whether new policies should be considered to protect workers, particularly those who are most vulnerable to exploitation.

Labour standards play a critical role in ensuring a basic floor of rights for workers. Whether regulating how many hours someone can work or what entitlements an employee should have to vacation time, labour standards protect workers from unfair working conditions while also ensuring firms are competing on a level playing field. Labour standards must be updated regularly to account for new business practices, technological advances, emerging forms of work and a range of other economic and social factors. How we live and work today is, quite simply, very different than how we lived and worked in the 1960s.

Part III of the *Canada Labour Code* (Code) sets out minimum labour standards for workplaces in the federally regulated private sector (FRPS). This sector includes approximately 915,000 employees and 18,000 employers in Canada in industries such as banking, broadcasting, telecommunications, and inter-provincial and international transportation, as well as in federal Crown corporations and some governance activities on First Nations reserves. Part III of the Code was enacted in 1965, yet had not been substantially updated until a comprehensive review conducted in 2017–2018 by the Labour Program of Employment and Social Development Canada, which led to a series of amendments related to issues such as flexible work arrangements, fair treatment for workers in precarious forms of work and unpaid internships.

However, five key issues were not resolved during this review, and consequently the Minister of Employment, Workforce Development and Labour appointed an independent Expert Panel on Modern Federal Labour Standards in February 2019 to consult with stakeholders, conduct research and provide advice to the Minister on those five issues by June 30, 2019. This report is the culmination of the Panel's work and contains the results of our consultations and research, and sets out our recommendations to the Minister and the federal government.

In the course of our work, we consulted with approximately 140 individuals and organizations across Canada, and held in-person sessions with a broad range of stakeholders in Vancouver, Winnipeg, Toronto, Ottawa, Montreal and Halifax. We are greatly appreciative of the time and effort of those who spoke with us to share their experiences, perspectives and expertise. This report would not have been possible without their engagement.

In addition to our consultations we also had a strong evidence base to draw from, including research conducted by the Secretariat supporting the Panel, data from Statistics Canada and our own research and analysis related to the issues, which drew on the diverse disciplinary backgrounds of the Panel, including labour law, economics and social policy.

A key part of our mandate was to examine issues using gender-based analysis plus (GBA+), which puts a focus on the distributional and intersectional impacts of policies and programs upon diverse groups and individuals. We sought additional data where possible to inform our understanding of demographic issues and made serious efforts to engage with diverse groups who have not historically engaged on federal labour standards issues (for example, low-income workers, non-unionized workers, freelancers, youth, Indigenous people and organizations, as well as organizations representing LGBTQ+ people among others).

We also applied a GBA+ lens to the planning and execution of our engagement activities, such as focusing on local representatives who could speak to regional issues, accommodating low-wage workers to ensure they would not be out of pocket for participating, and offering teleconferencing and simultaneous translation options.

Through the course of our work, we have had a unique opportunity to provide independent, impartial advice to the federal government on five important issues that affect workers and employers in the FRPS. These issues are also relevant to the many millions of workers regulated by the provinces and territories, and we hope that our analysis and recommendations can be of value to governments in those jurisdictions that consider updates to their labour standards legislation in the coming years.

This report sets out actionable recommendations to address specific issues and challenges that were identified during the course of our consultations and research. Highlights of key recommendations are set out below (a full list of recommendations can be found in Annex A):

Federal minimum wage

- The Panel recommends that a freestanding federal minimum wage be established, and annually adjusted.
- The Panel proposes two options for setting the federal minimum wage:
 - A common federal minimum wage in all provinces and territories, benchmarked at 60% of the median hourly wage of full-time workers in Canada; and
 - A minimum wage set at 60% of the median wage in each province and territory.
- The Panel recommends establishing a “low wage” commission to research minimum wage policy and its impacts across Canada on employers, employees and the economy.

Labour standards protections for workers in non-standard work

- The Panel recommends that Part III define the concept of “employee”.
- The Panel recommends that a joint and several liability provision be included in Part III.
- The Panel recommends that a definition of “continuous employment” that includes periods of layoff or interrupted service of less than 12 months be included in Part III.

Disconnecting from work-related e-communications outside of work hours

- The Panel recommends that Part III include a definition of “deemed work”.
- The Panel recommends that Part III provide a right to compensation or time off in lieu for employees required to remain available for potential demands from their employer.

Benefits: Access and portability

- The Panel recommends that the federal government, including the Canada Revenue Agency, review what it can do to help Canadians working in the FRPS, and more broadly, with the issue of lost pensions.
- The Panel recommends that the federal government explore, through stakeholder consultations and research, the potential development of a portable benefits model for workers in the FRPS.

Collective voice for non-unionized workers

- The Panel recommends introducing a protection for concerted activities in Part III of the Code.
- The Panel’s recommendations relating to third-party advocates, joint workplace committees and graduated models of collective representation, among others, represent ways that collective voice could be enhanced among non-union workers.

Cross-cutting issues

- The Panel’s recommendations to enhance compliance and enforcement efforts include the development of comprehensive interpretation guidelines and tests for employers and employees on issues such as jurisdiction; prioritizing greater information-sharing between agencies; re-emphasizing the need for more proactive education and information campaigns; and streamlining service-delivery.
- The Panel recommends that the Federal Jurisdiction Workplace Survey be conducted on a sustained and regular basis and that an FRPS identifier is added to the monthly Labour Force Survey.
- The Panel recommends that the federal government regularly review progress on modernizing federal labour standards and protecting those in

precarious forms of work while maintaining a level playing field for employers. Such a review should be conducted every five years.

We encourage the Minister and the federal government to consider the recommendations set out in this report as an important next step in ensuring that labour standards in FRPS workplaces are aligned with the realities of our economy and society in the 21st century.



Chapter 1: Introduction and overview of the Expert Panel's work

Labour standards establish the basic rights of workers with respect to a range of different working conditions, including hours of work, wages, holidays and leaves.

Part III of the *Canada Labour Code* (Code) sets forth the labour standards that apply to employers and employees working in the federally regulated private sector (FRPS), which includes such industries as banking, telecommunications, broadcasting and international and inter-provincial air, rail, road and maritime transportation, as well as federal Crown corporations and certain governance activities on First Nations reserves. While it is provincial and territorial labour legislation that applies to the majority of Canadians, more than 18,000 employers are subject to the provisions of Part III of the Code, which covers about 915,000 employees or 5% of Canada's labour force.¹

Federal labour standards were established more than 50 years ago, when the world of work was very different from today. Full-time, permanent employment was the norm, access to benefits and pensions was relatively widespread for the working population, and globalization and technological advancements had yet to reshape the economic landscape.

Recognizing the growing gap between standards that reflect the world of work in the 1960s and today's reality, in which more people work on a part-time, temporary and contract basis, often with limited access to benefits and wage increases, the Prime Minister asked the federal Minister of Employment, Workforce Development and Labour to modernize federal labour standards. In 2017, Part III of the Code was amended to add a right to request flexible work arrangements, create new unpaid leaves, place limits on unpaid internships and introduce new compliance and enforcement measures.

Subsequently, between May 2017 and March 2018, the federal Labour Program conducted extensive consultations with a broad range of stakeholders across Canada to explore what changes to labour standards were necessary (ESDC, 2018a). A range of changes have been made to Part III, or are forthcoming, stemming from those

¹ The [Portrait of the Federally Regulated Private Sector](#) created by the Labour Program for the Expert Panel is based primarily on the 2015 Federal Jurisdiction Workplace Survey (FJWS) and the 2017 Labour Force Survey (LFS). In most cases, the 2015 FJWS data were adjusted using 2017 LFS data and other measures, such as population growth. In May 2019, the Panel updated some tables and figures in the Portrait using 2018 LFS data so that the most recent available data could be reflected in this report. As indicated, the updated data suggest that there are 915,000 employees in the FRPS. However, it should be noted that some of the more recent estimates remain based on proportions derived from the 2015 FJWS (for example, the estimate that 5.5% of FRPS employees are employed on a temporary basis) and that, in some cases which are clearly identified, data referenced in the report are derived from the 2017 LFS. See Chapter 7 on cross-cutting issues for an overview of the data limitations the Panel faced, as well as our recommendations for improved data collection in the future.

consultations, including improving employees' eligibility to entitlements, ensuring fairer scheduling and fair treatment for workers engaged in precarious forms of work, providing paid personal days and ensuring sufficient notice and compensation are provided to employees when their positions are terminated.

However, arising from these consultations, five issues were identified as meriting further study because they were less well-understood, produced divergent views on how the federal government should proceed and raised fundamental questions about the goals and principles of federal labour standards. Those five issues are:

1. Federal minimum wage;
2. Labour standards protections for non-standard workers;
3. Disconnecting from work-related e-communications outside of work hours;
4. Access and portability of benefits; and
5. Collective voice for non-unionized workers

On February 20, 2019, the Minister announced the creation of the Expert Panel on Modern Federal Labour Standards. The Panel was asked to study the five issues identified in the 2017–2018 consultations, engage with stakeholders and experts on the issues and submit a report with evidence-informed advice relating to the five issues and any other related matters to the Minister by June 30, 2019 (see Annex B for the Panel's Terms of Reference). The Panel was also asked to use a gender-based analysis plus (GBA+) lens throughout its work.²

This report is the result of four months of work by the seven members of the Panel (see Annex C for the biographies of Panel members), the Secretariat at the Labour Program and the research assistants who supported the Panel.

The report contains the following main sections:

1. Introduction and overview
 - a) The changing nature of work
 - b) Snapshot of the federally regulated private sector
 - c) Principles informing the Panel's work
 - d) Panel's approach
2. Federal minimum wage
3. Labour standards protections for non-standard workers
4. Disconnecting from work-related e-communications outside of work hours;
5. Benefits: Access and portability
6. Collective voice for non-unionized workers
7. Cross-cutting issues: Compliance and enforcement, data and monitoring and evaluation

It also includes a series of annexes.

² See [Status of Women Canada](#), Government of Canada (2017) for a detailed explanation of GBA+ research and analysis.

The changing nature of work

The future of work and changes to the nature of work are topics that have received tremendous interest from policymakers, elected officials, academics and the general public in recent years. At the 2018 G20 Summit in Buenos Aires, world leaders agreed that creating an inclusive future of work is a top priority, especially against a backdrop of tremendous technological change that will create new opportunities but also pose significant risks of dislocation and distributional challenges (G20 Summits, 2018). Other recent reports from international organizations such as the World Bank, the International Labour Organization (ILO) and the Organisation for Economic Co-operation and Development (OECD) have also focused on the impacts of the changing nature of work and its implications for policymakers and existing regulatory and legislative frameworks (World Bank, 2019; ILO, 2019; OECD, 2018).

Studies estimating the impacts of automation due to advances in artificial intelligence and robotics are produced on a regular basis. Estimates range from fewer than 5% of current jobs being automated, all the way up to more than 40% of existing Canadian jobs becoming obsolete within the next 10 to 20 years (Manyika et al., 2017; Johal & Thirgood, 2016; Lamb, 2016).

Yet, many of these concerns are founded upon the possibility of what might happen rather than the reality of what's actually happening. In the face of widespread media attention to the claim that many workers in Canada are turning to the platform economy (often referred to as the sharing economy) and using firms such as Uber and Airbnb to earn additional income, a 2017 survey by Statistics Canada found that only 0.3% and 0.2% of Canadians, respectively, had offered peer-to-peer ride services and private accommodation services (Statistics Canada, 2017).

Estimates of the size of the so-called "gig" economy of on-demand, contingent workers are also highly variable and largely dependent on definitional issues (for example, online versus offline work) and availability of reliable data. In a study of platform-based work in the United States, Katz and Krueger found that work through online intermediaries accounted for only 0.5% of workers in 2015 (Katz & Krueger, 2019). The scope of gig work in the FRPS is even less clear, as the major platforms are typically under provincial or territorial jurisdiction.

What is clear, however, is that over the course of the past several decades, there are some trends in the labour market worth noting. These include the following.

There has been a **decline in the unionization rate** in Canada, from 37.6% in 1981 to 30.1% in 2018. This has been predominantly driven by a drop in private sector unionization rates (which stood at 15.9% in 2018, compared to 75.1% in the public sector) (Statistics Canada, 2018; Statistics Canada, 2019a).

Wage stagnation has had a significant impact on many workers in Canada. Overall median household income in 2017 constant dollars has increased from \$52,200 in 1976 to only \$59,800 in 2017 (a 14.6% increase over 41 years) (Statistics Canada, 2019b). The decline in real average incomes for households over the past 40 years in

the lower three deciles of the income distribution is particularly stark when set against the significant gains for the top three deciles, though wage growth has picked up since the turn of the century (Johal & Yalnizyan, 2018; Riddell, 2018).

Income inequality persists in Canada, and has hit a plateau at or near record highs over the past decade (OECD, 2019). After-tax income inequality (comparing the 90th percentile to the 10th percentile) for non-seniors doubled between 1976 and 2015 (Johal & Yalnizyan, 2018).

Increases in non-standard forms of work persist in Canada and many other advanced economies. Non-standard work (including part-time, temporary and self-employed with no employees) accounts for 60% of job growth in OECD countries since the mid-1990s (OECD, 2015). In Canada, the incidence of non-standard work increased from the 1970s through the early 1990s but has subsequently been relatively stable. Part-time employment (which was 12.5% in 1976 and stood at 18.7% in 2018) (Statistics Canada, 2019c) and temporary employment (which stood at 8.6% in 1997 and 11.3% by 2019) figures demonstrate the magnitude of the increase in the past 40 years.

There are a number of complex and inter-related drivers of declining unionization rates, wage stagnation, income inequality and the rise of non-standard forms of work which are beyond the scope of this report. However, clearly globalization, public policy choices around taxation and redistribution, new forms of technology and corporate practices such as outsourcing, franchising and sub-contracting are among the contributing factors that can be identified (Weil, 2011; OECD, 2011).

Implications for labour standards

The changing nature of work has many implications across a range of policy and regulatory domains. When firms engage in complex sub-contracting arrangements to sell goods or deliver services, which firm in the chain is primarily responsible for adhering to relevant regulatory standards? What factors should determine whether someone is an independent contractor and should tax treatment influence such choices? If your employee sends work emails on their “personal” time should they be compensated in some way for having done so, or are they exercising their own choice and preferences?

How does the changing nature of work impact labour standards in particular? The Panel argues there are four main implications that should be noted:

The blurring of lines between categories is becoming increasingly problematic. Whether the blurring of work and personal time, of contractor and employee, or of federal versus provincial/territorial jurisdiction, a range of distinctions that once were relatively clear have become murky over time as work arrangements evolved and new ways of working emerged. In some ways this is not surprising, as categories created in the 1960s by policymakers and politicians would have seemed logical, not foreseeing the advent of smartphones in every pocket nor corporate structures involving multiple parties regulated at different levels (for example, a federally

regulated firm using temporary help agency employees who are regulated at the provincial level).

The distancing of some workers from employment standards protections is a significant implication of the so-called “fissured workplace”. As firms employ a more complex web of sub-contractors, outsource more functions and use strategies such as franchising to deliver services more efficiently, workers are increasingly distanced from the firm that actually profits from their endeavours as well as the protections of labour laws (Weil, 2011). The rise of independent contractors as a well-recognized and often-utilized component of today’s labour market is perhaps the clearest example of firms attempting, in some cases, to divest themselves of certain responsibilities and obligations (for example, avoidance of payroll deductions such as CPP and EI) through misclassification—recognizing that some workers themselves prefer to be deemed independent contractors, often for financial reasons.

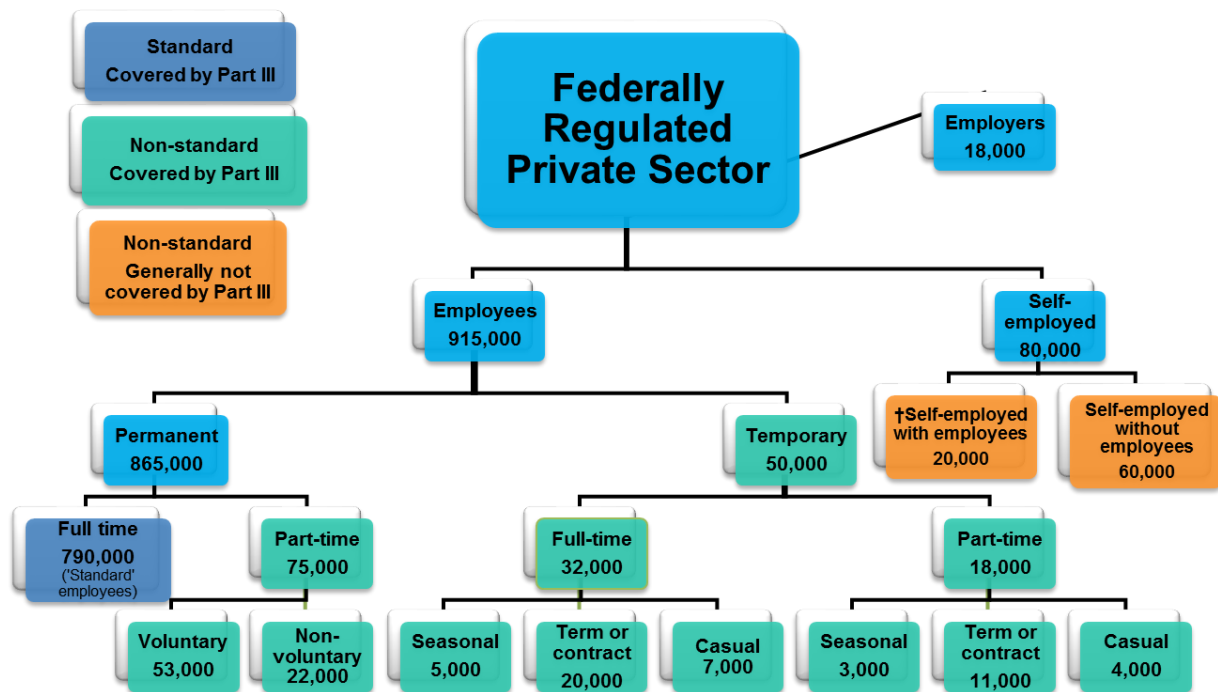
Some workers are falling behind as the cost of living increases but wages fail to keep up, while at the same time, access to benefits becomes increasingly tenuous. The rise of income inequality in Canada and other advanced economies has shone a spotlight on the challenges many workers face in meeting basic needs such as shelter, food and taking care of their and their families’ health expenses, whether dental care or purchasing pharmaceuticals. Re-thinking what living wages and benefits in the 21st century ought to be, is critical, with 3.7 million Canadians living in poverty (ESDC, 2018b), 6 million Canadians unable to afford basic dental care and many unable to access necessary mental health services (CAHS, 2014).

The impacts are not felt equally amongst different types of workers. In particular, precariously employed or vulnerable workers are less likely to be paid a living wage, have access to benefits and be secure enough to advocate for their rights, whether wages earned but not paid, or being compelled to work too many hours. Women, people with disabilities, visible minorities, recent immigrants, temporary foreign workers, workers with less education and single parents are all more likely to be employed in precarious forms of work (Noack, et al., 2011; Block & Galabuzi, 2011; Cranford, et al., 2003; PEPSO, 2015). Understanding the distributional impacts of well-designed or poorly-designed labour standards on these types of groups (including the intersections of different identity factors) is an important step to developing approaches that are effective for all in a diverse and fluid labour market.

Snapshot of the federally regulated private sector

It is important to note some of the key characteristics of the FRPS in Canada. The sector is composed of 18,000 employers, 915,000 employees and 80,000 self-employed workers (see Figure 1 for a more detailed breakdown). These numbers do not include those related to governance activities on First Nations reserves.

Figure 1: Composition of the FRPS, 2018



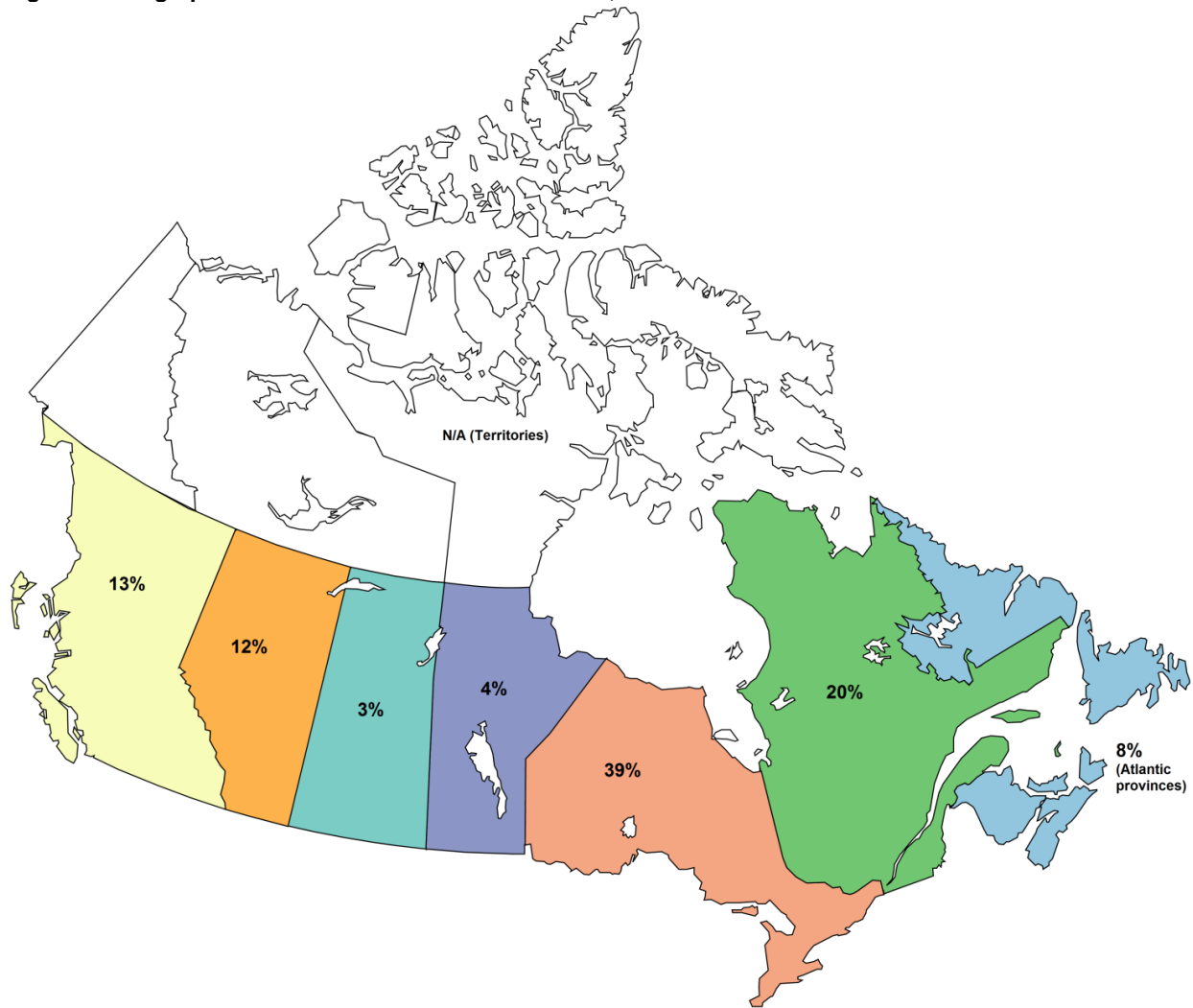
Source: 2015 Federal Jurisdiction Workplace Survey; 2017 Survey of Employment, Payroll, and Hours; 2018 Labour Force Survey; and Labour Program, Workplace Information Research Division estimates.

† These individuals are not subject to Part III of the *Canada Labour Code* as workers, but as employers.

It is worth noting that 790,000 of the 915,000 employees (or about 85%) are full-time and permanent employees, while the remaining 125,000 are in “non-standard” forms of work (meaning part-time and temporary). In addition, there are 80,000 self-employed workers who are not protected by labour standards under Part III of the Code (red boxes in Figure 1).

Geographically, the majority of employees work in Ontario (39%), Quebec (20%) and British Columbia (13%) (see Figure 2).

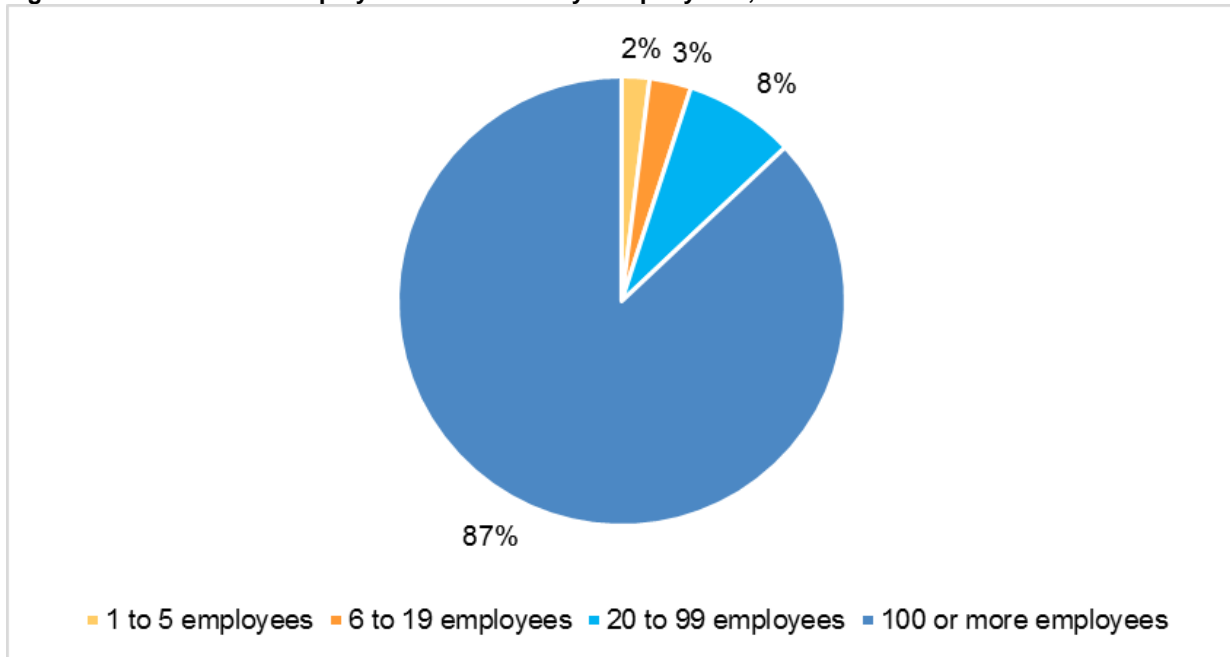
Figure 2: Geographic allocation of workers in the FRPS, 2017



Source: Labour Program, Workplace Information and Research Division estimates based on the Survey of Employment, Payroll, and Hours (2015, 2017); Federal Jurisdiction Workplace Survey, 2008; and Labour Force Survey, 2013–2017.

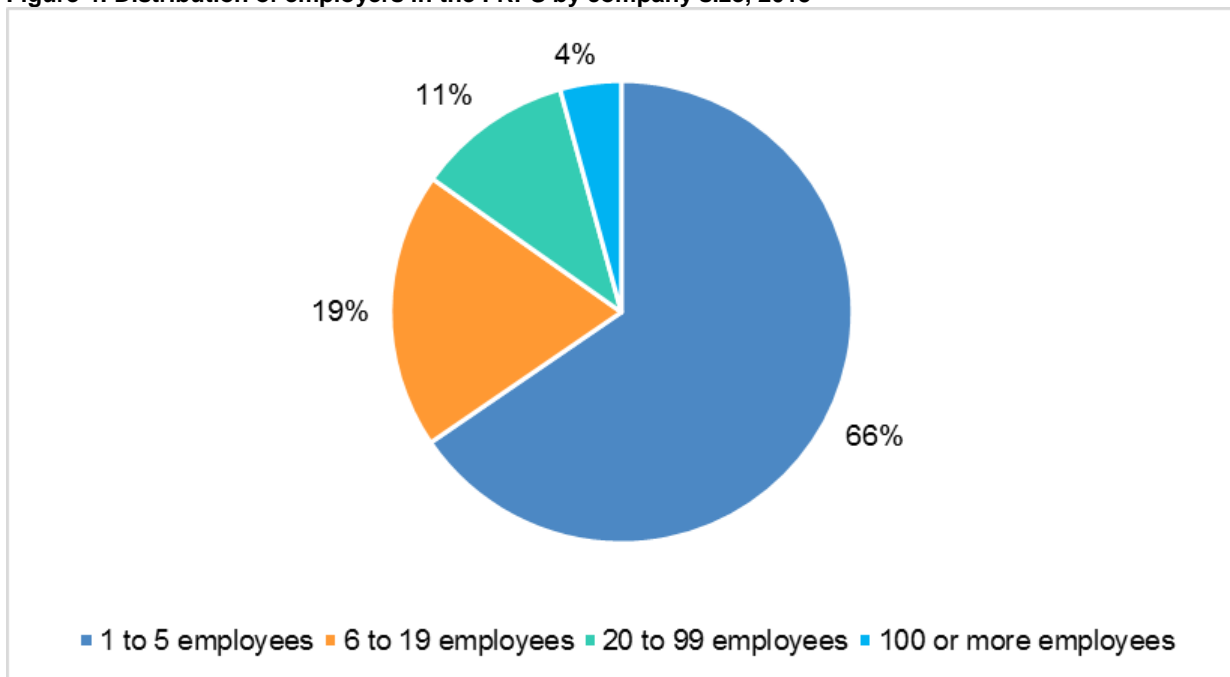
Larger employers are predominant in the sector, with firms having 100 or more employees employing 87% of all employees (see Figure 3). The highest proportion of employees in these large firms work in banking (28%), telecommunications and broadcasting (16%) and road transportation (16%). By firm size, there are many more small firms in the sector; 85% of employers have fewer than 20 employees (see Figure 4). Table 1 provides a breakdown of employers by province and industry.

Figure 3: Distribution of employees in the FRPS by company size, 2015



Source: Federal Jurisdiction Workplace Survey, 2015.

Figure 4: Distribution of employers in the FRPS by company size, 2015



Source: Federal Jurisdiction Workplace Survey, 2015.

Table 1: Estimated number of employers in the FRPS by province and industry, 2017

Industry	Total	NL	P E	NS	NB	QC	ON	M B	SK	AB	BC
Road transportation	14,180*	80	30	170	290	2,560	6,440	640	460	2,060	1,430
Air transportation	1,010*	20	2	20	10	160	300	40	20	140	270
Telecommunications	960*	10	3	30	20	240	380	30	20	80	120
Maritime transportation	430*	50	10	30	20	70	70	3	2	10	150
Feed, flour, seed and grain	410*	1	1	10	10	110	130	30	30	40	40
Postal services and pipelines	390*	10	1	10	10	60	150	10	10	70	60
Banks	100*	0	0	2	1	10	50	1	3	20	10
Rail transportation	20*	0	0	0	1	4	5	1	4	2	2
Total (without misc. industries)	17,500	170	50	270	370	3,210	7,540	760	550	2,420	2,090
Miscellaneous industries ³	500*	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Total (with misc. industries)	18,000*	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a

Source: Workplace Information and Research Division estimates based on the Canadian Business Patterns (2015, 2017); and Federal Jurisdiction Workplace Survey, 2015.

* Proportions are based on 2015 FJWS.

The proportion of employees covered by collective bargaining agreements in the FRPS is 34% (ESDC, 2019), which is much higher than coverage in Canada's private sector at approximately 16% (Statistics Canada, 2019a). The proportion of workers engaged in standard work (at 85%) is also higher than the Canadian average, including both the private and public sector (71%) (ESDC, 2019).

There are a number of diverse groups of people who are engaged in non-standard work, at varying proportions, which are outlined in Table 2.

³ Miscellaneous industries include undertakings classified as for the protection and preservation of fisheries as a natural resource, governance activities on First Nation reserves, uranium mining and processing, and atomic energy. First Nation government employees and employers have been excluded from this analysis.

Table 2: GBA+ analysis of non-standard employees and self-employed workers in the FRPS, 2018

Personal characteristic	All employees (915,000)	Temporary employees (50,000)	Part time employees (93,000)	Self-employed workers without employees (60,000)
Women*	39% (357,000)*	45% (23,000)*	53% (49,000)*	7% (4,000)
Men*	61% (558,000)*	55% (28,000)*	47% (44,000)*	93% (56,000)
Aboriginal status	4% (37,000)	5% (3,000)	3% (3,000)	5% (3,000)
Canadian born	70% (641,000)	67% (34,000)	73% (68,000)	42% (25,000)
Earning <\$15	7% (64,000)*	13% (7,000)	17% (16,000)	no data
55+*	20% (183,000)	18% (9,000)	25% (23,000)	30% (18,000)

Source: 2015 Federal Jurisdiction Workplace Survey; 2017 Survey of Employment, Payroll, and Hours; 2018 Labour Force Survey; and Labour Program, Workplace Information Research Division analysis.

* Proportions are based on 2015 FJWS.

When compared to workers in the rest of Canada, workers in the FRPS tend to have better working conditions (for example, wages, access to benefits), are more likely to be male, and are slightly older and more likely to be unionized.

Principles informing the report

The following principles guided our work, whether at the consultation phase, the research and writing phase, and most importantly at the deliberation phase, when we sought to achieve consensus on our recommendations.⁴ Those principles are:

Decency at work: This is the fundamental idea that labour standards must provide a basic floor of decency for workers, such that they receive sufficient wages to live on and are not deprived of wages or benefits to which they are entitled nor compelled to work unreasonable hours, nor are they subject to harassment or discrimination or unwarranted dangers in the workplace (ILO, n.d.).

The market economy: Labour standards ought to allow workers to benefit from and participate in Canada's market economy while also providing employers with a level playing field.

The workplace bargain: Labour standards ought to respect the rights of employers and workers to negotiate the terms of their relationship, provided that those terms do not derogate from basic labour standards.

⁴ The Panel was inspired by the principles outlined in Harry Arthurs' landmark review of federal labour standards, *Fairness at Work*, published in 2006.

Inclusion and integration: All workers, regardless of individual circumstances, should be afforded the full protection of relevant labour standards, as well as human rights legislation, and the distributional impacts of standards should be considered closely (for example, using a GBA+ lens).

High levels of compliance: Developing standards that parties will comply with is critical to ensuring trust in the system, overall respect for laws, and a level playing field for employers.

Clarity: Labour standards should be clearly, simply stated and information explaining standards should be easily available to workers and employers.

Circumspection: Labour standards should be developed and implemented to avoid unintended adverse consequences for workers or employers, and incremental or gradual changes are more likely to avoid such intended consequences.

Evidence-based: Analysis and advice informing the report is based on available, reliable data and input from stakeholders and experts.

The Panel's approach

The Panel undertook a three-phased approach to its work between February 2019 and June 30, 2019, though the phases were overlapping and not sequential.

Phase 1 (issue identification and scoping) involved initial meetings and discussions with the Labour Program to determine the precise scope and mandate of the Panel and ensure the right issues would be explored.

Phase 2 (engagement) involved targeted engagement across Canada, building upon the Labour Program's 2017–2018 consultations, with a range of workers, civil society groups, unions and labour organizations, employers and employer organizations, experts and other stakeholders. In total, meetings were held with over 140 individuals and organizations (see Annex D for a full list of stakeholders). Face-to-face meetings with stakeholders were held in Ottawa, Toronto, Montreal, Vancouver, Halifax and Winnipeg, and a number of bilateral meetings and calls were held with other stakeholders during the engagement phase.

Phase 3 (research and writing) involved research undertaken by the Panel, Secretariat and our research assistants and writing up the Panel's findings and recommendations in the final report. We would like to thank the Secretariat, headed by Executive Director Margaret Hill, and our research assistants for their hard work, patience and timely efforts (see Annex E for a list of Secretariat staff and research assistants). All errors and omissions in the final report are the responsibility of the Panel.

In the course of the Panel's work, there were some key limitations that need to be flagged. Foremost amongst all of these was time; a three-and-a-half month, part-time engagement for Panel members was challenging. There were many issues we would

have sought to explore in more depth, and a number of stakeholders we would have sought to engage with in a more comprehensive way, had we more time to carry out our work (for example, meeting with more workers, greater dialogue with Indigenous organizations and First Nation communities). Due to time pressures, it was also impossible to formally engage with external experts to conduct novel research on these issues, and we were therefore limited to discussing the issues with experts based on their understanding of the issues at the time.

A second key limitation, which we address in more detail in the report, is data. We were unable to access, whether for time, resourcing or general availability reasons, some key data that would have been beneficial to understanding the issues we studied. This limitation was particularly challenging for us in the context of the request that we deploy a GBA+ lens to our work (for example, considering distributional impacts of potential recommendations on different groups such as women, Indigenous people, racialized minorities, new Canadians). The section on data and our recommendations therein detail some of the specific gaps and constraints that we encountered.

Having set out those limitations, we are comfortable with the recommendations we have made in the report (see Annex A for a full list of recommendations). Where we are of the opinion that certain areas require more in-depth study and examination, we have flagged those issues. It is also clearly noted where we lack sufficient information or data to make an informed recommendation.

We are grateful to the federal government for seeking our impartial advice on these issues, which are of utmost importance to workers and employers in the FRPS. We also are aware that many of these issues will be, or are already, relevant to workers and firms regulated by the provinces and territories. We hope that our advice and analysis can be beneficial in that context as well.

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Chapter 2: Federal minimum wage

For more than 20 years, the federal minimum wage has been pegged, in Part III of the *Canada Labour Code* (Code), to the minimum wage rate in the province or territory in which the employee is usually employed. We were asked to explore two main questions:

- Should this approach be maintained or should a freestanding federal minimum wage be reinstated?; and
- If a freestanding rate were to be adopted, how should it be set, at what level and who should be entitled to it?

What's the issue?

Minimum wages are the lowest wage rates that employers can legally pay their employees and are a core labour standard. Setting such a floor can be justified by appeal to notions of basic fairness or justice. It can also be an effective way of achieving other policy objectives such as reducing income inequality and/or poverty as well as ensuring that the benefits of economic growth are more equitably shared.

However, increases in minimum wages can also have adverse consequences, potentially reducing employment opportunities or hours of work for low wage workers, raising the prices of goods and services and lowering the competitiveness of firms that hire low wage workers.

Choosing the optimal minimum wage, as well as how to adjust it over time, represents a delicate balancing act that takes account of the costs and benefits to society of each option.

Minimum wage policy has recently received increased emphasis as an important component of labour market and social policy. This change reflects several developments. One is the rise in wage and income inequality in many developed countries since the late 1970s/early 1980s. A related phenomenon is the highly unequal sharing of the benefits of economic growth over the past four decades. For example, based on income tax data the real (inflation-adjusted) market income of the bottom 90% of Canadian income earners increased by a meagre 2% over the period 1982 to 2010, whereas real market income of the top 10% rose by 75% and by 160% for the top 1% (Lemieux & Riddell, 2016). The shares of market income earned by the top 1% and the top 0.1% also rose substantially over this period. The extremely uneven sharing of economic gains has led to much greater emphasis on policies that may promote equitable growth, including higher minimum wages.

A third factor contributing to increased attention to minimum wage policy is growth in the size of the low wage labour market relative to the workforce as a whole.

This growth in part reflects greater polarization of Canada's (and other countries') labour market—more workers at the top and the bottom of the wage distribution and fewer jobs with middle income salaries (Green & Sand, 2015; Beach, 2016).

An additional factor contributing to increased attention to minimum wage policy is a growing body of research that concludes that the adverse consequences of minimum wages—specifically the magnitude of disemployment effects—are not as large as previously believed. This new research began with the influential work of Card and Krueger (1994; 1995) that challenged traditional views about the consequences of minimum wages. Although there remains considerable debate about the size of disemployment effects from increases in minimum wages much subsequent research has largely supported Card and Krueger's conclusion that moderate increases in minimum wages need not have adverse effects on low wage employment.

The substantial body of subsequent analysis that has followed their work also resulted in a rich body of evidence on minimum wages and their effects. This has resulted in greater understanding of the role minimum wages may play in reducing wage and income inequality and combating poverty, as well as other consequences—good and bad—of minimum wages. This body of research and evidence has also resulted in some countries such as the United Kingdom (in 1998),⁵ and Germany (in 2015) implementing their first national minimum wage, as well as greater public and policy attention being paid to minimum wages in countries that introduced minimum wages many years ago.

Minimum wage policy in Canada

In Canada, the federal minimum wage is the minimum wage applicable to employees covered by Part III of the Code. From 1965, when Part III came into force, until 1970, the rate was specified in the Code and, as of 1971, the Governor in Council had the authority to adjust it through regulation.

The current approach, adopted in 1996, is set out in section 178 of Part III. Section 178 establishes the federal minimum wage as the “minimum hourly rate fixed, from time to time, by or under an Act of the legislature of the province where the employee is usually employed and that is generally applicable regardless of occupation, status or work experience”.⁶ In addition, the Governor in Council has the authority, by order, to: a) replace the minimum hourly rate that has been fixed with respect to employment in a province with another rate; or b) fix a minimum hourly rate with respect to employment in a province if no such minimum hourly rate has been fixed. Neither of these two authorities has ever been used.

The provinces and territories set their minimum wage rates in different ways. Generally speaking, they establish them in labour laws or regulations and, in 5 of the 13 jurisdictions, mechanisms are in place to adjust the rates on an annual basis relative to

⁵ Previously UK Wages Councils established minimum wages and labour standards in specific sectors. The Wages Council system was abolished by the Thatcher government in 1993.

⁶ Under the *Interpretation Act* (ss. 35(1)), “province” includes the territories; for example, Yukon, Northwest Territories and Nunavut.

the Consumer Price Index (CPI).⁷ Changes in provincial and territorial minimum wages translate into changes in the rate applicable to employees in the federally regulated private sector (FRPS) given the current “pegged” approach in Part III.

Low wage and minimum wage earners in the FRPS

Based on the 2015 Federal Jurisdiction Workplace Survey (FJWS) and the Labour Force Survey (LFS), the Labour Program estimates there were 42,000 employees in the FRPS earning the minimum wage in the province in which they worked in 2017, amounting to 5% of all FRPS workers. This compares to 7% of employees earning the minimum wage in Canada as a whole (excluding the territories, for which data are not available) in 2017.

Compared to Canada as a whole, minimum wage workers are more likely to be found in full-time standard employment in the FRPS (71% versus 41% for Canada as a whole) and long-term employment (50% versus 16%). In the FRPS, as in other Canadian jurisdictions, minimum wage earners are over-represented in non-standard types of work. Nearly a quarter (24%) of part-time FRPS employees earn minimum wage yet they represent only 10% of the FRPS workforce.

Similarly, temporary workers constitute 16% of minimum wage employees yet make up only 5.5% of the workforce. Minimum wage employment is concentrated in road transport (31%), air, rail and maritime transport (26%), and banks (21%).⁸

In terms of the labour market dimensions contributing to vulnerability of workers, minimum wage work in the FRPS has some unique features. Minimum wage earners in the FRPS are older (76% are 25 years and over) than the rest of Canada (42% are 25 years and over). Immigrants are slightly more likely to earn minimum wage in the FRPS (33%) than in the rest of Canada (30%) (ESDC, 2019).⁹ Fifty-six percent of minimum wage earners in the FRPS have college, trade and university degrees compared to 31% that have a high school education or less.

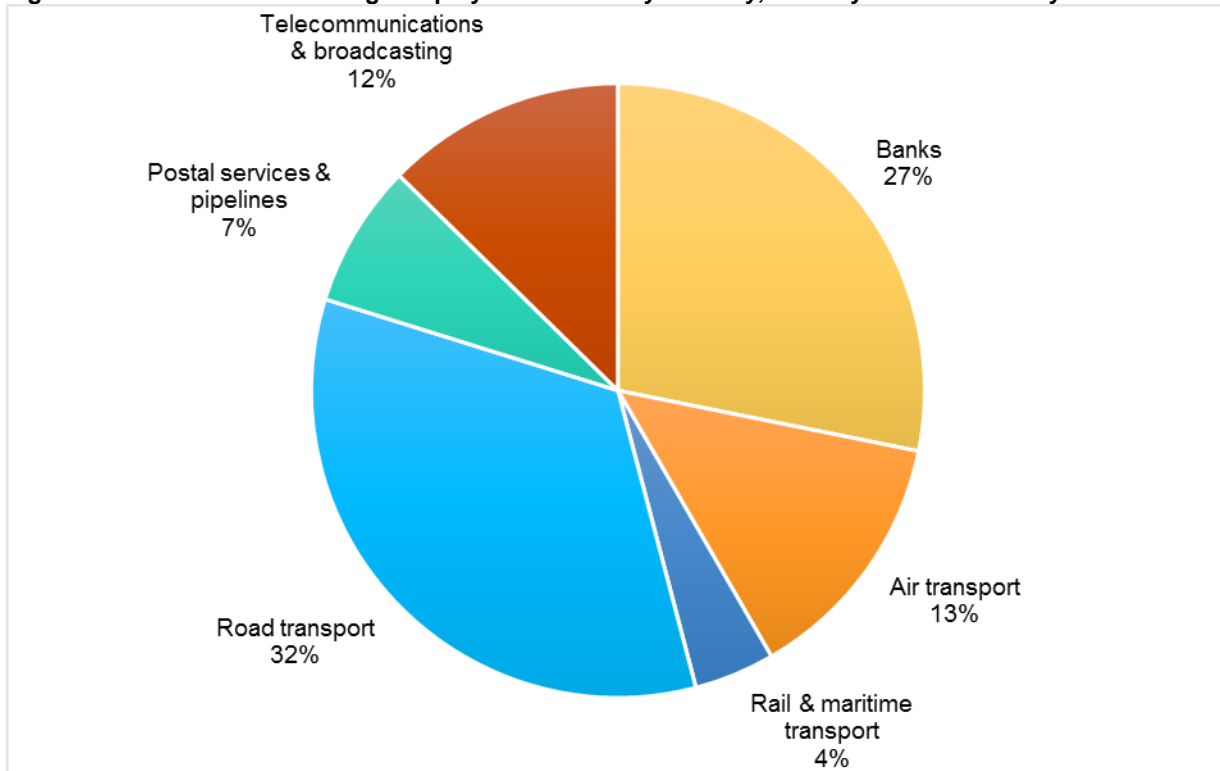
Employees in the FRPS are generally well-paid. However, about 10% earn low wages, compared to over 20% for Canada as a whole; for example, the Labour Program estimates that 67,000 employees earned \$15 or less in 2017 (ESDC, 2019). The distribution of low wage employees among FRPS industries is set out in Figure 5. Low pay is often associated with smaller employers. In the FRPS, however, 71% of low pay employees work for firms with more than 100 employees.

⁷ Namely, Manitoba; New Brunswick; Newfoundland and Labrador; Saskatchewan; and Yukon. Ontario will, under [ss. 23.1\(4\) of the ESA, 2000](#), adjust its minimum wage annually based on the CPI as of October 1, 2020. Nova Scotia will do the same as of April 2022. Nunavut assess its minimum wage rate on an annual basis.

⁸ Distribution of employees in the FRPS earning the minimum wage 01/2018 to 02/2019. Tabulations by the Panel based on Labour Force Survey microdata January 2018 to February 2019.

⁹ See Tables 3, 4 and 7 in [Federal minimum wage: Issue paper](#).

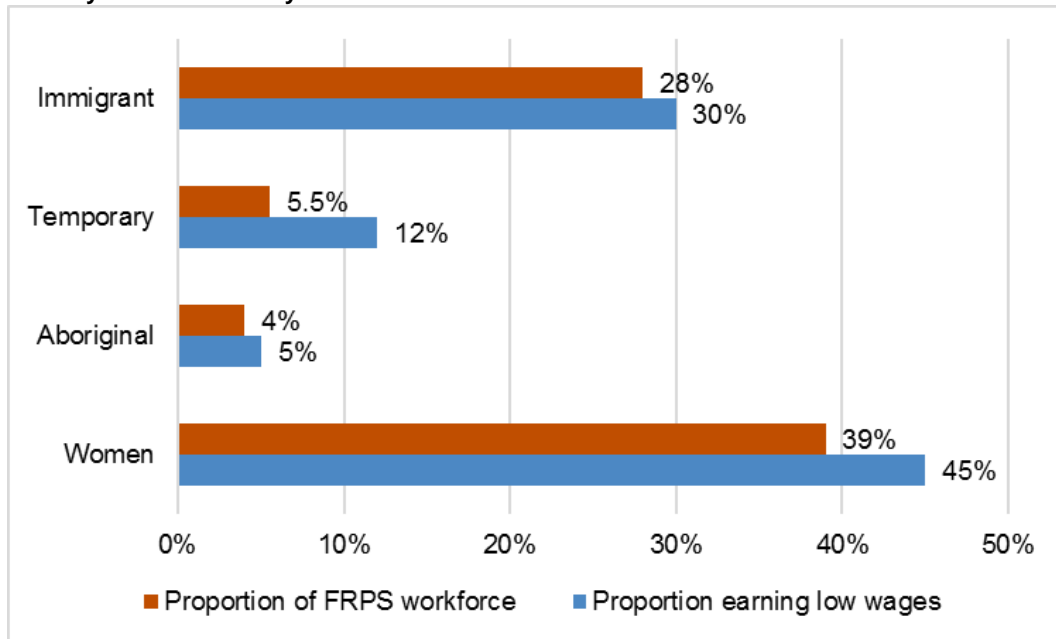
Figure 5: Distribution of low-wage employees in FRPS by industry, January 2018 to February 2019



Source: Labour Force Survey, January 2018 to February 2019.

Low income is not experienced equally. As Figure 6 shows, 45% of women experience low pay while they only make up 39% of FRPS employees. Similarly, temporary employees make up only 5.5% of employees in the FRPS but are twice as likely to earn low wages. Employees with low pay are less likely to be unionized (17%) than employees as a whole (34%). Low pay in the FRPS is not a feature of youth employment, as 80% of such employees are 25 years old and over. Nor is it confined to entry level or new job holders, as 38% have been with their employer for one to four years and 35% for five or more years.

Figure 6: Proportion of employees in specific demographic groups with low wage versus FRPS as a whole, January 2018 to February 2019



Source: Tabulations by the Panel based on LFS 2018 and 2019 microdata. The FRPS cannot be precisely identified in the LFS, so estimates are the Panel’s best approximation. See recommendations relating to data in Chapter 7 on cross-cutting issues.

Three of the four provinces with the highest concentration of federal undertakings are at, or moving towards, a \$15 per hour minimum wage threshold (Alberta, British Columbia and Ontario). These jurisdictions encompass over half (64%) of FRPS employees.

What the research says

Minimum wages can have numerous effects on labour market outcomes. In choosing the appropriate minimum wage at a point in time and adjusting it over time it is important to take account of both the positive and negative effects. Doing so will facilitate finding the “sweet spot” where substantial benefits are obtained without imposing unnecessarily high costs. There will always be tradeoffs involved with a particular minimum wage level, as there are costs and benefits associated with any option.

We summarize below what is known about the consequences of minimum wages. We focus in particular on Canadian studies, as well as some relevant studies from the United States (US) and the United Kingdom (UK), countries with labour market institutions similar to Canada’s.

Spillover effects

Spillover effects refer to the impacts of increases in minimum wages on the wages of workers whose wages, prior to the increase, were above the original or the new minimum wage. There is now a substantial amount of research on spillover effects in the US, the UK and Canada. In all three countries there is clear evidence of spillover effects from increases in the minimum wage.

Two recent studies find evidence of spillover effects of minimum wage changes in Canada's labour market. Fortin and Lemieux (2015) find strong effects for both men and women at the 5th percentile and somewhat smaller effects at the 10th and 15th percentiles. Effects are generally larger in magnitude for women. Campolieti's (2015) results are somewhat smaller: wage spillovers up to the 5th percentile of the wage distribution for men and the 10th percentile for women. There is no evidence of effects at higher percentiles.

Fortin and Lemieux also find important differences in minimum wage impacts between 1997 to 2005 and 2005 to 2013. During the 1997 to 2005 period real minimum wages were stable or declining in most provinces, while since 2005 minimum wages have been rising faster than inflation. During the 1997 to 2005 period changes in minimum wages exerted modest downward pressure on the bottom part of the wage distribution, while since 2005 minimum wage effects operated in the opposite direction and were much larger in magnitude.

Both studies are based on a large number of minimum wage changes in Canadian provinces over an extended period of time. Some of these increases are relatively small in percentage terms (most are in the 5% to 10% range), while others are much larger (a few exceed 20%). Their estimates reflect these diverse policy changes and may under- or over-state what could be expected to occur as a result of any specific minimum wage adjustment.

In other words, higher minimum wages raise wages of minimum wage workers and also of low wage workers earning more than the minimum wage. The influence of minimum wages on income inequality and poverty may thus extend beyond minimum wage workers to other low wage workers. However, there is no evidence that higher minimum wages influence wage rates of middle income or higher earners.

Impacts on wage and income inequality

The rise in wage and income inequality in the past four decades in many developed countries has attracted much attention and research into its causes and consequences. The consensus in the research literature is that technological change and globalization of production are the dominant causal factors resulting in rising inequality. However, there is solid evidence that changes in labour market institutions—especially declining unionization and changes in minimum wages—also contributed.

Autor, Manning, and Smith (2016) conclude that changes in US minimum wages contributed to growing inequality during periods when minimum wages were falling in purchasing power terms. UK studies such as Dickens and Manning (2004) and Stewart (2012) find that the introduction of a national minimum wage in the late 1990s had a substantial effect on the lowest part of the UK wage distribution (the bottom 20%) and moderated trends toward growing inequality in that country.

In Canada, wage and income inequality as measured by the Gini coefficient (a frequently used measure of the overall degree of inequality in a country or region) rose markedly during the 1980s and 1990s and has been relatively stable at those higher levels since 2000 (Green, Riddell, & St-Hilaire, 2016).¹⁰

Fortin and Lemieux (2015) conclude that changes in minimum wages over the 1997 to 2013 period played a key role in wage inequality trends in Canada. They compare the changes in inequality that took place to those they estimate would have occurred if minimum wages were held constant relative to the cost of living.

During the 1997 to 2003 period Fortin and Lemieux find declining minimum wages in purchasing power terms made a modest contribution to rising inequality during the late 1990s and early 2000s. The rise in real minimum wages in many provinces since the early 2000s exerted a strong effect on moderating pressures toward increasing inequality during that period. They find inequality-reducing effects were larger for women who are more heavily represented among minimum wage and low wage workers than are men.

Fortin and Lemieux also find the inequality-reducing impacts of higher minimum wages are strongest at the very bottom of the wage distribution—the 5th and 10th percentiles—and smaller but still evident at the 15th percentile. Increases in minimum wages had no impact on wages above the 20th percentile of the distribution for men or women.

Poverty

Numerous studies in both the US and Canada conclude that the link between minimum wages and poverty is relatively weak.¹¹ One reason is that many minimum wage workers are teenagers in middle and higher income families. Another large group of minimum wage workers consists of young adults attending college or university and living at home (Morissette & Dionne-Simard, 2018). Many of these students combining schooling and work also come from middle income families. Both of these issues may be less relevant in the FRPS where teenagers and full time students are less prevalent among those earning the federal minimum wage.

¹⁰ However, since 2000 wage growth among the top 10% has continued to outpace growth among the bottom 90% so the 90-10 differential, a measure of inequality that is more sensitive than the Gini coefficient to changes in the tails of the distribution, has continued to rise, albeit more slowly than during the 1980s and 1990s.

¹¹ See for example Card and Krueger (1995); Burkhauser, Couch, and Glenn (1996); Sen, Rybczynski, and Van De Waal (2011); and Campolieti, Gunderson, and Lee (2012).

Second, individuals in many poor families work very little or not at all so changes in minimum wages have little, if any, impact on their family income. Among those who are employed, minimum wage workers work fewer hours than workers higher up the wage distribution. For example, Fortin and Lemieux (2000) found that minimum wage workers constituted 6% of the workforce but worked only 3.6% of total hours.

However, there are reasons to believe that the relationship between changes in minimum wages and poverty may be stronger today than in the past. As real minimum wages increased substantially in the past 15 years, the composition of minimum wage employees has also changed. For example, Morissette and Dionne-Simard (2018) compare the composition of those earning the minimum wage in the first quarter of 2017 to that in the same quarter in 2018 and find that the proportion of minimum wage workers below 25 years of age fell from 52% in early 2017 to 43% in early 2018.

Green (2016) argues that raising the minimum wage in Canada to \$15 per hour would likely have adverse employment effects, especially for teenagers, but would have the potential of reducing poverty because a greater proportion of minimum wage workers would be older adults, some of whom would be the main breadwinner in the family.

Depending on whether one uses a relative measure or an absolute measure of poverty, poverty rates in Canada have been either stable or have declined substantially in recent years (Heisz, 2016). During this period minimum wages have increased substantially relative to the cost of living. There is clearly a need to determine whether these gains on the poverty front can be attributed in part to recent increases in minimum wages. This gap in our knowledge is important not only for the FRPS but also for the federal government's recently announced Poverty Reduction Strategy.¹² We discuss this issue further in the context of our recommendation for an independent low wage commission.

Employer responses and disemployment effects

A substantial amount of research effort, especially in the US, has been devoted to understanding both the magnitudes of any disemployment effects from changes in minimum wages and the factors that influence these adverse effects. Prior to the 1990s a consensus view was that a 10% increase in the minimum wage would result in a 1% to 3% decline in employment, with teenagers and young adults being most affected. Estimates were based mainly on time series data using changes in the US federal minimum wage. However, in part because the US federal minimum wage had remained fixed at a low level, in the early 1990s a number of states began raising state minimum wages. This opened up the opportunity of using cross-sectional variation across states to analyze minimum wages effects.

In their classic study, Card and Krueger (1994) found no decline in employment in New Jersey fast food outlets after a minimum wage increase relative to a neighbouring state (Pennsylvania). This finding challenged the consensus view and led

¹² The federal [Poverty Reduction Strategy](#) was announced in August 2018.

to a substantial amount of subsequent research. This subsequent research has been facilitated by increased regional variation in minimum wages due to the growing importance of state minimum wages—that now cover more than half the US workforce—during a period when the federal minimum has remained fixed. Recent studies use detailed regional data to study minimum wage changes that take place within contiguous counties that straddle state borders. These studies generally find small or no disemployment effects (for example, Dube, Lester, & Reich, 2016).

The Card and Krueger findings have not gone unchallenged. For example, Neumark and Wascher (2000) and Card and Krueger (2000) re-evaluated the New Jersey-Pennsylvania “natural experiment” with a variety of corroborating data sets and found conflicting results, although both positive and negative estimated effects were relatively small in size. The conclusions of recent studies using contiguous counties across state borders have also been disputed.¹³

In Canada the fact that minimum wage setting falls principally under provincial and territorial jurisdiction facilitates research in this area by providing both time series and cross-jurisdictional variation in minimum wage adjustments. As noted by Baker (2005), by providing a long time period in which there is both time series and cross-sectional variation in minimum wage adjustments, Canadian data are more suitable than that in the US and UK for examining minimum wage impacts.

Benjamin, Baker, and Stanger (1999) examine the impacts of increases in minimum wages in Canada that began the early 1990s after real minimum wages had fallen to low levels (see Figure 7). They find no disemployment effect in the short run (one to two years after the increase) but their estimates imply relatively large negative effects over longer periods, especially among young workers. These findings were confirmed by a number of later studies (Baker, (2005); Campolieti, Fang, & Gunderson (2005); Campolieti, Gunderson, & Riddell (2006); Brochu & Green (2013)) which found young workers experienced an employment loss of between 3% and 5% after a 10% minimum wage increase.

The Canadian literature thus suggests that disemployment effects are a potential adverse consequence of increases in minimum wages that should be taken into account by policymakers. These impacts are most evident for teenagers and young adults, who constitute a significant proportion of minimum wage employees in many Canadian jurisdictions.

Understanding the factors that influence the magnitudes of any potential disemployment effects and the circumstances in which they occur is important for minimum wage policy. One factor is adjustment time; adverse impacts are more likely to be larger in the long run than in the short run, as some adjustments such as installing labour-saving technology may take considerable time to design, procure and install.

¹³ See, for example, the exchange between Allegretto, Dube, Reich, and Zipperer (2017) and Neumark and Wascher (2017).

Another way employers respond to the increased costs associated with minimum wage changes is to increase product prices. This in turn may subsequently reduce employment in the industry as consumers adjust their spending patterns in response to changes in the relative prices and cut back on purchases of the goods and services produced by low wage labour. Such adjustments take time to develop so will not be picked up by studies that focus on short run effects.

Firms' ability to raise product prices also influences disemployment effects. Campolieti (2018) examines the effects of minimum wages on employment and prices in Canada's restaurant sector. During the period 1983 to 2000, when minimum wage changes were modest, restaurants were able to pass increased costs on to consumers and did not reduce employment. In the recent 2001-2016 period he finds moderately large negative effects on employment and less pass-through on restaurant prices. Harasztosi and Lindner (2018) analyze a large increase in Hungary's minimum wage. Firms in the exporting sector suffered large employment losses, while firms in non-tradeable and service sectors experienced limited employment reductions and increased prices. These studies illustrate the trade-offs involved in choosing appropriate minimum wage levels.

Higher minimum wages narrow the gap between low skilled workers and more highly skilled employees. Some employers respond by substituting more productive workers for low skilled minimum wage workers. For example, a recent US study found that firms hiring workers in low wage occupations raised hiring requirements following increases in the state minimum wage (Clemens, Kahn, & Meer, 2018), limiting employment opportunities for the least-skilled workers.

In summary, minimum wages have numerous potential consequences, both positive and negative. The Canadian evidence on disemployment effects is more consistently negative than in the US (and in the UK, discussed below). Understanding the reasons for these differences is an important issue for future research. Another important question for future research relates to the consequences of recent substantial minimum wage increases in several of the larger population provinces. We return to the issue of future minimum wage research later.

Minimum wage policies in other jurisdictions

Over 100 countries now have minimum wage policies. There are two general approaches to minimum wage regulation. Minimum wages can be set at a national or sub-national level through legislation that applies to all employees with some exceptions, such as age. This is generally the current practice in Canada, as described earlier.

Alternatively, wages can be set sectorally or through extension of union contracts, with minimum pay most commonly being between 60% and 70% of average wage rates. Countries with this type of minimum wage system include Sweden, Finland, Norway, Denmark, Switzerland, Iceland and Italy. Countries that determine wage rates

collectively tend to have more generous wage floors and less overall income inequality, but this relies on high union coverage (McBride & Muirhead, 2016).

With declining union densities in many countries, in some jurisdictions the model of collective wage setting is being replaced by national statutory minimum wage systems. Ireland, the UK and, more recently Germany, have all introduced common statutory minimum wages in response to declining union density and other factors (McBride & Muirhead, 2016).

United Kingdom

Declining coverage under unions and wage councils and increasing income inequality through the 1980s and 1990s led to the establishment of a statutory minimum wage and the independent Low Pay Commission (LPC) in the UK in 1999. Initially set at 45% of median earnings (for those aged 25 and over), the minimum wage increased the wages of 1.5 million low wage workers. For most of the past two decades, the proportion of people with hourly wages below the low pay measure (66% of median) stayed at about one in five people. But that changed in April 2016, when the UK passed a “living wage” policy. The minimum wage was then set at 56% of median earnings and is on course for 60% by October 2020. The goal is to ensure that “work pays and reduces reliance on the state topping up wages through the benefits system.”

Since the national living wage was introduced in 2016, the percentage of employees in low pay has fallen from 21% in 2015 to 17% in 2018. Research by Cominetti et al. (2019) concludes that two decades of careful evidence gathered by the LPC failed to identify significant impacts on the employment or hours worked of the low paid.

The LPC is mandated to provide research on the impacts of minimum wage increases and make annual recommendations for minimum wage adjustments to the government. Based on monitoring minimum wage policy over two decades, that minimum wage increases have resulted in little evidence of negative effects on jobs or business investment and that, while there was an initial increase in prices when the minimum wage was introduced in 1999, subsequent increases did not have the same effect. Further, while earnings have become more closely compressed for those earning less than 60% of the median, the LPC estimates that up to 30% of all workers have benefited directly and indirectly from the minimum wage.

Both major parties in Britain have committed to further plans to address low pay.¹⁴ Philip Hammond, Chancellor of the Exchequer in the current Conservative Party government, has promised to use the minimum wage to achieve the “ultimate objective

¹⁴ The Labour government established the national minimum wage in 1999 and adopted a minimum wage policy that would be “decided not on the basis of a rigid formula but according to the economic circumstances of the time and with the advice of an independent low pay commission, whose membership will include representatives of employers, including small business, and employees.” (UK Low Pay Commission (2019), p 5.) The Conservative Party opposed the minimum wage when introduced but has since adopted the National Living Wage at 60% of median earnings.

of ending low pay in the UK” (Savage, 2019). Based on the international definition this would involve setting the minimum wage at two-thirds of median earnings. The Labour Party has pledged a £10 minimum wage if elected, which would be worth 69% of median wage in 2022 (Cowburn, 2019).

United States

The federal minimum wage has been frozen in the US at \$7.25 (USD) for the past 10 years. It is binding on 21 states. In the absence of adjustments to the federal rate, state capitols and city halls in other jurisdictions have become more active in setting their own minimum wage. In 2019, 21 states and 39 cities and counties will raise their minimum wage (NELP, 2018).

Averaging across all of these federal, state and local minimum wage laws, the effective minimum wage in the US will be \$11.80 (\$15.84 CDN) an hour in 2019. Regional variation persists. For example, New York State’s minimum wage is \$13.73 or 62% of the state’s median wage compared to New Hampshire where the \$7.25 (\$9.73 CDN) minimum wage is set at the federal rate and is just 30% of the state median (Tedeschi, 2019).

What we heard

During the consultations, we heard from non-unionized workers and unions that a common minimum wage for FRPS workers would be welcomed. They said that a common federal minimum wage would level the playing field for employees of Canada-wide companies to bargain wages based on one floor rather than the uneven patchwork of minimum wages pegged at provincial and territorial rates.

We also heard from unions that establishing wage grids in collective agreements for Canada-wide collective agreements would be easier when based on one common wage floor rather than accommodating, say, a low minimum wage of \$11.06 in Saskatchewan and a higher minimum wage of \$15 in neighbouring Alberta. From their perspective, a common federal minimum wage would remove unfairness and inequality amongst FRPS workers who earn differing minimum wage rates based on the province or territory in which they work.

Unions, workers and some experts supported a universal federal minimum wage, generally at a rate of \$15 per hour, because it could improve the lives of precarious workers, increase employment stability, reduce turnover and decrease the gender pay gap. Many workers and unions said they view a federal minimum wage as an anti-poverty measure and the federal government should help lift individuals out of poverty and show leadership for provinces and territories to follow. Workers and unions noted that when contracts are flipped in certain sectors, such as airports, workers are routinely brought down to the minimum wage. As such, a federal minimum wage that was higher than the provincial rate would benefit these individuals in such circumstances.

The status quo approach, that is, to leave the federal minimum wage pegged to provincial and territorial minimum wage rates did receive support from most employer groups. It did not receive support from unions, workers, labour organizations or civil society groups.

In consultations with employers and their employer organizations, the response to a common minimum wage was more mixed. Many large FRPS employers said minimum wages were not a significant issue for them because few or no employees earned minimum wage in their firm or industry. However, some employers noted that wage rates should be viewed together with pensions and other benefits offered by a company.

Some employers and employer organizations expressed concern that a federal minimum wage rate set higher than some provincial/territorial rates may increase pressure for minimum wage increases at the provincial and territorial level, particularly in jurisdictions with lower minimum wages. Some employers said a common minimum wage would create inequalities among people doing similar jobs but receiving different minimum wage rates (federal and provincial/territorial). Some suggested a higher wage floor in the FRPS could improve employee recruitment.

Conclusions and recommendations

More is known today about the impacts (both positive and negative) of minimum wages increases than ever before, due in large part to a significant amount of new research in recent years. This research demonstrates how minimum wage hikes have impacted particular jurisdictions and generally supports the notion that earlier estimates of adverse impacts on employment tended to be over-stated, though younger and low-skilled workers may be negatively impacted and firms in export sectors could also face challenges. Furthermore, there is strong evidence that minimum wage hikes can play a role in mitigating income inequality.

However, there is no easy way to model what the precise impacts of minimum wage increases on employment levels, consumer prices, competitiveness of firms and a range of other issues would be **in a particular jurisdiction** such as the FRPS in Canada. These uncertainties are particularly challenging given the unique labour markets and economies within each province and territory in a country as large and economically diverse as Canada. Findings from Hungary, the UK or the US or even Canada are not easily transferable to the specific context of the FRPS.

Against this backdrop, the Panel believes there are better approaches than the status quo approach of pegging the federal minimum wage to provincial/territorial rates.

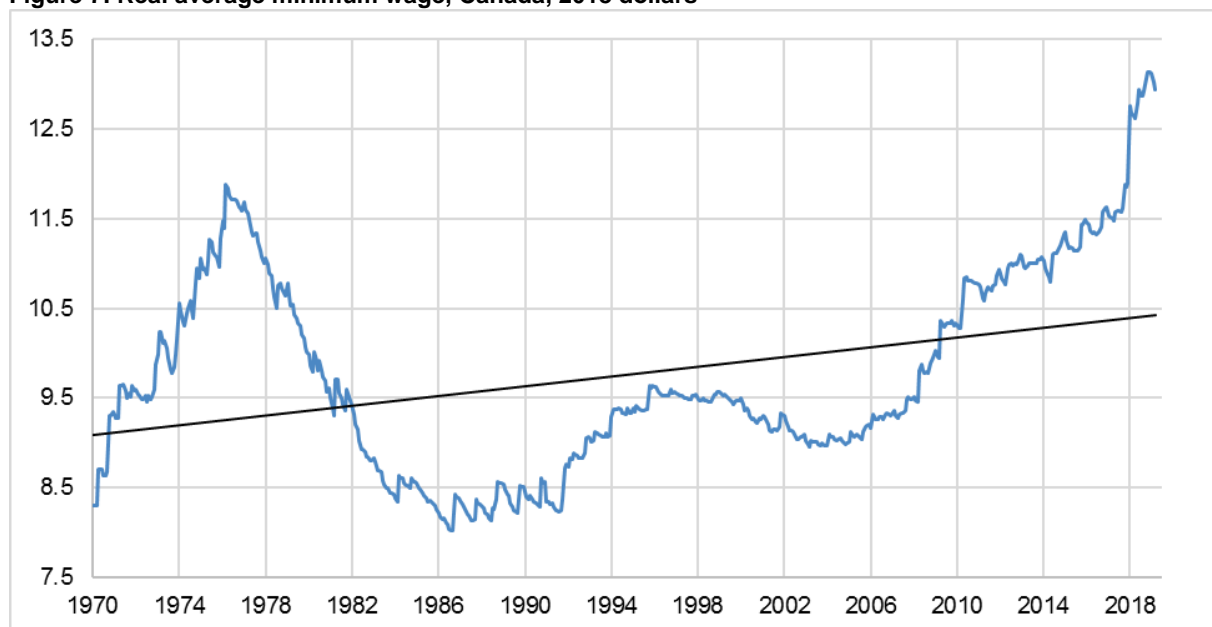
Status quo

The status quo approach can—and often does—result in long periods of time in which the minimum wage in some provinces/territories remains unchanged and is allowed to steadily decline in purchasing power terms. These periods are often followed by a rapid and large increase in the jurisdiction's minimum wage, usually after a change

in government, and the increase translates into increases in the federal minimum wage. These “roller coaster” patterns are evident to some extent in all provinces and territories and particularly in Ontario, Alberta and British Columbia.

Figure 7 summarizes the behaviour of the average real minimum wage in Canada measured in constant 2018 dollars since 1970.¹⁵ It shows clearly that provincial minimum wage rates have taken the average minimum wage on a path resembling a roller coaster ride. Although the average minimum wage is currently at a historically high level, in purchasing power terms it is only about 10% higher than its level in the mid-1970s, despite more than four decades of economic growth over that time period.

Figure 7: Real average minimum wage, Canada, 2018 dollars



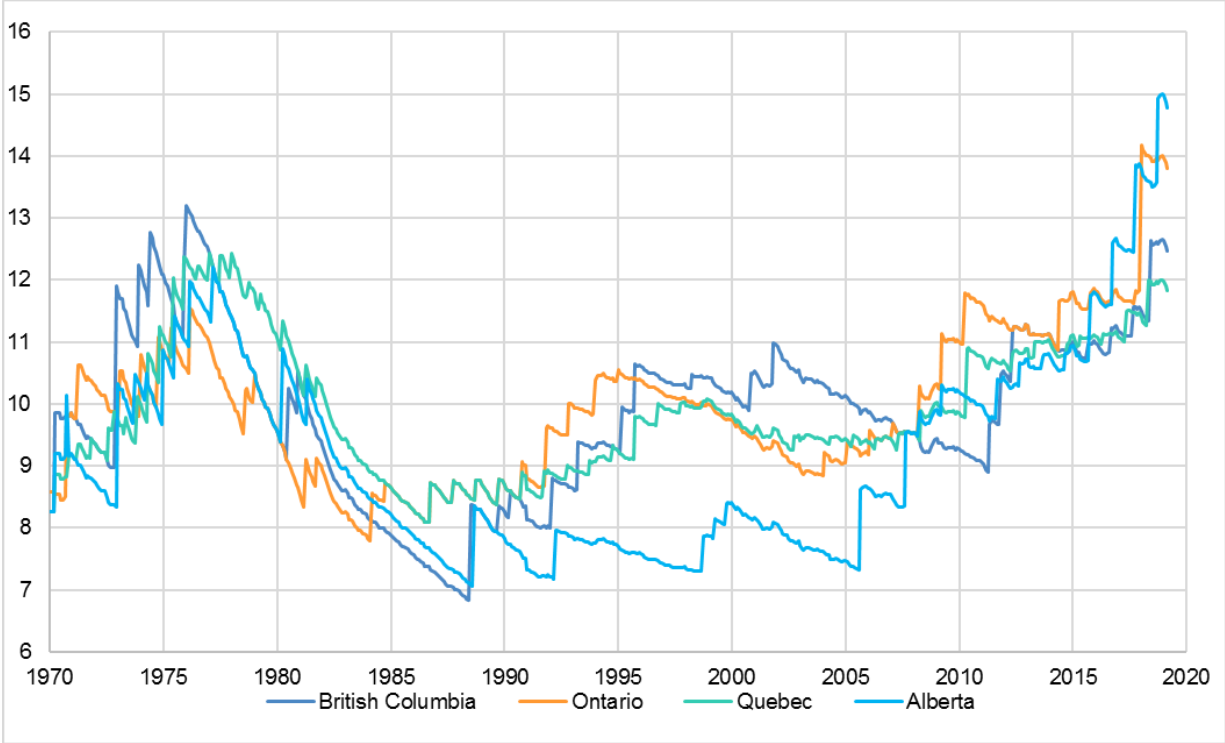
Source: Tabulations by the Panel using monthly information on provincial minimum wages weighted by monthly LFS employment data. Adjustment for changes in the cost of living is based on the Consumer Price Index.

Figure 8 and Figure 9 show the behaviour of real minimum wages in individual provinces over the 1970–2019 period, divided into larger and smaller population provinces. There are noteworthy differences across provinces in minimum wage behaviour, especially among the larger population provinces. In several provinces (for example, British Columbia, Alberta, Ontario) there are extended periods of time in which the minimum wage remains fixed and thus falls steadily in terms of purchasing power. For example, British Columbia (BC) had the highest minimum wage among larger population provinces in 2002 but the BC minimum wage was not adjusted until 2011. During this period the real minimum wage was steadily eroded by inflation, resulting in BC having the lowest minimum wage among large provinces. Although less pronounced, extended periods in which minimum wages were not adjusted in nominal

¹⁵ This is calculated as a weighted average of provincial minimum wages using monthly data on provincial employment and provincial minimum wages. Adjustment for changes in the cost of living is based on the Consumer Price Index.

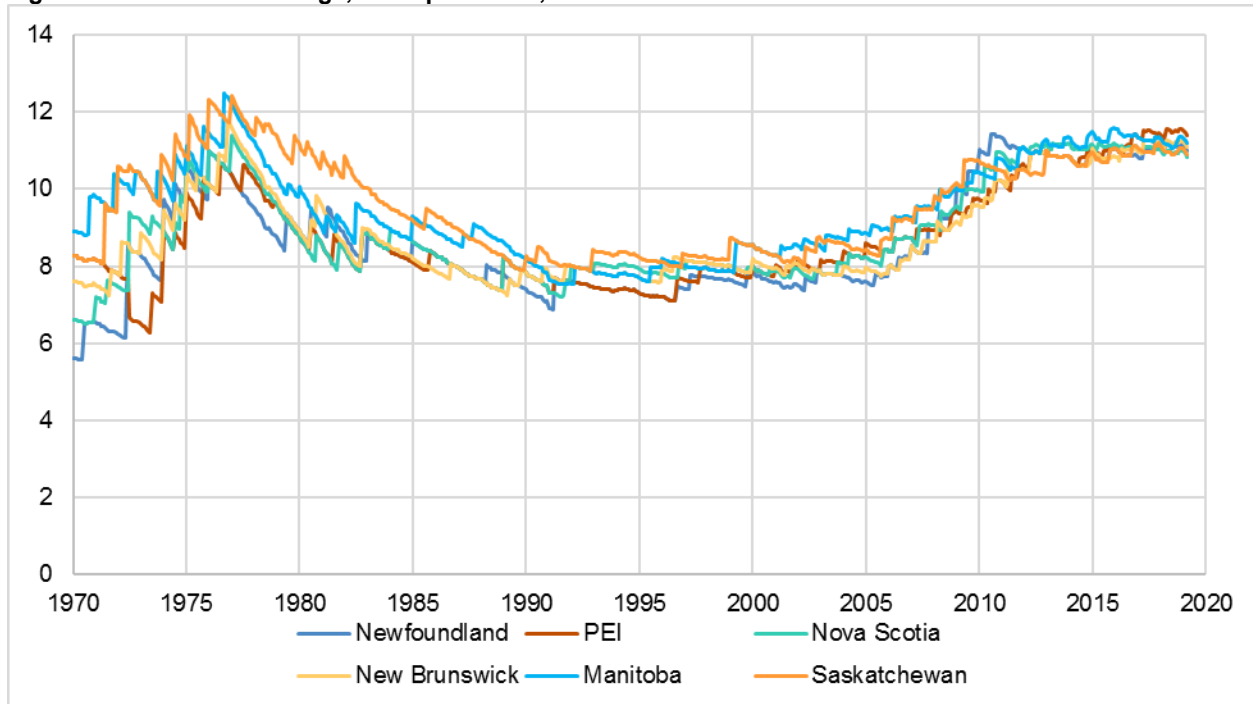
dollar terms and thus allowed to decline in purchasing power terms are evident in smaller population provinces.

Figure 8: Real minimum wage, large provinces, 2018 dollars



Source: Tabulations by the Panel using monthly information on provincial minimum wages weighted by monthly LFS employment data. Adjustment for changes in the cost of living is based on the Consumer Price Index.

Figure 9: Real minimum wage, other provinces, 2018 dollars



Source: Tabulations by the Panel using monthly information on provincial minimum wages weighted by monthly LFS employment data. Adjustment for changes in the cost of living is based on the Consumer Price Index.

Also evident in these figures is the pattern of rapid and large increases in the provincial minimum wage that follow these extended periods in which minimum wages remain unchanged. In the Panel's view this does not represent good public policy toward minimum wages. Lengthy periods in which minimum wages remain unchanged and are steadily eroded by inflation reduce the living standards of low wage workers, increase income inequality and contribute to poverty.

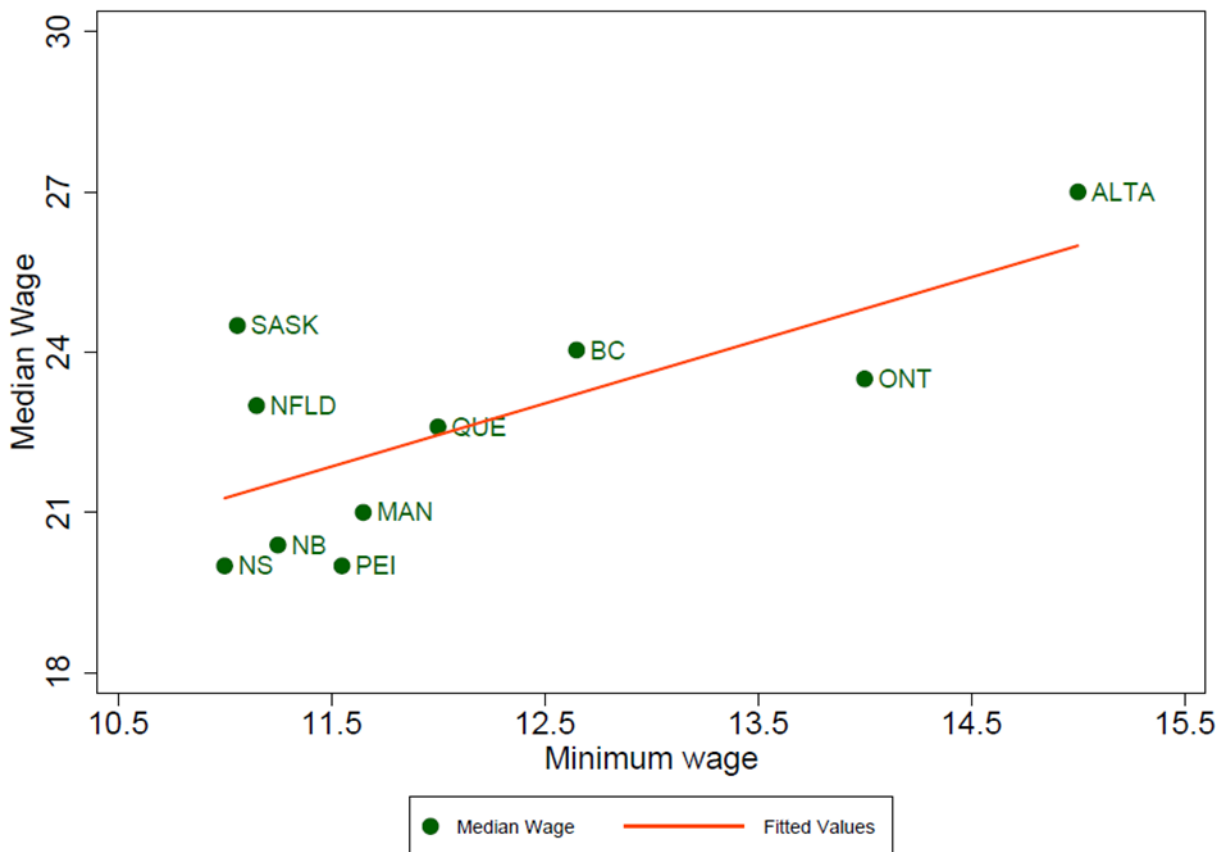
The large subsequent increases in the minimum wage impose difficult adjustments on employers of low wage labour. They are also disruptive to consumers who need to adjust to the changes in the prices of goods and services produced using low wage labour relative to other goods and services.

As indicated earlier, a number of provinces and territories now have in place minimum wage setting mechanisms that adjust wage rates relative to the CPI on an annual basis. These mechanisms will likely moderate the roller coaster patterns seen over recent decades in those jurisdictions. However, it is also possible that they could be reversed or overturned at some future date, which would increase the risks of returning to rapid changes after long periods of dormancy. It should also be noted that the three of the four most populous provinces do not have any system of regular adjustments (namely, British Columbia, Quebec and Alberta).

An additional disadvantage of the status quo minimum wage policy is that it is not as effective as possible in improving the earning power of minimum wage earners and reducing income inequality. This can be seen by reviewing minimum wage rates relative to prevailing wages. Figure 10 plots the relationship between provincial minimum wages and provincial median wages as of January 2019, together with the fitted relationship between the two (the solid line).

Saskatchewan currently ranks as Canada’s second highest wage province yet has a relatively low minimum wage as is evident in Figure 10. Newfoundland also has a minimum wage that is low relative to its median wage. Because the minimum wage rates in these jurisdictions are low relative to prevailing wages, they could likely be increased without risking significant adverse consequences.

Figure 10: Linear regression between median provincial wage and minimum wage by province, January 2019



Source: Median wages from January 2019 Labour Force Survey. Minimum wages from Government of Canada, [Hourly Minimum Wages in CANADA for Adult Workers](#).

The Panel is guided by the principle that standards, such as the minimum wage, should provide decency and wages sufficient to live on. We also believe that minimum wage policy should play a role in reducing income inequality. As discussed previously, research from several countries, including that of Fortin and Lemieux (2015) for

Canada, concludes that changes in minimum wages play an important role in reducing inequality, particularly at the low end of the wage distribution.

Recommendation 1: The Panel recommends that a freestanding federal minimum wage be established and adjusted annually.

Options

Recommendation 2: The Panel proposes two options for setting the federal minimum wage:

- 1) A common federal minimum wage in all provinces, benchmarked at 60% of the median hourly wage of full-time workers in Canada; and**
- 2) A minimum wage set at 60% of the median wage in each province.**

While both of these options have potential benefits and drawbacks, which we outline below, the members of the Panel are in agreement that the ultimate decision on which option should be pursued ought to be subject to a full, vigorous discussion by Cabinet and take into account consultations with a broad range of stakeholders, some of which (including provincial and territorial governments) we were unable to speak with due to time constraints.

The Panel unanimously agreed that at least one of the approaches set forward is preferable to the status quo, though some members of the Panel did not agree that a particular option was preferable to the status quo.

Option 1: Common federal minimum wage in all provinces and territories

The approach

Arthurs (2006) observed that no worker should be paid so little that, after working at a full-time job for a full year, they will still find themselves with less money than they need to live at or above the poverty line. Option 1 would be intended to lift a person working full-time, full-year out of poverty by benchmarking a common federal minimum wage at 60% of the median hourly wage of full-time workers.^{16 17} This would currently translate into a rate of \$15 per hour.

¹⁶ Poverty measures are typically measured as family income (often adjusted for family size) below a specific level or “poverty line”. It can be defined in relative terms (for example, Low Income Measure: 50% of median family income) or in absolute terms (Market Basket Measure: based on the cost of a market basket of goods and services in a region for a family of four).

¹⁷ We use the full-time hourly wage measure rather than the averaged hourly wage which includes full-time and part-time, contract, casual and seasonal wages. We do this to get an accurate picture of prevailing full time wage. Statistics Canada, Employee wages by industry, annual Table 14-10-0064-01. Employee wages by industry, annual, for 2018.

The proposed benchmark sits at the current highest provincial/territorial minimum wage of \$15 per hour in Alberta, and just above the rates in Ontario (\$14), British Columbia (\$13.85), Northwest Territories (\$13.65) and Nunavut (\$13).

For lower wage jurisdictions, raising the federal floor would be significant if done at one time. While the actual numbers of employees and employers affected would be quite small, an increase of this size could have significant localized effects. Therefore, the increase in the federal minimum wage in these regions which would experience more than a \$3 per hour increase would be phased in over two steps to reach the goal of 60% of the national median hourly wage (see Table 3).

Table 3: Proposed phase-in for federal minimum wage (Option 1)

FRPS hourly minimum wage rates as of June 2019		2019 Step 1			2020 Step 2		
		\$ Increase	% Increase	Rate	\$ Increase	% Increase	Rate
Alberta	\$15.00	\$0	0	\$15	\$0	0	\$15
Ontario	\$14.00	\$1.00	7%	\$15	\$0	0	\$15
British Columbia	\$13.85 (\$14.60 June 2020; \$15.20 June 2021)	\$1.15	8%	\$15	\$0	0	\$15
Northwest Territories	\$13.46	\$1.54	11%	\$15	\$0	0	\$15
Nunavut	\$13.00	\$2.00	15%	\$15	\$0	0	\$15
Yukon	\$12.71	\$2.29	18%	\$15	\$0	0	\$15
Quebec	\$12.50	\$2.50	20%	\$15	\$0	0	\$15
Prince Edward Island	\$12.25	\$2.75	22%	\$15	\$0	0	\$15
Nova Scotia	\$11.55	\$1.75	13%	\$13.30	\$1.75	13%	\$15
New Brunswick	\$11.50	\$1.75	13%	\$13.25	\$1.75	13%	\$15
Newfoundland & Labrador	\$11.40	\$1.80	16%	\$13.20	\$1.80	14%	\$15
Manitoba	\$11.35 (\$11.65 Oct 2019)	\$1.83	16%	\$13.18	\$1.82	14%	\$15
Saskatchewan	\$11.06 (\$11.32 Oct 2019)	\$1.97	18%	\$13.02	\$1.97	15%	\$15

Source: Provincial and territorial minimum wage rates as of June 2019; calculations by Panel.

Potential benefits of Option 1

A federal \$15 minimum wage would bring Canada in line with many other advanced economies and trading partners. The UK minimum wage is currently at \$14.14 (CDN) and is slated to go up to 60% of median wages by 2020. There are strong moves in the US to increase the minimum wage and, averaging across all of these federal, state and local minimum wage laws, the effective minimum wage in the United States will be \$11.80 (\$15.84 CDN) an hour in 2019 (Tedeschi, 2019). Comparable

economies such as Australia and New Zealand are at \$17.51 (CDN) and \$15.06 (CDN) respectively with New Zealand committed to move to \$17.72 (CDN) by 2021.

A common federal minimum wage benchmarked to 60% of median wages would enable the federal government to take a leadership role alongside countries such as the UK in working to reduce low pay and income inequality. FRPS employees could see the percentage of low pay earners fall as has been the case in the UK.¹⁸

The implications of this policy on a national basis are two-fold. First, there would be a direct and, in some cases significant, impact on labour costs for FRPS employers. Second, there would be both a draw upwards on provincial/territorial minimum wages as well as fairly large differences between federal and provincial/territorial minimum wages in low wage provinces/territories.

There is a case to be made that the FRPS operates in markets characterized by natural or regulatory constraints on competition which provide capacity to absorb wage increases (Arthurs, 2006). As such, federally regulated businesses are not as susceptible to pressures of globalization and movement offshore in pursuit of lower labour costs.

Canada's FRPS is largely comprised of domestic non-tradable goods and services and may be less subject to the effects of minimum wage increases experienced by more export-oriented firms (Harasztosi & Linder, 2017). Nevertheless, some industries such as trucking and airlines are relatively more exposed to international competition and the global supply chains of some other industries may also mean some level of disruption due to a minimum wage hike, particularly in lower wage provinces.

According to Labour Program data, the Atlantic provinces together represent relatively few FRPS employees (8% or 73,200). Only 10% of these workers currently earn less than \$15 per hour and would see a wage increase. The impact of the proposed wage increase across the Atlantic provinces would be experienced by 7,320 employees. A similar pattern holds for Saskatchewan and Manitoba (approximately 550 and 1,460 individuals, respectively, would see an increase). With the exception of Newfoundland and Prince Edward Island (which would see an overall wage increase of less than \$3 per hour), the increase in the federal minimum wage would be phased in over two steps in these lower wage regions.

Large increases to the minimum wage are not without precedent in Canada. In May 2011, the BC government raised its minimum wage by 28% in one year. Ontario recently raised its minimum wage by 21%. Fears of layoffs in both provinces have proved to be largely unfounded.

A common federal minimum wage would also serve to reduce competition between provinces and territories for federal undertakings on the basis of low wages. There could, however, be some increased risk of competition between federally and

¹⁸ Since the National Living Wage was introduced in 2016, the percentage of low paid employees fell 3.6%: Low Pay Commission (2019).

non-federally regulated employers. Given the low incidence of employees in the FRPS earning less than \$15 (approximately 7.4% in 2017), competition between federally and provincially/territorially regulated employers would be focused in the bottom segment of the labour market. The majority of employees earning less than \$15 work for large firms that are, in general, better positioned to adjust to a higher wage floor.

The proposed federal minimum wage would impact those industrial sectors with lower wages and those workers at the lower wage levels of industries with broader wage structures. Table 4 demonstrates that employees in the transport sectors (air, rail and marine, and road transport, respectively) will experience the most direct increases in wage rates compared to other sectors. Those employees in road transport, banking, telecommunications and broadcast will experience potential spillover effects on their wage rates as they sit just above the proposed minimum wage rate.

Table 4: Incidence of wage rates for FRPS industries

Sector	Current minimum wage (pegged at provincial rates)	Minimum wage at \$15 >\$15	Earning \$15 to \$17
Overall	3%	6.3%	7.6%
Air transport	6%	13.5%	7.4%
Rail & maritime transport	5%	11.8%	1.6%
Road transport	4%	8.4%	35.4%
Postal services & pipelines	2%	4.5%	9.5%
Banks	3%	4.9%	30.3%
Telecommunications & broadcasting	3%	5.8%	11.4%
Other	2%	2.6%	4.6%

Source: Tabulations by the Panel based on LFS 2018 and 2019 microdata. The FRPS cannot be precisely identified in the LFS. Estimates are the Panel's best approximation.

Table 5 illustrates the incidence of current minimum wage earners, as well as those who would see their wages brought up to \$15 and those earning \$15 to \$17 per hour who would potentially experience spillover effects.

Table 5: Incidence of wage rates for certain groups of FRPS workers

	Current minimum wage (pegged at provincial rates)	Minimum wage at \$15 >\$15	Earning \$15 to \$17
Overall	3%	6.3%	7.6%
Women	4%	8.5%	10.1%
Immigrants	3%	6.1%	8.1%
Temporary	7%	13.0%	15.7%
Part-time	3%	17.2%	21.3%
Aboriginal	4%	7.5%	8.3%

Source: Tabulations by the Panel based on LFS 2018 and 2019 microdata. The FRPS cannot be precisely identified in the LFS. Estimates are the Panel's best approximation.

As employers adjust wage schedules in line with a minimum wage increase, they may adjust wages just above the minimum wage to restore former wage differentials to maintain recruitment, retention and morale (Gunderson, 2005). Evidence for Canada is provided by Fortin and Lemieux (2015) who find that there may be increases in the 5th

and 10th percentiles of wage distribution but that above the 15th percentile there is no significant impact.

As discussed above, low wages are not experienced equally. More precarious workers will benefit more from the proposed minimum wage increase than employees overall. As such, the proposed federal minimum wage benchmarked to 60% of median wages will move Canada forward in its goals for equity-seeking communities.

As discussed above, minimum wage increases since the mid-2000s have generally increased the floor of wages across the country and contributed to compression of wages at the bottom. Raising the floor will not reduce that wage compression, but it will be a draw from productivity gains going to the top rather than from the middle of the income distribution.¹⁹

The federal government has a social policy role to take action to reduce income inequality. While the overall impact will be quite small given the small size of the FRPS and the lower proportion of employees earning less than \$15 compared to the provincial and territorial jurisdictions, it will provide a lead and best practice for economic development of the nation. Raising the floor will contribute on the demand side of the economy which is 54% of the economy and would be unlikely to impact on the investment side.²⁰

Potential drawbacks of Option 1

The principal concern around this option relates to potential adverse consequences for both employers and FRPS workers in regions with low prevailing wages. These concerns are heightened by the magnitudes of the implied overall minimum wage increases in these regions, ranging from 30% to 35% in four of the five lowest wage provinces, and 22% in Prince Edward Island (PEI). There would also be a large gap between the provincial/territorial and federal minimums going forward. This additional labour cost could also increase the incentive for FRPS employers to contract out work to contractors with lower labour costs regulated by the provinces and territories.

Whether a meaningful decline in employment would occur in the FRPS is uncertain, and would depend in part on whether firms could pass along higher costs to consumers. The low wage regions trade with other regions in Canada as well as the US and elsewhere. Accordingly, the ability of regional producers to pass along their higher costs in the form of higher prices may be limited. There may also be other potential adverse consequences for regional competitiveness.

¹⁹ As much research has pointed out, attention must be paid to the “hollowing” out of the middle wage distribution.

²⁰ Onaran and Obst studied the EU 15 countries to examine what role income distribution has in determining private demand. They found that there are negative effects when there is a fall in the wage share (inequality in the wage share of productivity) on domestic consumption that outweighs any expansionary effects on investment. They conclude that a more equal income distribution does not hamper growth and may help to restore workers’ purchasing power which benefits demand, pp. 28–30.

Another concern is the impact on low skilled workers. Some US research (Clemens, Kahn, & Meer, 2018) has found that employers will respond by raising their hiring standards, thus reducing employment opportunities for the least skilled. In the lowest wage provinces, 25% or more of the workforce earns less than \$15. Jobs that pay \$15 are highly desirable and would likely attract more skilled workers who are more likely to be hired over their unskilled counterparts, which would harm the least skilled.

A final unintended consequence could be that provincial and territorial governments will be pressured to raise their minimum wages beyond what regional conditions can support.

Option 2: Variable federal minimum wage in each province and territory pegged to median wages

The approach

This approach would peg the federal minimum wage in each province and territory at a fixed percentage of the median wage in each province and territory. For the purposes of discussing the advantages and disadvantages of this option, 60% of the median is chosen as an example. This would currently mean a minimum wage ranging from a low of \$11.77 in New Brunswick to a high of \$16.04 in Alberta.

The federal government could choose a more ambitious target such as 65% of the median wage, or a lower level such as 55% of the median wage.

Potential benefits of Option 2

Option 2 is intended to lift a person working full-time, full-year out of poverty, by benchmarking the federal minimum wage at 60% of the provincial or territorial median hourly wage. Like Option 1, it would contribute to advancing the objectives of the federal Poverty Reduction Strategy.

Another important advantage of this option is that it takes account of regional differences in labour market conditions and wages. The median of the wage distribution is generally higher in provinces and territories with higher prevailing wages and lower in lower wage provinces and territories. Indeed, because it represents the wage rate earned by the person in the middle of the wage distribution, the median wage is often used as a simple measure of prevailing wages in a region.

Large wage differences across regions are an enduring feature of Canadian labour markets. Substantial differences in rates of unemployment, employment and labour force participation, as well as wage rates and employment income, exist and generally persist. Table 6 shows the average and median wage by province in 2018. There are clearly large differences in prevailing wages across provinces. Both the average and median wage in the highest wage province (Alberta) are approximately 40% greater than that in the lowest wage province (PEI).

A similar picture emerges if one compares the highest wage provinces as a group (Alberta and Saskatchewan followed by BC and Ontario) to the lowest wage provinces (PEI, New Brunswick, Nova Scotia and Manitoba). Within jurisdictions, there are also important wage differences between major cities and rural areas.

This option also treats FRPS employees working in different regions fairly. They would receive wages at the same level relative to non-FRPS employees in the province or territory in which they work, in contrast to the status quo where employees in the FRPS are well paid relative to other workers in some provinces/territories and poorly paid in others.

A central challenge for federal minimum wage policy is whether and how to take account of differences across regions in prevailing wages. In setting the minimum wage for their jurisdiction provincial governments clearly pay attention to prevailing wages—the provincial minimum wage is lowest in the low wage provinces and highest in the high wage provinces (see Table 6 and Table 7). There are powerful economic reasons for doing so: any specific minimum wage (such as \$15 per hour) is likely to be too high for some regions (that is, the benefits of such a high minimum wage are not large enough to justify the associated adverse consequences) and too low in others (that is, the benefits of raising the minimum wage would outweigh the associated adverse consequences).

Table 6: Average and median wages by province, 2018

Province	Median	Mean
Newfoundland	\$21.54	\$25.55
Prince Edward Island	\$19.10	\$22.23
Nova Scotia	\$19.95	\$23.46
New Brunswick	\$19.62	\$22.75
Quebec	\$22.02	\$25.45
Ontario	\$23.40	\$27.37
Manitoba	\$20.93	\$24.51
Saskatchewan	\$24.46	\$27.46
Alberta	\$26.75	\$30.87
British Columbia	\$23.54	\$26.71

Source: Tabulations from Labour Force Survey public use microdata.

Note: Mean and median are averages of monthly data, July 1, 2018 and December 1, 2018.

Table 7: Minimum wage and 60% of median wage by province, 2018

Province	Provincial minimum wage	60% of median wage	Difference
Newfoundland	\$11.40	\$12.92	\$1.52
Prince Edward Island	\$12.25	\$12.25	\$0.00
Nova Scotia	\$11.55	\$11.98	\$0.43
New Brunswick	\$11.50	\$11.77	\$0.27
Quebec	\$12.50	\$13.21	\$0.71
Ontario	\$14.00	\$14.04	\$0.04
Manitoba	\$11.35	\$12.56	\$1.21
Saskatchewan	\$11.06	\$14.68	\$3.62
Alberta	\$15.00	\$16.04	\$1.04
British Columbia	\$13.85	\$14.12	\$0.27

Note: Provincial minimum wages as of June 1, 2019. Median wages based on monthly LFS data July 2018 to December 2018.

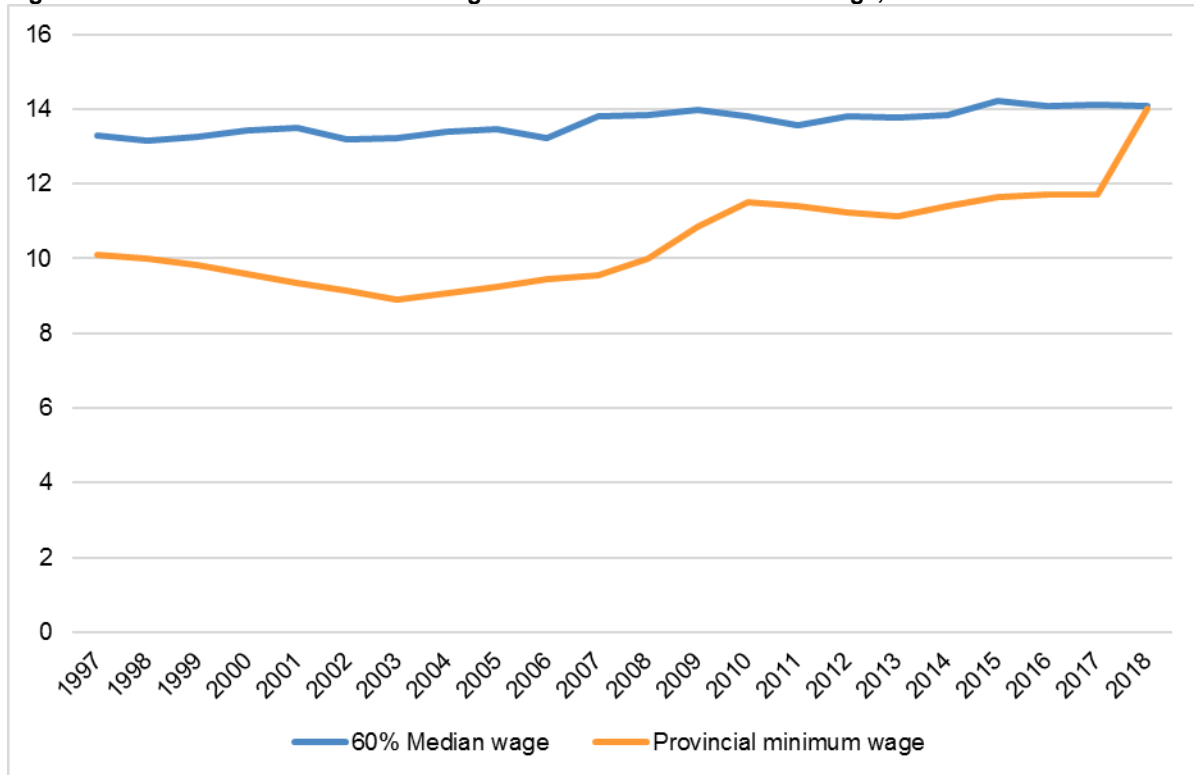
Table 7 shows the provincial minimum wages as of June 1, 2019, 60% of the provincial median wage and the difference between the two. Because 60% of the median is a relatively ambitious target, this choice results in a federal minimum wage that exceeds the provincial minimum wage in all jurisdictions except PEI. At the present time, given prevailing wages and provincial minimums, most upward adjustments are less than \$1.00. Larger increases would occur in Manitoba (\$1.21), Newfoundland (\$1.71) and Saskatchewan (\$3.62). These three provinces (especially Saskatchewan) stand out as provinces with a low minimum wage relative to the prevailing median wage.

An advantage of Option 2 for setting the federal minimum wage is that it results in a larger gap between the federal minimum and the provincial minimum in provinces with low minimum wages relative to their median wage. These are the provinces in which the minimum wage can be increased the most without risking adverse consequences.

A key beneficial feature of this option is that it would result in more stability over time in the federal minimum wage compared to the more erratic behaviour displayed by provincial minimum wages during recent decades with the status quo. The paths of the provincial minimum and 60% of the provincial median wage for three provinces are shown in Figure 11 to Figure 13 for illustrative purposes. Both series are adjusted for changes in the cost of living.

Figure 11 shows the Ontario experience since 1997. Between 1999 and 2003 the minimum wage declined substantially in real terms resulting in a widening gap between the minimum wage and 60% of the provincial median wage. This was followed by substantial increases in the real minimum wage during the 2003 to 2010 period, eliminating the gap by 2010. Since 2010 the minimum wage and 10th percentile have followed very similar paths.

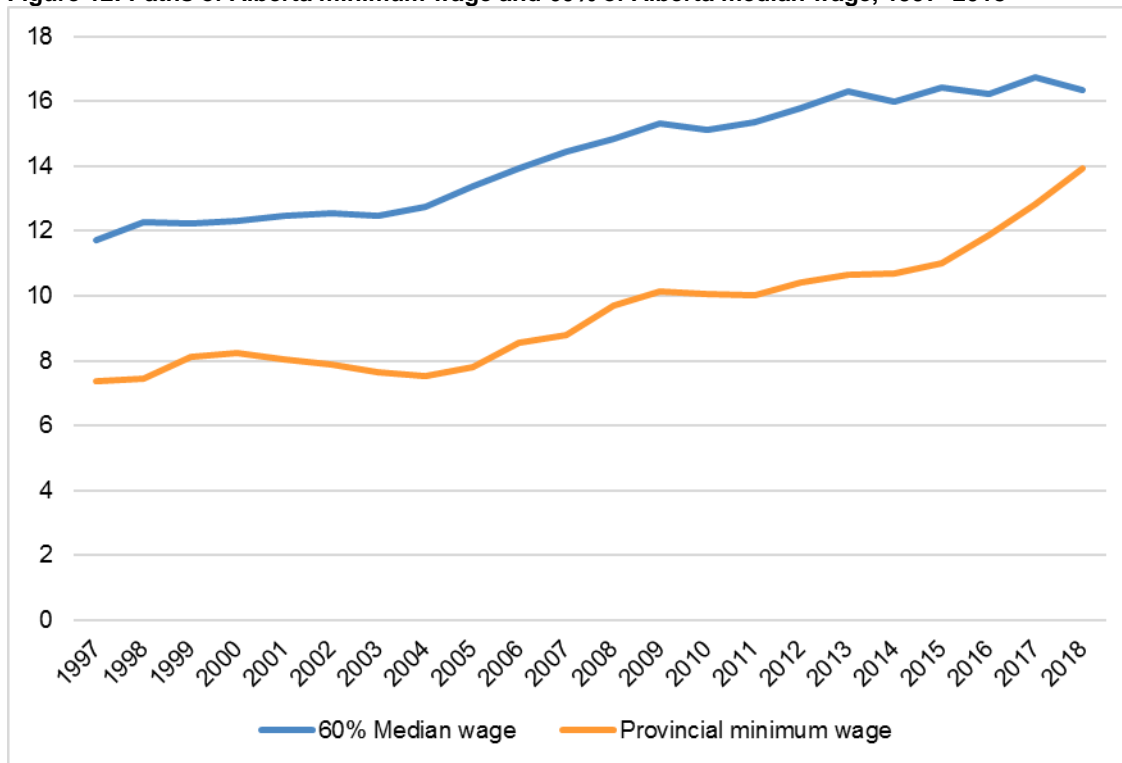
Figure 11: Paths of Ontario minimum wage and 60% of Ontario median wage, 1997–2018



Source: Minimum wages from Government of Canada, [Hourly Minimum Wages in CANADA for Adult Workers](#); monthly provincial employment from Labour Force Survey.

Alberta's minimum wage (Figure 12) followed a more erratic path than 60% of the median, which increased significantly over the 1997 to 2018 period. The decline in the minimum wage from 2000 to 2004 resulted in a large differential between the provincial minimum wage and what the federal minimum wage would have been if set equal to 60% of the provincial median wage. This gap was maintained until the recent substantial hikes in Alberta's minimum wage starting in 2015.

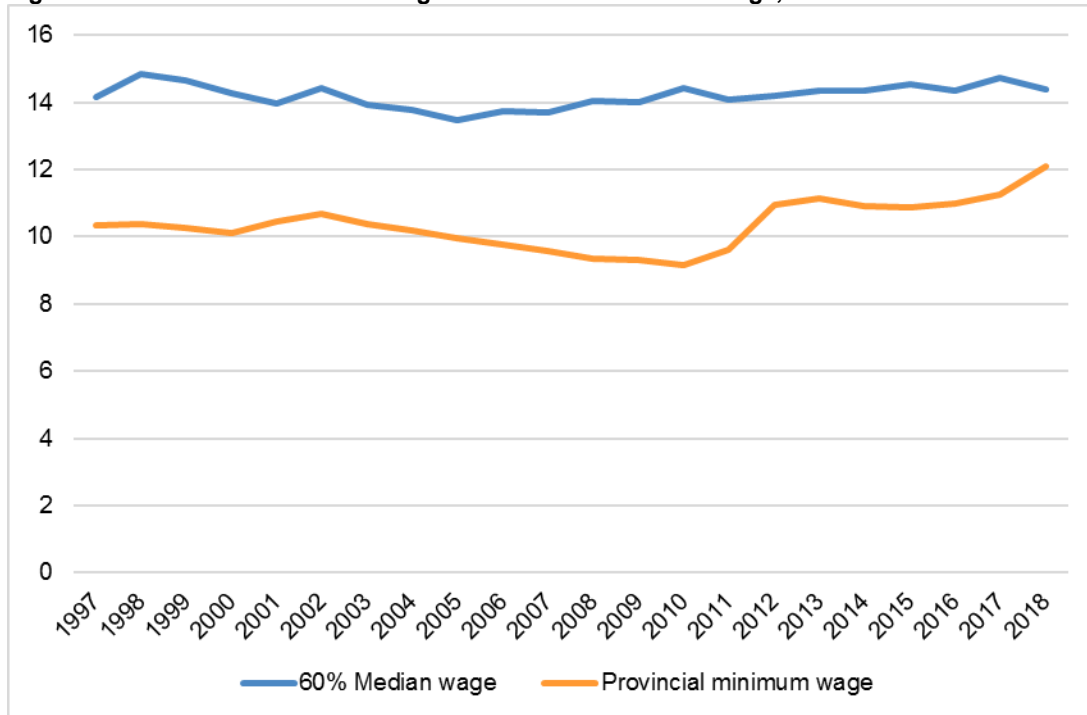
Figure 12: Paths of Alberta minimum wage and 60% of Alberta median wage, 1997–2018



Source: Minimum wages from Government of Canada, [Hourly Minimum Wages in CANADA for Adult Workers](#); monthly provincial employment from Labour Force Survey.

Like Ontario and Alberta, BC's minimum wage (Figure 13) declined in purchasing power terms for a lengthy period (2002 to 2010) and the gap between 60% of the median wage and the provincial wage grew substantially. Large increases in the BC minimum wage followed in 2010 to 2012, narrowing the gap. Since 2012, both series have followed similar upward paths.

Figure 13: Paths of BC minimum wage and 60% of BC median wage, 1997–2018



Source: Minimum wages from: Government of Canada, [Hourly Minimum Wages in CANADA for Adult Workers](#); monthly provincial employment from Labour Force Survey.

A clear conclusion from these figures (and corresponding figures for the other seven provinces) is that setting the federal minimum wage equal to 60% of the provincial or territorial median wage would result in greater stability over time in the federal minimum wage. Although there may occasionally be unusual periods in which the median wage declines from one year to the next in inflation-adjusted terms, these do not necessarily imply that the dollar value of the median wage declined. In any event, a simple fix for such an eventuality would be to adopt the policy that the level of the federal minimum wage can increase over time but not decrease.

This option also has the advantage of treating FRPS employees working in different provinces and territories fairly in the sense that their minimum wage would be set at the same point in the prevailing wage distribution relative to non-FRPS employees in the provinces or territories. To some extent this also accounts for differences in the cost of living across regions because living costs (especially housing) tend to be lower in lower wage provinces than in higher wage provinces.

Potential drawbacks of Option 2

As we heard during our engagement activities, setting the federal minimum wage at 13 different provincial and territorial median wage rates may be confusing and administratively complex for both employers and employees, particularly so for national companies that operate undertakings that are both federal and provincially/territorially regulated.

This option suggests that provincial/territorial prevailing wages provide a better indicator of the cost of living differences for which a federal minimum wage should account. Canada’s official poverty line sets out the income requirements based on cost of living in 50 regions across the country.²¹ This absolute measure of poverty demonstrates that, for low wage earners, the cost of living is shaped by living costs associated with living in the largest cities in the country or in smaller towns or rural areas. For example, the highest poverty lines are in communities of less than 30,000 in Alberta, Newfoundland, Nova Scotia, PEI, and Saskatchewan.²² A common federal minimum wage based on a national or cross-country median wage may be better able to account for these factors contributing to Canada’s poverty levels.

Finally, linking a federal minimum wage to provincial/territorial medians rather than a national median may unintentionally reproduce provincial/territorial income inequality dynamics. Income inequality is, in part, due to the top sectors of the labour market extracting higher “rents” or wages than the lower sectors of the labour market which have seen real wage growth of about 2% over recent decades. These inequalities are reflected in prevailing or median wages. Averaging median wages over a national rather than a provincial/territorial basis may better moderate this factor.

Adjusting the federal minimum wage

An important advantage of setting the federal minimum wage at 60% of the Canadian median wage (Option 1) or 60% of the provincial/territorial median wage (Option 2) is that it will increase over time at the same rate as wages elsewhere in Canada. In normal economic conditions wages increase more rapidly than the cost of living, so there is growth in the real (inflation-adjusted) wage. For example, between 2000 and 2016 the median hourly wage rate increased by 49% or 3.1% annually in constant dollars.

However, in abnormal economic conditions, median wages may not rise sufficiently to keep up with the cost of living or even decline in dollar terms. This could be due to various factors such as a serious economic downturn, changes in international trade policies or wage controls as recently brought into place for three years on Ontario’s public sector. In these circumstances, median hourly wage increases may fall below the annual cost of living increase or even be negative.

Recommendation 3: The Panel recommends that the federal minimum wage be adjusted annually based on data from the Labour Force Survey (LFS) regardless of which approach to setting the federal minimum wage is pursued.

Because there is considerable seasonality in Canada’s labour markets all 12 months of the previous calendar year should be used to calculate the relevant median wages, thus adjusting for seasonal factors. Because the LFS microdata needed to calculate median wages are released quickly, the median wages for the previous

²¹ See *Canada’s First Poverty Reduction Strategy*, [Chapter 9: Improving measurement of poverty](#).

²² See *Canada’s First Poverty Reduction Strategy*, [Chapter 1: Introducing Canada’s Official Poverty Line](#), by region.

calendar year (for example, 2018) will be known by April of the current year (for example, 2019).

In order to give employers sufficient advance notice to prepare for the annual adjustment, we propose implementing the revised minimum wages in October. Annual adjustments will result in changes in minimum wages that are steady and gradual, in contrast to the current practice in which minimum wages in constant dollars decline for extended periods in some jurisdictions and subsequently are increased rapidly.

Recommendation 4: The Panel recommends that in the case of economic circumstances occurring in which 60% of the median wage does not keep up with increases in the cost of living, the minimum wage be increased by the CPI.

Following this approach, the annual adjustment would be made by the percentage increase in the median wage or the CPI, whichever is greater.

Independent low wage commission

The low wage labour market is an important and enduring feature of Canada's economy. Whether we can move away from this unfortunate situation and, if so, how best to accomplish this is an open question. With recent substantial increases in minimum wages more than 10% of the workforce earns the minimum wage in several provinces, a much greater proportion than in the past.

The low wage labour market in the FRPS is smaller relative to the size of the workforce, but nonetheless its size is a concern to Panel members. Understanding the nature of this segment of the labour force and what policies are likely to be most effective in improving standards of living for those who are in it requires a sustained research and analysis effort. It is also valuable for the public to receive regular updates on the state of the low wage labour market and careful and credible analysis of the consequences of minimum wage and related policies.

For example, as illustrated in Figure 7 to Figure 9, minimum wages in Canada have recently increased substantially but there is no credible research on the consequences of these large changes to inform the Panel's report. The most recent published study of minimum wage impacts is Campolieti (2018) which focuses on minimum wage changes in the restaurant sector over the period 1997 to 2016.

Existing Canadian research concludes that the link between minimum wages and poverty is weak—to an important extent because many minimum wage workers are teenagers and young adults in middle or upper income families. However, as noted previously, the composition of minimum wage workers is changing with recent minimum wage increases, and now includes more older adults and family breadwinners. Given these changes, up-to-date research on the relationship between minimum wages and poverty is vital to inform policy.

Minimum wage debates are often divisive, with parties on both sides citing whatever evidence they can find to support their positions. A key objective of the proposed low wage commission would be to provide a balanced, objective and evidence-driven perspective on minimum wage policy options.

Recommendation 5: The Panel recommends establishing a “low wage” commission to research minimum wage policy and its impacts across Canada on employers, employees and the economy.

The commission should also investigate other policy options for improving the lives of those in the bottom parts of the wage and earnings distributions and, in this regard, could complement the work of the new National Advisory Council on Poverty.²³

The commission would make recommendations for adjusting the federal minimum wage and its benchmark(s) as required based on experience with the new approach adopted and research on its consequences. More generally, the commission would monitor new research on the impacts of minimum wages in Canada and other countries and summarize this research in a balanced and objective fashion for policymakers and the general public. The UK Low Pay Commission, which reports to the government on an annual basis, provides one possible model of an evidence-based process for review and recommendations on the federal minimum wage.

²³ See [Canada’s National Advisory Council on Poverty](#).

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Chapter 3: Labour standards protections for workers in non-standard work

Labour standards generally apply to workers in traditional employment relationships. Today, however, many workers are engaged in non-standard employment and may not have access to these protections. In this context, we were asked to consider two questions:

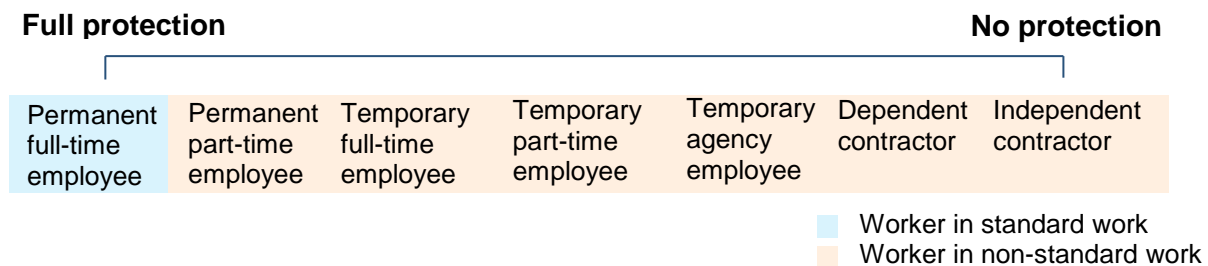
- Who should be covered by federal labour standards?; and
- What protections should apply to non-standard workers in the federally regulated private sector (FRPS)?

Non-standard work: Trends in the federally regulated private sector

Federal labour standards are based on the assumption that standard work, meaning work that is full-time, permanent and part of an employment relationship with one employer (ILO, 2016), is the norm. However, as the nature of work changes, a small but significant and potentially growing portion of workers are engaged in non-standard work, or work that differs from standard employment (ILO, 2016).

Non-standard work is generally understood in terms of a proliferation in the forms of employment. It covers a broad spectrum of workers, including part-time, temporary and temporary help agency employees, as well as dependent and independent contractors (see Figure 14).

Figure 14: Spectrum of forms of work



Non-standard forms of work that are common in the gig economy (also called the “on-demand” economy or “platform” economy),²⁴ such as gig work, task-based work and zero hours contracts (contracts with no guaranteed hours), fall along different points of

²⁴ According to the [ILO \(2016\)](#), this term is used to designate “work that is mediated through online platforms.” Common features of the gig economy include the classification of workers as independent contractors and the constant monitoring of worker performance through reviews and ratings by clients and customers.

the spectrum and many workers do not fit neatly in one category. If they work under multiple contracts, it is possible that many different labels would apply at the same time.

Non-standard employment accounts for approximately a third of total employment in Canada (Busby & Muthukumaran, 2016; Randstad, 2017; Bank of Canada, 2019). After rising significantly in the 1980s and 1990s (OECD, 2018; ILO, 2016; Fudge & Vosko, 2001; Atkinson & Meager, 1986), the overall share of non-standard forms of work that we can easily measure (namely, part-time, temporary or term contract and own-account self-employed) has stabilized and persists as a feature of the labour market. This “period of relative stasis” has been described as “persistent precarity” (Noack & Vosko, 2011).

Workers aged 18 to 24 are overrepresented in this category, with 58% of them occupying a non-standard job (Bank of Canada, 2019; Noiseux, 2012). Women are more likely than men to engage in non-standard work (Crane, 2018; Fudge & Vosko, 2001; Cranford et al., 2003a; Zeytinoglu & Muteshi, 2000). Workers from provinces with historically high unemployment rates are also overrepresented (Bank of Canada, 2019; OECD, 2018), as are workers with disabilities (Schur, 2002, regarding American workers), and racialized workers (Cranford et al., 2003b).

Similar labour force features can be observed in the FRPS, but on a smaller scale. Based on the 2015 Federal Jurisdiction Workplace Survey (FJWS), about 15% of employees in the FRPS are not in full-time permanent jobs (ESDC, 2019b). This compares to 29% of employees in Canada overall.

Based on Labour Program analysis of the 2015 FJWS, the 2017 Labour Force Survey (LFS) and the 2017 Survey of Employment, Payroll, and Hours (ESDC, 2019a), about 10% of all FRPS employees work part-time, compared to 18% of all employees in Canada. An estimated 5.5% of FRPS employees are in temporary work, with about half of them in term or contract employment and the rest in either seasonal or casual employment. In Canada overall, temporary employees constitute 14% of all employees.

In 2018, over 20% of temporary employees earned low wages while 9.3 % of permanent employees earned low wages in the FRPS.^{25 26} Lower income for temporary workers can be attributed in part to fewer or less secure hours of work. Women comprise 39% of all FRPS employees, but 53% of part-time employees. In 2017, the greatest proportion of temporary employees worked in banks (25%), followed by telecommunications and broadcasting (16%), miscellaneous industries (16%), road transport (13%) and postal services and pipelines (13%).²⁷ Even though temporary work

²⁵ That is, less than 66% of median hourly wages. The OECD defines low pay as less than 66% of median income.

²⁶ Source: 2015 Federal Jurisdiction Workplace Survey; 2017 Survey of Employment, Payroll, and Hours; 2018 Labour Force Survey; and Labour Program, Workplace Information Research Division analysis.

²⁷ Source: 2015 Federal Jurisdiction Workplace Survey; 2017 Survey of Employment, Payroll, and Hours; 2017 Labour Force Survey; and Labour Program, Workplace Information Research Division analysis.

can be well paid or provide a stepping stone to more permanent jobs, it tends to be lower paid and with fewer benefits than full-time permanent work (ILO, 2016).

Moreover, there are approximately 80,000 self-employed workers in the FRPS who are not protected by labour standards under Part III of the *Canada Labour Code* (Code).²⁸ Although no precise data are available, these workers are likely a mix of independent and dependent contractors and, possibly, employees. When employees are misclassified as independent contractors, sizeable costs and risks are shifted onto workers who are deprived of labour standards protections (Carre, 2015; Donahue et al., 2007).

Non-standard work is the result not only of changes in the nature of workers' forms of employment, but also the shift from a hierarchical unit of production to a decentralized firm structure. The interaction between employers' search for flexibility, the globalization and financialization of economic activities and the acceleration of technological transformations have, in recent years, profoundly changed the way work is organized (Stone, 2006).

The "flexible firm" is articulated around three axes: numerical, functional and financial flexibility (Atkinson & Meager, 1986; Burrows et al., 1992). Essentially, employers seek to increase or decrease their workforce as quickly as needed while minimizing the financial burden caused by wages and other employer benefits. As a result, many employers focus on core competencies and outsource other activities (Mercure, 2001).

David Weil (2014) describes this process as "fissuring". It allows firms to benefit from the work of employees without directly being considered by labour law as their employer. Fissuring includes offshoring, subcontracting and the use of temporary help agencies, and is a key factor in work featuring low wages, non-compliance with core workplace statutes, limited benefits, more contingent employment, greater risk exposure and weakened bargaining power for the job-holder.

Fissuring can lead workers to experience labour market insecurity and precarity (Standing, 1997; Vosko, 2005). Vosko (2010) has provided the most comprehensive definition of precarious work, which is characterized by some combination of uncertainty, low income and limited social benefits and statutory entitlements. She argues precarious work varies and is shaped by employment status (employment or self-employment), form (hours, tenure and duration of work), dimension of insecurity (degree of uncertainty, degree of regulatory coverage, control over the labour process itself, working conditions, wages, and collective bargaining agreement coverage), social context (occupation, geography, industry) and social location (gender, social status, citizenship status).

Other scholars suggest precarious work is characterized by a lack of numerous related securities that extend beyond the terms of work itself, such as labour market

²⁸ Source: 2015 Federal Jurisdiction Workplace Survey; 2017 Survey of Employment, Payroll, and Hours; 2017 Labour Force Survey; and Labour Program, Workplace Information Research Division calculations.

security, or full employment; job security, or retention and advancement; work security, or health and safety rules; skill reproduction security, or training and upgrading; income security, or assurance of a stable income and inclusion in the social safety net; and representation security, or a collective voice and the right to strike (Standing, 2011). Thus, a greater number of such cumulative insecurities may result in more precarious work. While precarious work and non-standard work are not interchangeable concepts, the first should be seen as a possible consequence of the latter.

In the Canadian context, the fissuring of the workplace makes it even more challenging to determine whether an employer's operations are regulated by the federal government or covered by provincial or territorial labour legislation. For instance, are employees hired through a temporary help agency to work in a federally regulated undertaking protected by the Code or subject to provincial/territorial jurisdiction? According to the 2015 FJWS, federally regulated businesses reported paying 60,000 temporary workers through an employment agency. They are not counted in the FJWS as they are not considered employees of the federally regulated firm, and mostly worked in postal services and pipelines (66%). Other temporary agency workers were reported in banking (13%), telecommunications and broadcasting (10%), and road transport (8%). Nearly all (95%) were reported in firms with 100 or more employees.

Canadian courts have recognized that labour relations, including labour standards, are presumed to be a provincial/territorial matter. The federal jurisdiction applies only by way of exception.²⁹ In addition to the clear cases of "direct jurisdiction"—for example, a worker directly employed by a bank (under federal jurisdiction as per 91(15) of the *Constitution Act, 1867*) will be regulated by federal legislation—the federal government also has jurisdiction over someone who works for an enterprise that is "an integral part of a federally regulated undertaking".³⁰ The Supreme Court has termed this concept "derivative jurisdiction".³¹ To determine whether derivative jurisdiction applies, the court must assess "the essential operational nature of a work, business or undertaking [...] to determine if that ongoing nature renders the work integral to a federal undertaking".³²

The focus of the analysis is on the relationship between the related business, the subcontractor, and the federal operation that is said to benefit from the work provided by the employees of the related business. The analysis is twofold: the effective performance of the federal undertaking must be dependent on the services provided by the related business and vice versa, and providing those services must be core to the activities of the related business itself.³³ The jurisdictional determination will in turn determine the legal framework applicable to the employees.

²⁹ It was established by the Privy Council in 1925, based on the interpretation of ss. 92(13) of the *Constitution Act, 1867*: *Toronto Electric Commissioners v. Snider*, 1925 CanLII 331 (UK JCPC).

³⁰ *Ibid.*

³¹ *Tessier Ltée v. Quebec (Commission de la santé et de la sécurité du travail)*, 2012 2 SCR 3, 2012 SCC 23.

³² *Ibid.*

³³ *Commission de la santé et de la sécurité du travail v. Transit Du Roy inc.*, 2014 QCCA 278; *Chemin de fer Québec-Gatineau inc. v. Commission des relations du travail*, 2015 QCCS 4231.

This is not an insignificant matter given differences often exist between federal and provincial/territorial regimes. Further, given the increasing use and complexity of fissuring, the determination of jurisdiction can become a major challenge. This also likely explains why very little data is available to map the reality of workers in the FRPS employed in such “fissured” workplaces. Several related businesses, such as subcontractors and temporary help agencies, will be provincially/territorially regulated.

Governments have approached the consequences of non-standard work through a variety of mechanisms, such as reducing the economic incentives for employers to hire on a temporary or contract basis and establishing limits on the length of temporary forms of employment.

The European Union (EU) has long promoted improvements in quality of work for part-time, term/contract and temporary agency employees. Directives on fixed-term, part-time and temporary agency employment have been passed in the last two decades.³⁴ In general, these Directives state that workers cannot be treated less favourably than comparable full-time workers solely on the basis of their employment status.

In April of this year, the European Parliament passed a Directive titled *Transparent and predictable working conditions in the European Union* (2019) that builds upon the 1999 Directive on fixed term work and the 2008 Directive on temporary agency work.³⁵ The 2019 Directive is aimed at updating and extending the information on employment-related obligations and working conditions. Employers are required to provide information to workers about the working relationship, schedules, right to request more secure employment and to have other (parallel) employment and protection from dismissal if they make a complaint. The Directive applies to all employees, including workers in casual or short-term employment, on-demand workers, domestic workers and platform workers.

The 1999 EU Directive on fixed-term work also requires countries to introduce one or more of the following measures relating to the terms of temporary contracts: objective reasons justifying the renewal of such contracts or relationships; the maximum total duration of successive fixed-term employment contracts and relationships; and the maximum number of successive renewals.³⁶

Non-standard work has wide-ranging implications for workers, employers (whether they rely on non-standard workers or not) and society in general. It is important to note that not all workers in non-standard work face the same challenges (Rodgers & Rodgers, 1989). Part-time, temporary and temporary agency employees are

³⁴ Council [Directive 1999/70/EC](#) of 28 June 1999 concerning the framework agreement on fixed-term work; [Directive 2008/104/EC](#) of the European Parliament and of the Council of 19 November 2008 on temporary agency work; Council [Directive 97/81/EC](#) of 15 December 1997 concerning the Framework Agreement on part-time work.

³⁵ European Parliament. [Transparent and predictable working conditions in the European Union](#). Adopted in April 2019.

³⁶ S. 5.1 of the Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work.

formally covered by labour standards protections. However, workers who are not employees, or are not considered to be employees, are not protected by basic labour standards. For some, non-standard work can offer flexibility, enabling them to meet personal and family obligations and find better work-life balance, especially in the case of part-timers (ILO, 2016). Others are vulnerable to low income and overwork. Girard (2010) notes that there is generally a lack of studies on the effects of self-employment, temporary employment and multiple jobs holdings on family life.

Employers include non-standard workers in their workforces for different reasons and this can have impacts for them as well as those employers who do not rely on non-standard workers. Some employers, particularly those with 24/7 operations, emphasized during our engagement activities that certain types of non-standard work (for example, temporary, part-time) are necessary to enable them to operate (for example, during peak periods) and remain competitive. This is in line with research by the OECD (2018) and ILO (2016) that indicates that non-standard work can help employers remain competitive and increase profits by allowing them to build a flexible and agile workforce. However, non-standard work also makes for an uneven playing field amongst competitors (De Stefano, 2016) and increases employment churn.

There is research pointing to broader societal implications of non-standard work in the labour force (De Stefano, 2016). These include lower home ownership and fertility rates, both of which could have negative societal consequences (ILO, 2016). The literature on the economic impacts of non-standard work highlights labour market segmentation³⁷ (ILO, 2016) and increased inequality (OECD, 2015). It is also recognized that the lightened tax burden of certain employers leads to tax loss. The misclassification of employees as independent contractors causes, in the United States alone, annual losses of tax revenue in the billions of dollars (National Employment Law Project, 2012).

Non-standard work and Part III of the Code

Part III of the Code applies to, and in respect of, employees employed in or in connection to any federal work, undertaking or business (including employees of Crown corporations and excluding the federal public service). Part III is the only labour standards legislation in Canada that does not include a definition of “employee”. Recent changes to Part III set a precedent for extending protections to some workers (that is, beyond employees), both in terms of coverage and effective access to such protections.

Part III does not currently treat independent contractors as employees. In the application of Part III, binary determinations of whether someone is a true employee (who would be covered by Part III) or a true independent contractor (who would not be covered by Part III) are therefore made on a regular basis by workers and employers

³⁷ The ILO (2016) defines this as “a situation in which one segment of the labour market faces both inferior working conditions and vulnerable employment status, while the other segment enjoys more favourable working conditions and employment security granted by permanent contracts—even if workers in both segments perform the same types of jobs. A key feature of dual labour markets is that the transition from one segment to another is compromised.”

and, when complaints are brought forward, on a case-by-case basis by Labour Program inspectors, adjudicators and the courts.³⁸

Part I (Industrial Relations) of the Code does recognize the existence of “dependent contractors” and treats them as employees. In particular, Part I defines a “dependent contractor” as:

- (a) the owner, purchaser or lessee of a vehicle used for hauling, other than on rails or tracks, livestock, liquids, goods, merchandise or other materials, who is a party to a contract, oral or in writing, under the terms of which they are:
 - i. required to provide the vehicle by means of which they perform the contract and to operate the vehicle in accordance with the contract; and
 - ii. entitled to retain for their own use from time to time any sum of money that remains after the cost of their performance of the contract is deducted from the amount they are paid, in accordance with the contract, for that performance;
- (b) a fisher who, pursuant to an arrangement to which the fisher is a party, is entitled to a percentage or other part of the proceeds of a joint fishing venture in which the fisher participates with other persons; and
- (c) any other person who, whether or not employed under a contract of employment, performs work or services for another person on such terms and conditions that they are, in relation to that other person, in a position of economic dependence on, and under an obligation to perform duties for, that other person

The rationale for providing dependent contractors with rights under Part I stems from arguments put forward by Harry Arthurs in the 1960s (Arthurs, 1967). Arthurs argued that dependent contractors should not be excluded from collective bargaining simply because their employment relationship did not resemble a traditional employer-employee relationship. A key point was that collective bargaining is a means of correcting a power imbalance and, because dependent contractors occupy the same labour market space as employees, they should be eligible for unionization.

The Code also offers certain protections to both union and non-union employees when a business or part of a business is sold, leased, merged or otherwise transferred. Part I allows a bargaining agent to continue to represent its unionized employees after such a sale or transfer, and allows the collective agreement to remain in place until it expires. This is known as “successorship rights”.³⁹ The new employer is bound by the existing collective agreement.

³⁸ Inspectors rely on their interpretation and remedial purposes of the Code and the principles and tests set out in the common law when interpreting Part III and making determinations about whether an individual is an employee or an independent contractor. Courts have traditionally looked to various factors in defining an employment relationship, including: the degree of control exercised by the alleged employer over the worker; the worker’s integration into the employer’s business; the worker’s availability to work for others; the worker’s ownership of tools; and the worker’s degree of financial risk or opportunity for profit.

³⁹ *Canada Labour Code*, RSC 1985, c. L-2, s.44 [Code].

Part III provides that, when a federal work, undertaking or business, is transferred from one employer to another, the employment of employees is deemed to be continuous, notwithstanding the transfer. This is referred to as “continuity of employment”.⁴⁰ Continuity of employment is required to establish and retain entitlement to protections and benefits under Part III that are only granted after completing a period of continuous employment with the same employer (for example, unjust dismissal, sick leave, bereavement and parental leaves and termination pay).

Until recently, neither of these provisions applied when a contract was retendered. This is commonly referred to as “contract flipping”. Under the amendments to section 189 made in the *Budget Implementation Act, 2018, No. 2 (BIA 2)*, continuity of employment will now be protected when a contract is retendered and the second employer becomes responsible for carrying out any federal work, undertaking or business, or part of one. It will also be protected when the work was previously regulated at the provincial or territorial level.

BIA 2 also made other important amendments to Part III to:

- Prohibit employers from paying part-time, temporary, casual or seasonal employees a lower wage than other employees simply because of their employment status if they are doing substantially the same work under similar conditions, unless the difference in rates of pay are based on objective factors (for example, seniority, merit);
- Require employers to provide all employees, regardless of their status, with information about labour standards requirements, their conditions of employment and promotional opportunities; and
- Prohibit temporary help agencies from charging a fee to an employee in connection with assigning the employee to perform work for a client and paying an employee at a lower rate than the rate paid by the client to its employees.

When implemented, these changes are expected to reduce economic incentives for employers to use non-standard forms of employment.

The recent changes will also improve access to entitlements for those covered by Part III by: eliminating the continuous employment requirements for general holiday pay, sick leave, maternity and parental leave, leave related to critical illness and leave related to death or disappearance of a child; and reducing the continuous employment requirement for three weeks of paid vacation from 6 years to 5 years. This will assist temporary, seasonal and casual employees in becoming eligible for statutory entitlements. The Expert Panel notes, however, that the concept of “continuous employment” is not defined in the Code.

Other changes introduced through BIA 2 will help prevent misclassification and protect misclassified employees. Specifically, an employer will be prohibited from treating an employee as if they are not their employee in order to avoid their obligations

⁴⁰ *Ibid.*

under Part III or to deprive the employee of their rights under Part III. Moreover, if in any proceeding in respect of a complaint made under Part III the employer alleges that the complainant is not their employee, the burden of proof is on the employer.

The Expert Panel believes it is important to observe that the intent element sets the initial burden of proof on the shoulders of the employee, who must establish the employer's intent to avoid obligations or deprive the worker of their entitlements under the Code. Nevertheless, this amendment is likely to send a signal to employers and workers about misclassification and, in that sense, is proactive.

The BIA 2 changes received Royal Assent in December 2018 and are coming into force as necessary regulations are put in place.

Finally, Part III has recently been amended to provide greater protection for individuals in the FRPS in another form of non-standard work, namely unpaid internships.⁴¹ This was done through Bill C-63, the *Budget Implementation Act, 2017, No. 1*, which received Royal Assent in December 2017. Once in force, which is anticipated to be in 2020, the new provisions will prohibit unpaid internships in the FRPS unless they are part of an educational program and make sure, through regulations, that any unpaid interns whose internships are part of such a program and who are unpaid receive labour standards protections appropriate to this type of non-standard work. The changes will come into force as soon as necessary regulations are in place.

Taken together, these changes introduced as part of the federal government's modernizing federal labour standards agenda make important strides to better address non-standard work. However, there is still more to be done.

What we heard

During our engagement activities, we heard differing views about the extent to which non-standard work is a problem in the FRPS. We also heard a range of ideas that could be pursued related to this issue, with significant agreement on the need for more education and better guidance.

Some employers emphasized that certain types of non-standard employment are necessary to enable them to operate and remain competitive, and that they sometimes use non-standard employment forms as a recruitment and retention tool. For example, it can allow them to accommodate workers nearing retirement or attending school. According to some employers and employer organizations, people in non-standard employment are usually professional, highly skilled contractors who choose such work because it is lucrative.

⁴¹ Unpaid interns are not employees in standard work. They are people who are engaged in a short-term workplace-based learning experience in order to acquire experience meant to assist them in developing career prospects.

Unions told us that some people are struggling in the FRPS. We heard from one civil society group that precarity forces people to live in poverty or spend more on healthcare and housing, and that this struggle has an impact on employers' bottom lines. We also heard that it can contribute to anxiety, burnout and the inability to plan for life decisions such as buying a home. We heard that these issues impact certain groups, such as immigrants, youth, women, visible minorities, trans and gender-diverse people, differently.

It was noted in a roundtable with civil society groups and worker associations, for example, that immigrants, youth and women are overrepresented in non-standard work forms and arrangements. Youth spoke of "a new normal" where some work excessive hours at multiple precarious jobs. Indigenous organizations told us that there is a trend towards more contract work in their communities, often driven by government funding agreements, and that workers who do such work typically have irregular hours and no benefits.

Participants proposed a range of ideas related to this issue that tended to fall under the following themes: coverage of Part III, definitions of key terms, education and guidance, and rules around specific issues.

Coverage of Part III

Unions, labour organizations and worker associations generally favoured broad coverage of federal labour standards that would extend to non-standard workers not currently covered by Part III. One union recommended that the same labour standards apply to the federal public service and that employers not be able to opt out of labour standards by declaring certain groups of workers not to be employees. One expert and some unions also raised the possibility of sectoral approaches to address some labour standards issues.

Employers and employer organizations, on the other hand, were generally not supportive of expanding labour standards protections beyond those who are currently covered and they expressed concern about the impacts of such a change. One employer organization recommended considering the impact on smaller firms, for example. There was also a suggestion from some employers to exclude mature collective agreements from any new changes.

Definitions of key terms

We heard from experts that with new technology and evolving forms of work, the definition of "employee" becomes very complicated. It was recommended by unions, labour organizations, worker associations and one expert that Part III be amended to establish a broad definition of "employee", with many suggesting that the definition include dependent contractors. There was also suggestion to modify the definition from time to time to reflect the changing labour market. One union recommended defining "employer" and "temporary help agency" as well.

There was some support expressed during an employer roundtable for defining terms like “independent contractor”, “dependent contractor” and “employee” once and for all; however, it was also suggested that people will try to get around any definition.

Education and guidance

We heard that there is a lack of awareness of labour standards among employers, particularly smaller employers, and workers. We heard from Indigenous organizations that this is an issue among some Indigenous workers, especially youth. To address this issue, some employers and one worker association recommended that the federal government develop guidelines to help employers identify whether a worker falls under federal or provincial/territorial labour standards. Employers also recommended guidelines to help them identify whether a worker is an employee or an independent contractor.

Rules around specific issues

Participants also proposed ideas related to a mix of more specific issues. Unions spoke about “contract flipping”, and ensuring that when an employer loses a contract, workers do not lose their labour standards protections or their collective agreement. One worker suggested that contracts be awarded based on quality and not the lowest bid.

One union recommended that the federal government hold digital platform companies liable for the conditions that gig workers in their sectors experience.

One worker association recommended that temporary help agency employees only be used for short terms (for example, three months), which would be followed by access to a direct job with the client employer. Unions, labour organizations and worker associations recommended joint and several liability for triangular employment relationships. One employer organization, on the other hand, said that protections for temporary help agency employees already exist.

Two unions recommended term limits for temporary or contract employees, with one recommending 18 months and the other one year. One employer emphasized the need for temporary employees during peak periods and strongly cautioned against restricting this practice in any way.

One union suggested that non-standard workers should have the same social protections as those in standard work, including benefits, Employment Insurance (EI) and Canada Pension Plan (CPP). They also recommended universal services and programs, including pharmacare and childcare. One employer organization recommended examining CPP and EI to see if there is a way for non-standard workers to contribute. We also heard support for broadening CPP during a roundtable with Indigenous organizations. One union recommended reforming and restricting the tax advantages associated with misclassification.

Conclusions and recommendations

We set out here two sets of recommendations in response to the questions we were asked to address. The first set pertains to who should be covered by labour standards and the second to how to ensure non-standard workers have effective access to these standards.

Scope and coverage of Part III

Definition of employee

As noted earlier, Part III does not presently include a definition of “employee” and the scope and coverage of Part III as it relates to employees is therefore dependent on decisions made by employers, workers, Labour Program inspectors, adjudicators and the courts. These decisions are generally based on guidelines, common law and legal precedents. In practice, they typically rest on an assessment of whether someone is a “true” employee (and thus covered by Part III) or not a “true” employee (and therefore excluded from Part III).

The Labour Program’s interpretation, policies and guidelines (IPG) on determining the employer-employee relationship states that different criteria should be taken into account (ESDC, 2016a). A worker should be classified as an **employee** when they work exclusively for the employer and the employer provides tools, controls duties and sets working hours. Other criteria that are to be considered are whether the worker must perform services and report to the employer’s workplace on a regular basis and if pension or group benefits are provided.

Conversely, the IPG indicates that a worker should be classified as an **independent contractor** if they provide services to several payers with their own tools and pay their own expenses and are able to accept or reject the work proposed by a payer. A worker who is able to decide how the task is completed, hire a third-party to complete the job and set their own working hours is also likely to be an independent contractor, as is someone who is excluded from participating in benefit plans and will not be provided vacation pay.

If the worker falls in the middle of the continuum their classification as an employee or independent contractor becomes complicated and can generate a high level of uncertainty. This can lead to employees being misclassified as not an employee and thereby denied protections under Part III.

During our engagement activities, we heard that the lack of clarity about the scope of coverage under Part III (what is or is not an employment relationship) enables the growth of new practices that further obscure the employee-independent contractor distinction and the employee-employer relationship. This aligns with Deepa Das Acevedo’s research (2018) on regulating the platform economy in which she concludes that the confusion over the employment status of platform-based workers has developed due to an overreliance on one of the many factors that should be considered

in making determinations: the degree of control over the worker exercised by the company.

Most North American jurisdictions use some version of a multi-factor test to determine whether a worker is an employee. The goal of this test is to illuminate the economic reality of the relationship, which the written terms of the contract may not accurately represent. However, as is the case with any multi-factor test, its application can lead to more or less restrictive interpretations of who is an employee. Therefore, various attempts have been made to provide guidance on the interpretation and application of the test in order to influence the scope of covered employment. Recently, the California Supreme Court in the *Dynamex* case set forth the so-called ABC test that obliges the hiring entity to establish each of the following three factors:

- a. that the worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact;
- b. that the worker performs work that is outside the usual course of the hiring entity's business; and
- c. that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed⁴²

The presumption of employee status and the ABC test have long been used in 17 American states to determine who is an employee to access employment rights such as workers' compensation and labour standards protections. California and Washington are currently reviewing legislation to create a presumption of employee status with criteria that must be met to determine a worker is not an employee.^{43 44}

A related issue is that of the dependent contractor. The common law has long recognized that there is a category of worker who is not a traditional employee and not an independent contractor.⁴⁵ As noted earlier, Part I of the Code recognizes dependent contractors as employees for the purpose of collective bargaining on the grounds that they share the same labour market space as employees. The Federal Court has recently ruled that the Code has to be interpreted as a whole, and that importing the definition of "employee" to Part III in order to determine if a so-called "independent contractor" could sue for unjust dismissal did not constitute an error of law.⁴⁶

Some provincial and territorial jurisdictions have defined the concept of "dependent contractor". In Quebec, section 1(10) of the *Act respecting labour standards* includes, in the definition of "employee", workers who are party to a contract and "perform specified work for a person within the scope and in accordance with the

⁴² *Dynamex Operations West, Inc. v. The Superior Court of Los Angeles County*. 4 Cal. 5th 903 (2018) No. S222732, Supreme Court of California. April 30, 2018.

⁴³ State of California, [AB-5 Worker status: employees and independent contractors](#). The Bill was passed in the assembly on May 29, 2019 and is now being reviewed by the senate.

⁴⁴ State of Washington, [Senate Bill 5513](#). The Bill was referred to the Committee on Labor and Commerce on January 28, 2019.

⁴⁵ *Carter v. Bell & Sons*, 1936 2 DLR 438.

⁴⁶ *Peepeekisis Cree Nation No. 81 v. Dieter*, 2018 FC 411.

methods and means determined by that person”.⁴⁷ The *Employment Standards Act of Yukon* includes “contract workers” in the definition of “employee”.⁴⁸ According to section 1(1) of that Act, a contract worker is any worker who, whether or not under a contract of employment, is in a situation of economic dependence and under the obligation to perform duties for another person.

While other provinces and territories have not incorporated a definition in their legislation, case law indicates that the criteria used to establish whether a worker is an independent contractor or an employee could also determine whether the worker was a dependent contractor.^{49 50} As such, the most important factors are the worker’s economic dependency towards their employer/client and the level of exclusivity required of them.⁵¹ Other relevant indicators are the duration of the working relationship, the absence of any expectation of profits by the worker, as well as whether the worker has to wear the company’s uniform and whether all the infrastructure used by them belongs to the company.^{52 53 54}

A worker who is determined to be a dependent contractor benefits from the same advantages as an employee. The hallmark indicator of a dependent contractor relationship is a worker’s exclusivity to the employer. Exclusivity is not determined on a “snapshot” basis because it is integrally tied to the question of economic dependency.

Therefore, a determination of exclusivity must involve a consideration of the full history of the relationship.

Recommendation 6: The Panel recommends that Part III define the concept of “employee”.

This recommendation is three-fold. First, Part III should include a clear statutory definition of “employee” that encompasses any person who performs labour or supplies services for monetary compensation, as well as a presumption of employee status unless the hiring entity can establish that the person is not an employee as set out below.

Second, and following the ABC test set forth by the California Supreme Court, Part III should include a clear statutory definition of “independent contractor” which would be structured around four cumulative conditions:

- The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for performance of the work and in fact;

⁴⁷ *Act respecting labour standards*, CQLR, c N-1.1.

⁴⁸ *Employment Standards Act*, RSY 2002, c 72.

⁴⁹ *Doyle v. London Life Insurance Co.* (1985), 1985 BCLR 285.

⁵⁰ *Keenan v. Canac Kitchens Ltd.*, 2016 ONCA 79.

⁵¹ *Ibid*; *McKee v. Reid's Heritage Homes Ltd.*, 2009 ONCA 916.

⁵² *Drew Oliphant Professional Corporation v. Harrison*, 2011 ABQB 216.

⁵³ *Shaham v. Airline Employee Travel Consulting Inc.*, 2018 NSSM 18.

⁵⁴ *Khan v. All-Can Express Ltd.*, 2014 BCSC 1429.

- The person performs work that is outside the usual course of the hiring entity's business;
- The person is customarily engaged in an independently established trade, occupation or business of the same nature as the work performed; and
- The person has the risk of profit and risk of loss.

Finally, Part III should include a clear statutory definition of “dependent contractor”. Dependent contractors should also be deemed to be employees in order to help make it clear that dependent contractors are not to be thought of as belonging to the category of independent contractors and to help clarify that employees with some features of dependent contractors are employees.

Proceeding to a comprehensive revision of regulations that set forth exceptions, exemptions and special rules

While the purpose of Part III of the Code is to provide basic minimum terms and conditions of employment that apply to all employers and employees in the FRPS, a number of regulations set forth exemptions, exceptions and special rules that exclude some workers from some standards. These apply to certain types of employees (managers, supervisors and some professionals) and to certain sectors of work (railway running-trade employees, railway operating employees, motor vehicle operators, commission salespersons in the broadcasting industry, shipping industry and marine personnel). In the case of managers and supervisors, most of the exemptions relate to hours of work and unjust dismissal. Certain sectors are exempted from limits on overtime and hours of work, as well as requirements for rest periods. Many of the sectors with special rules respecting hours of work are also governed by special rules on hours of work by Transport Canada. During our engagement activities, both employers and employees emphasized the confusion created when their work hours are governed by two sets of rules.

The Panel did not have the opportunity to undertake research to evaluate the impacts of exemptions and special rules on employers and employees. However, a study of exemptions conducted by Vosko, Noack, and Thomas (2016) demonstrates that certain groups of employees are disproportionately impacted by exemptions and special rules in Ontario's *Employment Standards Act* (ESA). Non-unionized employees, young employees, women, and low-wage employees are less likely to be fully covered by the ESA due to exemptions, as compared to employees overall.

Part III provides a floor of standards integral to ensuring the decency of work. Exemptions are, at least theoretically, inconsistent with the principles of universality of minimum standards, social minimums and fairness upon which labour standards are founded. Accordingly, exemptions and special rules that lower this basic floor should be limited and justifiable.

Some of the regulations granting industry exceptions may now be outdated and no longer warranted. Some were introduced in the 1980s or before (for example, shipping), others in the 2000s. Given that business practices have evolved and changed, as have other aspects of today's workplaces, there should be a review of

these exemptions. It is also important to ensure that exemptions from the protections in Part III remain justifiable.

Following recent changes to Part III, the Governor in Council now has the authority to make regulations modifying how any of the normal hours of work and scheduling provisions in Division 1 of Part III respecting hours of work apply to certain classes of employees (for example, motor vehicle operators, west coast shipping employees) and establishing that any of these types of provisions do not apply to certain classes of employees.⁵⁵ Especially in this context, it is important that existing exemptions and special rules be reviewed on a principled basis through a process that ensures transparent decision making, while examining underlying policy intents and impacts for employers and workers alike.

Recommendation 7: The Panel recommends that a process be established to review existing regulations under Part III that set exemptions, exceptions and special rules.

The review should be based on the principles that Part III should apply to as many employees as possible and that departures or derogations of a standard through an exemption, exception or special rule should be limited and justifiable. We also propose that the following be considered as criteria that would justify maintaining an exemption, exception or special rule:

- The nature of the work makes it impractical for a minimum standard to apply. Applying the standard would preclude a particular type of work from being done at all, or would materially alter its output such that the work could not continue to exist in anything close to its present form;⁵⁶
- The work provides a social, labour market or economic contribution that argues for its continued existence in its present form, even in the absence of one or more minimum standards applying to it;
- The employee group to whom the exemption or special rule applies is readily identifiable, in order to prevent confusion and misapplication; and
- The employees to whom the exemption or special rule applies are not historically disadvantaged or precariously situated in the labour market.

The review should involve employee and employer representatives, experts, the general public, other interested parties, as well as Labour Program officials. It should be overseen by a neutral chair.

Greater benefit

Section 168 of the Code states that the provisions of Part III pertaining to minimum wage, annual vacation, general holidays and bereavement leave do not apply to an employer and employees who are parties to a collective agreement that confers

⁵⁵ These amendments were made as part of the *Budget Implementation Act, 2018, No. 2*.

⁵⁶ The “nature” of the work relates to the characteristics of the work itself. It does not include the quantity or cost of work produced by a given number of employees. Criteria used by the Ontario Ministry of Labour to assess exemptions and special rules (Mitchell & Murray, 2016).

on the employees rights and benefits “at least as favourable” as those conferred by the provisions with respect to length of leave, rates of pay and qualifying periods.

During our engagement activities, many unions acknowledged that collective agreements generally provide greater benefits than labour standards and consequently not all changes to the Code affect unionized employees. Some employers also suggested that their collective agreements, taken as a whole, provide greater rights or benefits than Part III. This opens the door to an employer looking at a collective agreement as a “whole” and saying it provides equivalent or greater benefit than Part III.

The current jurisprudence related to section 168 favours a global approach where the agreement is considered in its entirety. Through the use of the "metaphorical scale", adjudicators will place together in one bucket, for example, employees’ rights and benefits regarding holidays in respect of length of leave, rates of pay and qualifying periods under Part III and, in another, employees’ rights and benefits regarding holidays in respect of length of leave, rates of pay and qualifying periods under the collective agreement.⁵⁷

However, while all the provisions of Part III and the collective agreement relating to holidays in respect of their length of leave, rates of pay and qualifying periods go into the respective bucket, not all of them will carry equal weight. We believe that this approach contradicts the basic principle that labour standards should be universally applicable to all employees who are entitled to the rights and protections they provide.

Recommendation 8: The Panel recommends that section 168 of Part III of the Code be clarified to ensure that an employer cannot rely on a greater benefit with respect to one standard to offset a lesser benefit with respect to another standard.

In other words, an employer should not be permitted to average out the provisions in a collective agreement to see if, on average, or in total, they are equivalent to or greater than the standards in Part III.

Ensuring that non-standard workers have effective access to federal labour standards

Joint and several liability and jurisdictional issues

Fissuring often materializes in subcontracting chains and tripartite employment relationships, where the characteristics of an employer may be shared between two separate employer entities. The Labour Program (ESDC, 2017) has an IPG to address

⁵⁷ *Bell Technical Solutions v. Communications, Energy and Paperworkers Union of Canada (Policy grievance with respect to the remembrance day holiday)*, 2010 CLAD No. 355; *Syndicat canadien de la fonction publique, section locale 675 (Groupe des employés-es de bureau et professionnels-les - Unité des services généraux et administratifs) c. Société Radio-Canada*, [2011] DATC No. 40; *Compagnie Système Allied (Canada) et Union des chauffeurs de camions, hommes d'entrepôts et autres ouvriers, Teamsters Québec, section locale 106 (FTQ)*, DTE 2007T-715.

tripartite employment relationships. The IPG recognizes that employer features may be shared between separate employer entities. In determining who is responsible for the employer's obligations in tripartite arrangements, consideration is to be given to factors such as what party exercises the most control, legal subordination and degree of integration into the business. A determination is to be made on the facts of the case using a comprehensive approach (ESDC, 2017).

Part III does not currently address liability between the entities. For example, some companies use temporary help agencies, contracts for services provided for the company and contracting out of business activities. In these arrangements, a determination is made about who the "real employer" is. Generally, in cases of temporary help agencies and subcontracting, this is the agency or subcontractor. During our engagement activities, one employer in the trucking sector observed that some employers in their sector use agencies specifically to avoid employer liability.

Part III also does not define "employment relationship". The practice is to characterize the employment relationship in a binary, single employer-employee way. However, Part III does have a provision which applies to multi-employer employment. Section 203 of the Code states that *multi-employer employment* "means employment in any occupation or trade *in which, by custom of that occupation or trade, any or all employees would in the usual course of a working month be ordinarily employed by more than one employer*" (emphasis added).

In these situations, liability for wages and general holiday pay is shared among employers in a multi-employer association. The provision has been applied to longshore employment under the regulatory authority granted to the Governor in Council in subsection 203 (2).⁵⁸ While other occupations or trades can be designated as "multi-employer" by regulation, the definition of multi-employer employment means, in practice, that the scope of potential broader application is limited.

There is a need to consider clearly assigning obligations and liabilities in multi-party situations so that workers at the bottom are not at risk of non-payment of wages and other entitlements (ILO, 2016). One approach for addressing the problem of shared responsibility is to treat two or more entities as jointly and severally liable for the employer's obligations. Because small firms are more likely to be in non-compliance with labour standards (Vosko et al., 2016), extending employer responsibility may protect workers who are engaged in various forms of contracted or temporary work. A growing body of literature suggests that unpaid wages and other labour standards violations are more likely to be resolved when all those organizing or directing the work are held jointly responsible (Rawling, 2006; Hardy & Howe, 2015; Hyde, 2012; Weil, 2010, 2014).

⁵⁸ *Canada Labour Standards Regulations*, SOR/91-461, s. 17.

Saskatchewan has a provision that extends liability for unpaid wages beyond direct and related employers in certain circumstances where employers contract out their work.⁵⁹ In Quebec, an employer who enters into a contract with a subcontractor, directly or through an intermediary, is jointly and severally responsible with that subcontractor and that intermediary for monetary obligations under the Act.⁶⁰ Ontario makes temporary help agencies and the client jointly and severally liable for employment standards (wages, overtime, public holiday pay and reprisals).⁶¹ British Columbia has provisions that extend liability for unpaid wages beyond the direct and related employer where employers contract out work.⁶² While many of these provisions are seldom used, these provisions have been in place for decades and provide tools for addressing non-standard work arrangements.

Recommendation 9: The Panel recommends that a joint and several liability provision be added to Part III.

Federally regulated undertakings subject to Part III who enter into contracts with subcontractors or other intermediaries in the FRPS, either directly or indirectly, should be considered jointly and severally liable for wages owed and statutory entitlements under Part III.

As discussed above, when fissuring occurs in the FRPS, workers may move from federal to provincial or territorial jurisdiction. For example, when a federally regulated business contracts out its building cleaners, the cleaners are likely to move from being protected under federal labour standards to provincial rules. Subcontracting can involve reduced pay and benefits for contracted out workers. Some workers who become regulated by a province or territory, especially in service types of work, experience non-compliance with the relevant labour standards. As well, employees who work side by side may end up covered by two different statutory regimes. To illustrate, temporary agency workers who are covered by provincial labour standards and work in a federally regulated business such as a bank are not covered by Part III, while the permanent employees of the bank are. This can be the case even though they may work for a year or more at the bank through the temporary help agency.

Constitutionally, the Code cannot regulate the relationship between a subcontractor and their employees when these entities are covered by provincial/territorial labour standards. However, we do believe that FRPS employers should be required to do their due diligence to ensure that a provincially/territorially regulated subcontractor or other intermediary respects provincial/territorial labour standards.

⁵⁹ *The Saskatchewan Employment Act*, SS 2013, c S-15.1, s. 2-69.

⁶⁰ *The Act respecting labour standards*, CQLR, c N-1.1, s. 95.

⁶¹ *Employment Standards Act*, SO 2000, c 41, s. 74.18.

⁶² *Employment Standards Act*, RSBC 1996, c 113, s. 30(1).

Recommendation 10: The Panel recommends adding a positive duty to comply with applicable labour standards when contracting takes place between a federally regulated undertaking and provincially/territorially regulated entities.

There should be a positive duty on FRPS employers to exercise due diligence to require that their subcontractors in provincial or territorial jurisdictions comply with the labour standards that apply to them. Should monetary labour standards be violated by the subcontractor and should the subcontractor not pay monies it has been ordered to pay by the body that has authority to make that order, the employer who has not exercised due diligence should be subject to an administrative monetary penalty, as provided for under the new Part IV that was added to the Code in 2017 and is expected to come into force by mid- to late 2020.⁶³

Consideration should be given to the possibility of making the federally regulated company liable for any monetary debt not recovered by the worker through provincial or territorial process. Assigning liability to the higher-level entity based on an obligation of due diligence may improve compliance rates along the subcontracting chain.

As mentioned earlier, the jurisdictional determination has become a major challenge. We heard from both employers and employees that it is not always clear whether an employer is federally or provincially/territorially regulated. For example, a building contractor tasked with the construction of an airport's runways was not considered by the Supreme Court to be governed by federal laws. The Court concluded that the construction of runways "is a matter so far removed from aerial navigation or from the operation of an airport".⁶⁴

However, when a maritime shipping company relies exclusively on a stevedoring enterprise (loading and unloading ships at a dock), the stevedores will be regulated by the federal legislation, since their work is integral to that of a maritime company (which is a federal undertaking).⁶⁵

Moreover, adherence to and the enforcement of Part III relies on employers knowing what set of rules they are required to follow. Confusion about jurisdiction may

⁶³ Bill C-44, [Budget Implementation Act, 2017, No. 1](#), s. 318-402.

⁶⁴ *Construction Montcalm Inc. v. Min. Wage Com.*, 1979 1 SCR 754.

⁶⁵ *Tessier Ltée v. Quebec (Commission de la santé et de la sécurité du travail)*, 2012 2 SCR 3.

lead to unintended non-compliance. Employees also need to know which jurisdiction they fall under in order to know their rights and where to file their complaints.⁶⁶

Recommendation 11: The Panel recommends that the Labour Program collaborate with provincial and territorial counterparts to develop clear guidelines to assist in the correct determination of jurisdiction for labour standards.

While we recognize that determining jurisdiction is generally an individual fact-based determination, an effort should be made by the Labour Program, with its counterparts, to develop a functional test to give guidance. An online tool like that developed for calculating general holiday pay could assist employers and employees in making these determinations.

Continuous employment

Several protections under Part III depend on a condition related to the “continuous employment” of employees. Continuity of employment is required to establish and retain entitlements to protections and benefits that are only granted after completing a period of continuous employment with the same employer (for example, unjust dismissal, sick leave, bereavement and parental leaves and termination pay). As noted previously, under the amendments to section 189 made through BIA 2, continuity of employment is now protected when a contract is retendered and the second employer becomes responsible for carrying out any federal work, undertaking or business, or part of one.

Nevertheless, the concept of “continuous employment” is not defined in Part III. Some employees can go contract-to-contract or season-to-season with the same employer and never accumulate the service required to access minimum standards under Part III (for example, protection from wrongful dismissal or termination pay). How is the continuity of service of non-standard work forms such as fixed-term contracts and seasonal contracts calculated?

In some cases, the courts have determined that the annual interruption caused by the seasonal nature of the work should be foreseen as an annual lay-off, which does not necessarily interrupt the continuity of an ongoing employment relationship between an employee and an employer.⁶⁷

In other cases, adjudicators have determined that there are a number of factors that should be considered in order to determine whether there has been a veritable break in the continuity of employment. Thus, the global length of service with the

⁶⁶ Between 2015-2016 and 2017-2018, 652 labour standards complaints filed with the Labour Program were determined to be inadmissible or rejected for review because of jurisdiction, that is just over 9% of all such complaints. This information is derived from the Panel’s analysis of an administrative database of complaints filed with the Labour Program, including monetary complaints, non-monetary complaints, unjust dismissal complaints and proactive inspection, from 2015-2016 to 2017-2018.

⁶⁷ See *Beothuk Data Systems Ltd., Seawatch Division v. Dean*, 1998 1 FC 433 and *Gallaher v. CRC Rail Management Services Ltd.*, 2017 CLAD No. 224.

employer as well as the customs, the practices in the sector and the employer's practices are considered by adjudicators.⁶⁸ Moreover, the shared assumption that the employee will continue their activities with the employer has lead adjudicators to determine the continuity of employment notwithstanding that the employee did not work during several months.⁶⁹ However, the Federal Court has upheld that periods of unemployment between contracts severed the continuity of employment.⁷⁰

This situation can generate confusion and uncertainty.

Provincially, Nova Scotia, New Brunswick and Quebec have general definitions of what constitutes continuous employment.^{71 72 73} The Nova Scotia *Labour Standards Code* defines a worker's period of employment as "the period of time from the last hiring of an employee by an employer to his discharge by that employer and includes any period on lay-off or suspension of less than twelve consecutive months". A similar definition is found in the New Brunswick *Employment Standards Act*. Quebec's *Act respecting labour standards* provides a definition of "interrupted service" as "the period during which the employee is bound to the employer by a contract of employment, even if the performance of work has been interrupted without cancellation of the contract, and the period during which fixed term contracts succeed one another without an interruption that would, in the circumstances, give cause to conclude that the contract was not renewed".

As for Newfoundland, Ontario, Manitoba, Saskatchewan, Alberta, Northwest Territories and Nunavut, their definitions of continuous employment are included in specific sections.^{74 75 76 77 78 79 80}

Recommendation 12: The Panel recommends that a definition of "continuous employment" that includes periods of layoff or interrupted service of less than 12 months be included in Part III.

⁶⁸ *Stone v. Canada (Attorney General)* (F.C.A.), 2006 4 FCR 120.

⁶⁹ *Desjarlais v. Piapot Cree Nation*, [2011] CLAD No. 167

⁷⁰ *Lord v. Conseil des Atikamekw d'Opitciwan*, 2011 FCJ No. 701.

⁷¹ *Labour Standards Code*, RSNS 1989, c 246, s. 2(o).

⁷² *Employment Standards Act*, SNB 1982, c E-7.2, s. 1.

⁷³ *Act respecting labour standards*, CQLR, c N-1.1, s. 1(12).

⁷⁴ *Labour Standards Act*, RSNL 1990, c L-2, s. 55.

⁷⁵ *Employment Standards Act*, SO 2000, c 41, s. 33(2), s. 59(1) & s. 65(2).

⁷⁶ *The Employment Standards Code*, CCSM c E110, s. 60.1.

⁷⁷ *The Saskatchewan Employment Act*, SS 2013, c S-15.1, s. 2-60(2).

⁷⁸ *Employment Standards Code*, RSA 2000, c E-9, s. 3 & s. 54.

⁷⁹ *Employment Standards Act*, SNWT 2007, c 13, s. 24(4) & s. 38(4).

⁸⁰ *Labour Standards Act*, RSNWT (Nu) 1988, c L-1, s. 14.02 & s. 16(1)(b).

Sector-specific issues: The trucking sector

When we spoke with Labour Program officers across the country, they reported that they receive a substantial and disproportionate number of complaints for unpaid wages, overtime and hours of work violations from workers in the trucking sector. This is confirmed by the number of complaints of labour standards violations filed. According to internal Labour Program data, 67% of labour standards monetary complaints filed between 2015/16 and 2017/18 were from truckers, while truckers only make up 16% of FRPS employees.⁸¹

During our engagement activities, we heard that there are many different practices regarding how wages are paid in the industry. Some common practices include pay on the basis of kilometres driven, pay on the basis of the overall trip (a trip rate), pay on the basis of hours worked, payment based on a percentage of the load value or some combination of various factors. It was suggested by several trucking employers that many small employers in this sector are unfamiliar with labour standards. This in itself creates unequal competition between employers who comply with labour standards and those who do not.

Labour Program analysis of data from the LFS for the period 1998 to 2017 demonstrates that incorporated self-employment in the trucking sector in the FRPS is becoming more common, particularly self-employment as a corporation without paid employees (ESDC, 2019b). According to this data, the proportion of self-employed workers without employees in the trucking industry has increased from 26% in 1998-2002 to 30% in 2013-2017 (ESDC, 2019b). The Labour Program officials we spoke to also find that more employers in the sector are misclassifying employees as independent contractors to avoid obligations under the Code.

There are a variety of employment arrangements in the trucking sector. Some companies hire drivers directly and some hire workers indirectly through agencies. In our engagement activities we heard that some companies require drivers to incorporate (the Driver Inc. model) and others will force workers to enter into a “lease-to-own” agreement for the vehicle. The nature and frequency of these various models could indicate a misclassification issue in the sector. One officer reported that, in their experience, 8 out of 10 complaints from truck drivers were confirmed as cases of misclassification.

The trucking industry has faced labour shortages, in part because of the long hours of work away from family and community. As a result, we heard that some employers have shifted hiring practices to bring in drivers under the Temporary Foreign Worker Program (TFWP). We heard from representatives of the industry that, in the Atlantic provinces, approximately 30% of drivers are hired through the TFWP.

The TFWP allows drivers into Canada on a temporary basis and requires that they only work with the employer named on their work permit. Migrant workers are made vulnerable by the tie to their employer through the work permit (Nakache &

⁸¹ Labour Program, Number of Monetary Complaints filed between 2015-2016 and 2017-2018 by transport truckers, owner/operator truckers and other truckers.

Kinoshita, 2010; Goldring & Landolt, 2013; Fudge, 2012). We heard from workers and workers' organizations that this vulnerability can be exacerbated by unfamiliarity with Canadian law and language barriers, leading to a lack of information about rights available under the Part III.

What we heard raises concerns about the extent to which workers in this industry are being misclassified, being required to meet employer-driven models if they wish to work in the industry and potentially being paid less than minimum wage given their actual hours of work. We are also particularly concerned about the possible lack of record-keeping, which is required for effective enforcement and complaint investigation.

Recommendation 13: The Panel recommends that a pilot project be launched to explore possible changes to Part III and the regulations made under it to address issues related to misclassification, pay and record-keeping practices and other relevant matters in the federally regulated trucking industry.

The December 2018 budget implementation legislation added a provision to the Code that allows the Governor in Council to establish and operate pilot projects to test possible legislative and regulatory amendments that would improve and better protect employees' rights under Part III. This new authority should be used to launch a pilot project to examine and explore potential changes to the rules regarding misclassification, pay and record-keeping and related matters in the trucking sector in response to the concerns we have identified.

Adopting such a sectoral approach would recognize that legislative provisions and regulations of general application may not be optimally effective in industries with unique structural other characteristics. Appropriate participation in the pilot project should be ensured. Interested parties would include trucking firms and associations, unions with members in the industry, associations of non-unionized truckers, self-employed truckers, including and owner-operators, as well as academics and other experts.

One outcome of the pilot project could be proposed rules for calculating vacation and holiday pay, overtime pay and equivalent wages paid on a basis other than time which would help to promote compliance and better protect the rights of workers in the industry. The pilot project could also be designed to be a test-bed for exploring the impacts in the industry of the recent changes to Part III that, once in force, will establish a presumption in favour of employee status that is limited in key ways in the Panel's view, as discussed earlier in this chapter.

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Chapter 4: Disconnecting from work-related e-communications outside of work hours

In today's world of work, mobile technologies and other factors, such as alternative work arrangements, the 24/7 economy, gig work and organizational cultures have blurred the boundaries between what it means to be "at work" and not "at work". In this context, should limits be set on work-related e-communications outside of work hours in the federally regulated private sector? If so, how should this be done and why?

The "right to disconnect" and the changing nature of work: mapping the issue

A key function of statutory labour standards has been the setting of boundaries between work and non-work time. Historically, such standards were seen as necessary to balance competing interests over who controls a worker's time (ILO, 2011; Berg et al., 2014; Berg et al., 2004). This balance included protecting employees from excessive hours and safeguarding their need for rest, recovery and time for personal responsibilities (Paulin, 2008).

These labour standards emerged in a context that was specific to industrial society, involving what is referred to as standard work. However, with globalization and financialization of the economy, the transition from an industrial society to a service-based society, and the increasing accessibility of information and communication technology tools, work is no longer always tied to a physical location and many firms have adopted diversified working time practices (Berg et al., 2004; Berg et al., 2014).

Many employers require a flexible workforce that is available around the clock in order to meet demand and remain competitive in today's global economy. In some workplaces, constant availability and connectivity is simply a part of the workplace culture. During our engagement activities, we heard from employers that flexibility is key to accommodate time zone differences, continuous operations and employee control over their work hours. Implicit or explicit workplace expectations drive employees to stay connected to work via email or messaging apps, and to send or reply to work-related messages at any time (Vallée, 2010).

Mobile devices such as cell and smartphones, tablets, laptop computers, email, instant messaging and communication apps make it possible for employees to perform actual work beyond usual work hours or outside the usual workplace or worksite(s). Some employers provide employees with mobile devices at the employer's cost and allow their use for personal calls and messaging both at work and after hours. In other cases, employees will use their personal devices for professional purposes. In 2017, mobile networks covered approximately one quarter of Canada's geographic land mass

and reached 99% of Canadians while the mobile services penetration rate reached 85.7% (CRTC, 2018).⁸²

The increased availability of mobile technologies has also led to the emergence “third time” (also known as “standby” or “on-call” time), during which employers require employees to remain connected and available beyond usual work hours or outside the usual workplace or worksite(s) in case of need (Vallée, 2010; Vallée & Gesualdi-Fecteau, 2016; Coiquaud, 2016).

The effects of ubiquitous information and communication technology tools in a work-related context are varied. On one hand, workers increasingly use technology to set up flexible work arrangements so they can create a more satisfactory work-life balance (EuroFound & ILO, 2017). Flexible work arrangements allow employees to permanently or temporarily alter their work schedule, the number of hours they work or the location where they do their work, or to take leave from work to meet personal responsibilities. Telework, which generally entails working offsite, appears to contribute to higher staff retention, improved employee performance (as a result of fewer interruptions) and higher productivity (partly because employees work more unpaid hours).⁸³

On the other hand, engaging in e-communications for work purposes outside of work hours has been associated with poorer employee recovery from work and increased work-life interference, higher levels of burnout and increased health impairments (Derks & Bakker, 2014; Fenner & Renn, 2010; Arlinghaus & Nachreiner, 2014; Barber & Santuzzi, 2014; Dembe, 2005).⁸⁴ The feeling that employees cannot “switch off” interferes with their ability to recover from work. Research also suggests that extended “workplace telepressure” can be detrimental to family life because the work performed outside of the workplace or worksite(s) is done in addition to work performed on the employer’s premises (Ojala et al., 2014).

Thus, mobile devices and technology blur the boundaries between work time and personal time. The results of our GBA+ analysis on this issue indicated that, although both genders are likely to suffer the repercussions of such blurring, its effect is likely to be more pronounced on women (EuroFound & ILO, 2017; Sullivan & Lewis, 2001; Hilbrecht & Lero, 2014). In Canada in 2015, women spent 33% more time than men on unpaid work activities and are likely to be unavailable for after-hours work which can have an impact on accessing promotions or better jobs (Working Families & Bright Horizons, 2019; Hilbrecht et al., 2008).⁸⁵

⁸² The penetration rates represent the number of subscriptions to mobile services divided by the population (CRTC, 2018).

⁸³ “Home-based teleworkers tend to work more unpaid hours than their office-based counterparts, so an increase in productivity is partly due to an increase in actual working time,” (EuroFound & ILO, 2017).

⁸⁴ See Bell et al., 2012, for impacts on the health of workers who work longer hours than they would like.

⁸⁵ Which are defined by Statistics Canada as household chores, care of household adults or children and shopping for goods and service, Statistics Canada (2015-2016). [Daily average time spent in hours on various activities by age group and sex, 15 years and over, Canada and provinces.](#)

Ensuring effective work-time boundaries in the digital era

The nature and scope of a right to disconnect cannot be conceptualized without considering statutory labour standards respecting the duration of work.⁸⁶ Yet research suggests that existing labour standards are likely insufficient to ensure effective boundaries between work and personal time. Currently, all federal, provincial and territorial labour standards laws stipulate that hours worked in excess of standard hours must be paid at an overtime rate and provide rules on rest periods and maximum hours. Some jurisdictions (Alberta, Northwest Territories and Nunavut) also impose a limit on the number of hours that an employee can agree to work or be required to work by their employer in a day.

Existing provisions in Part III of the Code

Part III of the *Canada Labour Code* (Code) states that the standard hours of work are a maximum of 8 hours per day, which is defined as a 24-hour period, and 40 hours per week, from midnight on Saturday until midnight on the following Saturday.⁸⁷ The Code also entitles employees who work more than the standard hours of work to overtime pay at one-and-a-half times their regular wage rate.⁸⁸ However, regulations allow for different standard hours of work in certain industries or in relation to certain types of work.⁸⁹

According to the Labour Program's analysis of 2017 Labour Force Survey (LFS) data for industries associated with the federal jurisdiction, about 110,000 of then-910,000 (12%) of employees in the FRPS worked unpaid overtime in 2017. It is not known, however, if this overtime time was spent on e-communications or other forms of work. The vast majority (93%) of the employees who performed unpaid overtime were not covered by a collective bargaining agreement. About 42% worked in banks, followed by telecommunications (14%), road transport (14%), air transport (6%) and postal services and pipelines (6%). Among female employees, 14% performed unpaid overtime work and among male employees, 11% performed unpaid overtime. Just over half (55%) of those employees with unpaid overtime worked in management, business, finance and administrative occupations. Administrative data show that unpaid hours of work are the most frequent cause of complaint under Part III of the Code.

⁸⁶ *Canada Labour Code*, RSC 1985, c. L-2, s. 169-177 [Code].

⁸⁷ *Ibid*, s. 169.

⁸⁸ *Ibid*, s. 174, subject to any regulations made by the Governor in Council.

⁸⁹ Including for: truck drivers (Motor Vehicle Operators Hours of Work Regulations (CRC, c 990) and Commercial Vehicle Drivers Hours of Service Regulations (SOR/2005-313); employees on ships in the East Coast and Great Lakes (East Coast and Great Lakes Shipping Employees Hours of Work Regulations, 1985 (CRC, c 987)) and the West Coast shipping industry (West Coast Shipping Employees Hours of Work Regulations (CRC, c 992)); running trades employees in the railway industry (Railway Running-Trades Employees Hours of Work Regulations (CRC, c 991)); commission salespersons in the broadcasting industry (Broadcasting Industry Commission Salesmen Hours of Work Regulations (SOR/79-430)); and commission-paid salespersons in the banking industry (Banking Industry Commission-paid Salespeople Hours of Work Regulations (SOR/2006-92)).

The Code limits the maximum number of work hours to 48 per week,⁹⁰ and provides that an employee is entitled to at least one full day off per week which, whenever practicable, shall fall on a Sunday.⁹¹ However, the Code exempts many categories of employees from these rules. The hours of work rules do not apply to managers, superintendents or those who exercise management functions,⁹² as well as certain professionals such as doctors, lawyers, dentists, architects and engineers.⁹³ In some sectors, such as rail, air, maritime and road transportation, different rules around maximum working hours can be set by Transport Canada.⁹⁴

Amendments made to the Code in late 2017 give employees the right to request flexible work arrangements.⁹⁵ The amendments create a formal mechanism for employees and employers to discuss arrangements about when, where and how work gets done that suits their respective needs. An employee with six months of continuous employment with an employer will be able to request a change to the terms and conditions of their employment related to the number of hours they work, their work schedule and the location of their work.

However, the amendments do not create a right to have flexible work arrangements. The amendments require the employer to grant the request, offer an alternative or refuse. The amendments also give employees the right to refuse overtime in certain circumstances in order to fulfill family responsibilities without fear of reprisal.

Further, amendments to the Code made in 2018 introduced scheduling rules. An additional right to refuse to work is provided to employees respecting any shift occurring within 96 hours prior to when the schedule is given. New breaks, such as meal breaks and rest periods between shifts, have also been introduced.⁹⁶ These amendments have received Royal Assent and will come into force once necessary regulations have been put in place.⁹⁷

However, Part III of the Code does not provide statutory protections for employees who are required to remain available for potential demands for work from their employer. According to the Labour Program's Labour Standards interpretations, policies and guidelines (IPGs), "stand-by" or "on-call" time is not considered "work" (Employment and Social development Canada, n.d.).⁹⁸

⁹⁰ Section 171 states that the maximum number of hours can be fewer if prescribed by the regulations or other sections of the Code. It may also be exceeded under certain conditions, including if a permit has been granted by the Minister for exceptional circumstances; for emergency work; under an averaging plan (where hours of work may be averaged over two weeks, for instance, in case of operational necessity); and in the case of a modified work schedule.

⁹¹ *Code*, s. 173.

⁹² *Id.*, s. 167(2)(a).

⁹³ *Id.*, s. 167(2)(b); Canada Labour Standards Regulations, CRC, c. 986, s. 3.

⁹⁴ See, for example: Commercial Vehicle Drivers Hours of Service Regulations (SOR/2005-313).

⁹⁵ Bill C-63, [Budget Implementation Act, 2017, No. 2](#).

⁹⁶ Bill C-86, [Budget Implementation Act, 2018, No. 2](#), s. 206-213.

⁹⁷ Bill C-63, [Budget Implementation Act, 2017, No. 2](#), s. 216; [Budget Implementation Act, 2018, No. 2](#) (SC 2018 c 27), s. 313.

⁹⁸ See also *SRJ Expedite Ltd. v. Paré*, 2009 CLAD No. 284; *Bell v. LTS Solutions*, 2012 CLAD No. 275.

The *Canada Labour Standards Regulations* do require an employer to pay “reporting pay” if an employee is called in and reports to the workplace or worksite(s).⁹⁹ In this case, an employee is entitled to a minimum of three hours of regular wages. Conversely, an employee who is not required to perform any duties while obliged to remain available is not entitled to compensation.

France has integrated a right to compensation for workers having to remain available for potential demands for work from their employer. The notion of “astreinte” is provided in the *Code du travail*,¹⁰⁰ and is defined as “a period during which the employee, while being away from the worksite(s) and not permanently and immediately available to his employer, must be able execute work at the employer’s will [our translation]”.¹⁰¹ The “astreinte” is an obligation for the employee to be available outside the workplace or worksite, as opposed to an employee “on duty” who waits for work while at his workplace or worksite during normal working hours.

An employee who must be reachable by phone and ready to respond at all times may be considered to be under “astreinte”.¹⁰² The “astreinte” period must be compensated either financially or with additional periods of rest.¹⁰³ In 2016, the *Code du travail* was modified to specify that the employee has to be away from the worksite or workplace but still available.¹⁰⁴

Finally, unlike in Part III of the Code, labour standards legislation in Manitoba, Quebec and Saskatchewan all have explicit statutory definitions of what is “deemed work”. For example, in Quebec, an employee is deemed to be at work in the following situations: while available to the employer at the place of employment and required to wait for work to be assigned; during the break periods granted by the employer; when travel is required by the employer; and, during any trial period or training required by the employer.¹⁰⁵

In Manitoba, “hours of work” are defined as the hours or parts of hours during which an employee performs work for an employer. It includes hours during which an employee is required by the employer to be present and available to work.¹⁰⁶ In Saskatchewan, an employer is required to pay an employee for each hour or part of an hour in which the employee is required or permitted to work or to be at the employer’s disposal.¹⁰⁷

⁹⁹ *Canada Labour Standards Regulations*, CRC, c. 986, s. 11.1.

¹⁰⁰ In general on the subject, see: Véricel (2017); Secunda (2018).

¹⁰¹ *Code du travail*, France § L3121-9.

¹⁰² For example, the Cour de Cassation (one of France’s courts of last resort) held that an employee who had to keep his mobile phone on and be available 24/7 for his employer qualified for the notion of “astreinte”. The employee was awarded 60 000 € for a period of a year and a half: [Court of cassation, chambre sociale](#) (2018, July 12).

¹⁰³ *Code du travail*, France § L3121-9(3).

¹⁰⁴ *Code du travail*, France § L3121-9(1) states: “sans être sur son lieu de travail”.

¹⁰⁵ *Act respecting labour standards*, CQLR, c N-1.1, s. 57.

¹⁰⁶ *Employment Standards Code*, CCSM, c E110, s. 1(1).

¹⁰⁷ *Saskatchewan Employment Act*, SS 2013, c S-15.1, s. 2-16(1).

Approaches to disconnecting in other jurisdictions

The concept of a “right to disconnect” and a corresponding protection against reprisals has recently emerged to address the adverse effects of engaging in e-communications for work purposes outside of work hours. Introducing a right to disconnect could enhance awareness about the impacts of after-hours work-related e-communications for both employers and employees and provide employees with the support to say “no” to checking in after hours (Moulton, 2017).

Part III of the Code does not currently directly address limiting work-related e-communications outside of regular working hours in this way, and no provinces or territories provide such a legal right. A Private Member’s Bill was introduced in the Quebec legislature in March 2018 proposing to require provincially regulated employers to put in place after-hours disconnection policies to ensure that employee rest periods are respected.¹⁰⁸ Employers would also have been obliged to reassess their policies every year and face fines of \$1,000 to \$30,000 for non-compliance. The Bill died on the order paper upon adjournment of the legislature in June 2018.

Belgium and Italy are currently exploring ways to ensure that the use of digital tools respects rest time and leaves, as well as the balance between the personal and professional lives of employees.¹⁰⁹ In France, a statutory “right to disconnect”—that is, the right of employees not to check or respond to email or other work-related communications when they are off work—came into force on January 1, 2017. This was in response to the recommendations made by Mettling in a report on the digitalization of the economy (Mettling, 2015).¹¹⁰

Under the *Code du travail*, companies with more than 50 employees are required to negotiate a policy with their workers that establishes the boundaries around work-related e-communication outside of work hours. If an agreement on such a policy cannot be reached, the company must, after consulting employee representatives, publish a “charter” that defines the right to disconnect in that company. The policies and charters must aim to protect workers’ non-work time. The *Code du travail* also requires employers to implement training and raise awareness for employees about the reasonable use of technology.

The French statutory “right to disconnect” has been the subject of some criticism. No legal definition of the “right to disconnect” is provided in the *Code du travail*. As a consequence, the meaning of the “right to disconnect” is unclear. Does the right to disconnect entail “a truce of emails” or “cutting the server” during certain periods?

This right to disconnect is expected to be collectively negotiated. The failure to reach an agreement on this issue will have the effect of transferring to the employer the

¹⁰⁸ Bill 1097, [Right-to-Disconnect Act](#), 2018.

¹⁰⁹ Ministero dello Sviluppo Economico, Legge n. 81 del 22 maggio 2017: [Misure per la tutela del lavoro autonomo non imprenditoriale e misure volte a favorire l’articolazione flessibile nei tempi e nei luoghi del lavoro subordinato](#), July 30, 2018, CIRCOLARE N 3707 /C; [Loi du 26 mars 2018 relative au renforcement de la croissance économique et de la cohésion sociale](#), March 26, 2018, Moniteur belge no 78, 31620-31656.

¹¹⁰ *Code du travail*, France § L2242-17.

prerogative to determine the nature and scope of the right by implementing the “charter”. As noted by Ray (2016) and others, a collective agreement has a normative effect and is enforceable in court, which is not the case of a “charter” (Gratton, 2016; Fontaine, 2017). In terms of implementation, no penalty is provided in cases where this issue is not negotiated or where the employer fails to set up a “charter”.

In Germany, a self-regulatory model has been adopted, whereby social partners (labour organizations, employers’ associations and government) collaborate to find tailor-made solutions (Secunda, 2018; EuroFound & ILO, 2017). Several employers have reached agreements with internal works councils on telework, which often include rules about disconnecting from work-related e-communications outside of work hours. For example, the German Labour Ministry has concluded an agreement with its own works council that bans communication with staff outside of work hours, except in emergencies, and protects employees from reprisals for not responding to such communications (Vasagar, 2013).

In New York City, a councilman introduced a bill in March 2018 that would make it illegal to require employees to check and respond to emails and other electronic communications outside of usual work hours.¹¹¹ Any employer with 10 or more employees would be required to have a policy defining “usual work hours” for each class of employees. Paid time off to which employees are entitled, such as vacation, paid personal days and sick days, would be considered time outside of usual work hours. The bill also includes a provision to protect employees from reprisals if they claim their right to disconnect. Violation of the right to disconnect could result in a \$250 (USD) fine for an employer.

Some individual employers, particularly in Germany and France, have developed their own initiatives to limit the use of email and other work-related e-communications outside of working hours, such as policies limiting emails during certain times and agreements with works councils about hours during which employees can be reached.

For example, in Germany, Volkswagen has implemented a policy that stops Blackberry servers from sending emails to employees covered by a collective bargaining agreement from half an hour after standard hours end until half an hour before they start as part of an agreement between the company and its works council. In practice, this means emails are only received between 7 a.m. and 6:15 p.m. (BBC, 2012). Some commentators deplore this kind of solution since it does not “consider individuals’ preferences regarding the use of email” (Stich et al., 2019).

In France, under the collective agreement covering the telecommunications sector, employment contracts must stipulate the hours during which a teleworker may be contacted (EuroFound & ILO, 2017). However, there are no further details “either in respect to the technical dimension or in respect to the real impact and proper functioning of [these] work agreements” (Krause, 2018).

¹¹¹ The New York City Council (2019). [Private employees disconnecting from electronic communications during non-work hours](#). The first hearing of the bill took place on January 17, 2019.

What we heard

During our engagement activities, we heard divergent opinions on three general themes: flexibility, compensation and management.

Flexible work arrangements

Many employers believe that the 9–5 workday is a thing of the past and that most employers and employees use mobile devices as a daily tool. Overall, most employers and employer organizations said that any new regulation would impede business flexibility, making it harder to compete. Employers told us that 24/7 operations in many sectors require workforce flexibility, meaning that disconnecting may not be feasible.

An employer organization noted that mobile devices permit more independence and flexibility for their workers, many of whom make the choice to monitor their emails over the weekend. Other employers told us that, in the trucking sector, which is a 24/7 industry, disconnecting is not a problem because companies do not manage drivers' time; in fact, disconnecting could cause safety issues if drivers are unable to obtain important information about route changes or road hazards. Several employers pointed out that recent amendments to the Code regarding scheduling and shift change notifications, as well as flexible work arrangements, are incompatible with the concept of disconnecting.

Organizations representing workers told us that companies in many sectors want to offer services 24/7 and expect employees to be on-call during peak hours. They also told us that employers should recognize the difference between workers wanting to check in after hours and being required to do so. Some workers noted there were privacy considerations when employers can potentially reach workers at any time or track their whereabouts.

Unions told us that e-communication outside of work affect all types of workers and companies and is relevant to issues of “teleworking”, flexible schedules and work-life balance. Some unions mentioned that various industries in the federally regulated private sector (FRPS) require flexibility respecting the right to disconnect. They suggested that a uniform solution would be inappropriate. The remote working arrangements and flexibility of some workers such as freelancers in broadcasting and truckers, who work alone and receive dispatches at all hours, means disconnecting is virtually impossible.

Overall, several workers and organizations representing workers said that any employer expectation of availability outside of work hours should be clear from the outset, whether set out in an employment contract, collective agreement or through workplace discussions about what employers can legally expect and the employee's corresponding duty to respond and ability to disconnect.

Compensation schemes

In general, employers and employees agreed that working outside of regular hours should be adequately compensated. In this regard, there are various arrangements in place in the FRPS. Employers told us that, in the banking sector, work hours that exceed the maximum are appropriately logged and paid as overtime. Other employers said they had

on-call policies in place, and that employees are paid when they are called in to work. In certain transportation sectors, on-call workers are required not to drink alcohol and to stay near the workplace or worksite when they are on-call but are not compensated for doing so.

Several collective agreements address employees being required to remain available for a potential demand from their employer. Some have standby provisions that state how much employees are paid for their time while on standby. Other employers told us their employees were aware at the time of hiring that they would sometimes be required to work on standby but would not be compensated; however, compensation for this was considered to be included as part of their regular salary.

For many unions, the issue of overtime includes elements of both payment and protection. One labour organization suggested workers be compensated in shorter increments (for example, five minutes at the overtime rate) and be given a job-protected right to refuse to respond to after-hours communication in order to truly disconnect without fear of reprisal.

Some unions noted that there is a greater need for these protections given the increased use of technology. They suggested that even responding to emails outside of work hours should be compensated as overtime. One union told us that workers would feel more at ease disconnecting if clear principles for doing so were found in the Code. We also heard an argument for the creation of a robust regime around what constitutes work itself, as well as work time. Several unions endorsed a statutory “right to disconnect”.

Some workers and unions told us that the issue of disconnecting should be addressed through other means, such as defining what is deemed work. In their view, disconnecting is really about determining what is considered to be work and ensuring payment for hours worked.

Some workers said they believe that, in the air travel, broadcast and banking sectors, employers download the cost of operations onto their employees. We heard that workers routinely work unpaid hours before and after their official shift starts, and during mandatory online training. Some organizations representing workers said that the term “on-call” or “standby” should be better defined and compensated. Unions and workers also stated that the right to rest in Part III should be meaningful and that the lack of a clear definition of deemed work creates uncertainty.

Employers and unions pointed out that there are differences between the limitations set forth in Part III and those established by other authorities, such as Transport Canada. Such differences have implications, and may, for example, cause confusion and compliance issues.

Employer management

An employer organization noted that any approach to disconnecting should start with raising awareness so that any issues can be addressed in the workplace before any potential legislative changes are made. It suggested that responsibility lies with employers to ensure that no unnecessary demands are placed on workers after hours. Some

employers and employer organizations said that managers should ensure overtime is assigned and not assumed.

Several employers noted that, in part because employees are often provided mobile devices for both work and personal use, there is an informal system in many workplaces where some personal use is permitted on company time in exchange for responding to work demands on personal time. Employers told us that, in the banking sector, policies are in place to prevent managers in some offices from emailing staff after 7 p.m.

Other employers agreed that some workplaces have technology-use policies in place. Many employers argued that, in a tight labour market, responsible management of after-hours communication was a critical aspect of staff retention and employee satisfaction. One employer association said that abuses of the informal system did happen but were unlikely to be solved by the introduction of universal regulations. One organization representing managers argued that employers should be encouraged to promote awareness and training, good management and formal policies around technology use.

The informal system was perceived differently by workers. Some told us they experience confusion around what should be considered deemed work. They also told us that the ability and willingness to work outside of regular hours gave a competitive advantage to those employees without family responsibilities or health issues. They said that workplace cultures that incentivize staying connected through promotions or bonuses are part of the problem. We were also told that, for some employees of First Nations, their work is less impacted by disconnecting from work-related e-communications than by a lack of ability to connect at all due to poor internet service in remote areas.

Experts and workers have also stated that the right to disconnect should be thought of as an equity issue. Employees who extend their availability beyond their regular hours of work are more likely to access performance bonuses and promotions. The fact that employers may reward extended availability can be detrimental to employees who care for children or other members of their family. We were told that this can lead to unhealthy competition between employees whereby some employees work excessive hours. One union called these consequences “indirect reprisals”.

Conclusions and recommendations

Greater access to mobile devices and technology has contributed to the blurring of work-time boundaries. These boundaries have become increasingly porous because employees often perform work outside the workplace after their regular hours or are asked to remain available or to alter their lifestyle and activities for a potential demand for work from their employer. Such blurring can infringe the workers’ autonomy, ability to enjoy personal and family life, and increase stress and other health risks due to the intensification of work requirements. Research shows that women not only work more unpaid hours than men, but also spend more time on unpaid care activities, which may limit their ability to obtain recognition and advancement at work. From a GBA+ perspective, our

recommendations apply to all workers, but women in particular may benefit from clearer boundaries around work and non-work time.

Recommendation 14: The Panel does not recommend that there be a statutory right to disconnect at this time.

The Panel believes that a statutory right to disconnect would currently be difficult to operationalize and enforce. Part III already provides entitlement to overtime for services required by the employer beyond certain hours of work. Part III also provides some restrictions around the duration of work. These provisions, in part, help to provide a framework to address the negative aspects of this issue. Nevertheless, the Code does not define what is deemed work. Given the blurring of boundaries described above, the absence of such a definition generates ambiguity about what work is for employers, employees and labour standards officers responsible for enforcing labour standards.

Recommendation 15: The Panel recommends that employers subject to Part III consult with their employees or their representatives and issue policy statements on the issue of disconnecting.

These policies should be tailored to the specific context of each workplace. However, the goal is to ensure that statutory labour standards pertaining to work time are interpreted and implemented accurately. We believe that employers and employees would be aided by a standardized definition of deemed work in the Code in creating these policies. The policy should clearly define the boundaries between work time and non-work time and address how labour standards protections are being respected.

Recognizing that there are a variety of different types of businesses in the FRPS, with different service requirements (for example, 24/7 businesses operating across six time zones), each policy will likely be different. Any policy should include clarifying expectations around such elements as emergencies, incident management, protecting 24/7 operations, safety related issues including investigations, overtime scheduling, work hours scheduling/bidding, dispatching activities (particularly in trucking), online training after hours, general work assignments for contract workers and other specific industry-related issues where work obligations require the monitoring of one's mobile device. The policy should also address non-essential emails that are sent out after hours and the expectations around response times for these.

It is in the interest of employers to have well-developed policies about e-communication and related expectations in the workplace. We heard repeatedly that the way employers address this issue is an emerging workplace engagement and employee retention issue.

Recommendation 16: The Panel recommends that Part III include a statutory definition of "deemed work".

Considering how firms and employees rely upon mobile technologies, defining deemed work is necessary to ensure that employees have effective access to the statutory protections applicable to the duration of work. Determining the circumstances under which

employees are deemed to be at work, regardless of worksite(s), enables employees to be compensated for all time spent at the behest of the employer. Clarifying what constitutes deemed work is also required to ensure effective access to rest periods.

The definition should be based on the principle that work includes the time when an employee is effectively at the behest of the employer at or outside the workplace or worksite(s). Employees should be deemed to be at work “when providing services required or permitted by the employer”. Undergoing training required by the employer, whether such activities are performed at or outside the workplace or worksite(s), should also be considered deemed work. Clear statutory language defining deemed work is necessary to ensure that workers can effectively access labour standards protections related to the duration of work. The Expert Panel believes that the enforcement of labour standards would be assisted by a definition of deemed work.

Recommendation 17: The Panel recommends that Part III provides a right to compensation or time off in lieu for employees required to remain available for potential demands from their employer.

Such “standby” periods are not currently addressed in Part III, except where the employee is effectively called in and is required to report to the workplace. In such cases, an employee is entitled to a minimum of three hours of regular wages. The Code requires no compensation for other work obligations outside of “recognized” work hours. This recommendation draws from the idea of “astreinte” set forth in the French legislation.

It should be emphasized that the obligation to be available for potential demands from the employer often does not require that the employee be physically tied to the workplace. However, the requirement to remain available and be immediately able to work impairs the right of employees to a private life. Often the obligation will constrain employees to stay in a specific geographical location nearby. Being available to work in the FRPS usually includes being unimpaired by alcohol or drugs. Such obligations have implications for workers’ autonomy and their entitlement to breaks from workplace obligations.

Nevertheless, periods during which employees are required to remain available to work, or on standby, should not count as rest periods for the purposes of Part III. That said, we recognize that there may be a need for exceptions to this recommendation in circumstances in which public health or safety would be adversely affected.

Recommendation 18: The Panel recommends that further research be undertaken to evaluate the impacts of increases in work intensification through e-communications and related productivity requirements in the FRPS.

Research shows that work intensification, including working, being on standby or on-call to do work outside of normal working hours is likely to have an impact on work-life balance and employees’ health, particularly mental health. The research we recommend would be useful for the purposes of assessing impacts on workers’ health and the ability of workers to meaningfully access labour standards protections, and the effectiveness of these standards in protecting workers’ health.

The research should also assess the effectiveness of our recommended voluntary, policy-based response to provide reasonable parameters for a right to disconnect in private federal workplaces. This research should also seek to evaluate the demographic groups, worker categories or sectors in particular that face work intensification.

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Chapter 5: Benefits: Access and portability

We were asked to examine two questions related to benefits:

- Should the federal government take steps to enhance access to employer-provided benefits in the federally regulated private sector (FRPS) and/or improve portability?; and
- If so, what measures should be considered?

What's the issue?

Benefits, including statutory minimums such as annual vacations as well as employer-provided benefits such as medical and retirement savings plans (including pensions), make a crucial contribution to the personal and financial security of Canadian workers. Access to these types of benefits has traditionally been based on full-time and long-term employment with one employer.

As the nature of work continues to evolve and workers shift between employers more frequently and are more commonly engaged in non-standard forms of work (for example, part-time and temporary employment and contract work or self-employment), access to benefits can become more challenging and, in some cases, workers may have no access to benefits.

Gaps in Canada's public provision of benefits have continued to emerge in recent years. The Canada Pension Plan (CPP), for example, would pay a maximum amount of \$1,134.17 per month to someone age 65 in 2018, but few low-income or part-time workers would come close to actually receiving this amount. The average monthly amount for new CPP recipients is, in fact, only \$673.

Even combined with the Old Age Security payment and the Guaranteed Income Supplement (GIS) for low-income seniors (\$1,500 currently), many will fall short of the average expenditures (\$2,611) for retirees in Canada (Press, 2016). The effects of the GIS claw-back on CPP income and the challenges for those who have not lived in Canada for most of their lives, and will not qualify for the maximum OAS, paint an even more challenging picture for Canadians planning for retirement (Milligan & Schirle, 2016; Busby & Muthukumaran, 2016).

A 2015 Wellesley Institute study found that one-third of working Canadians do not have medical benefits coverage through their employer, with coverage rates particularly low for women and part-time employees (Barnes & Anderson, 2015). Canada is the only country that provides universal healthcare without also providing universal drug coverage with a patchwork of limited programs at the provincial level (Morgan & Daw, 2012).

Mental health issues cost the Canadian economy over \$50-billion a year, yet few services are covered by Medicare (CAMH, n.d.). Only 6.2% of dental expenditures in Canada are covered by governments (CDA, 2017), while six million Canadians avoid visiting a dentist each year due to costs and particular access challenges experienced by vulnerable groups (CAHS, 2014).

There are also significant questions around the distributional impacts of inadequate benefits. For example, women are more likely to live in low-income households than men, though this gap has narrowed in recent decades (Fox & Moyser, 2018). Furthermore, women face particular challenges when it comes to saving for retirement such as the gender pay gap, fewer years in the workforce and living longer on average than men (Garnick, 2016). Recent immigrants also face particular challenges when it comes to retirement savings, such as residency requirements for the OAS and lower earnings than their Canadian-born counterparts (Marier & Skinner, 2015).

The federally regulated private sector picture

Given these gaps in the public health-care system, employer-provided benefits play an increasingly important role for many workers in meeting their needs and helping them overcome unexpected challenges. What is the situation for workers in the FRPS?

The most recent Federal Jurisdiction Workplace Survey (2015) paints the following picture:

- 88% of employees have worked for the same employer for more than a year and 38% have worked for the same employer for 10 years or more;
- 32% of employers offer pension plans to their employees (large employers—83% and small employers—28%); and
- 47% of employers offer employment-related benefits to their employees, with those employing five or fewer employees about three times less likely to offer benefits than those employing 100 or more employees (35% versus 99%).

An analysis of 231 collective agreements done for the Panel by the Labour Program using the Negotech database shows:¹¹²

- Part-time employees are usually provided with benefits pro-rated to their hours of work with a minority of agreements excluding part time employees from all benefits;
- Casual and temporary employees generally do not receive benefits such as pension savings plans, medical and group insurance or leaves; and
- Seasonal employees tend to be entitled to receive benefits only during the time they work, but can elect coverage during the period of their seasonal lay off if they continue to pay the associated costs.

¹¹² [Negotech](#) Search. Employment and Social Development Canada, Labour Program.

According to the 2014 Longitudinal and International Study of Adults (LISA),¹¹³ participation in an employer-provided pension plan is more common in the FRPS than in Canada overall. Approximately 33% of employees in the FRPS participated in an employer-provided Registered Retirement Savings Plan (RRSP), 21% participated in a Deferred Profit Sharing Plan (DPSP) and 53% participated in an employer-provided pension plan.¹¹⁴ In Canada, approximately 20% of employees participated in an RRSP, 5% in a DPSP and 37% in an employer-provided pension plan.

Lastly, according to the Conference Board of Canada 2015 Benchmarking survey, 29% of all employers (not just those in the federal private sector) provide benefits to permanent part-time employees, assuming the employee meets a preset working time threshold.

In an online public survey launched as part of the Labour Program's 2017–2018 Modern Federal Labour Standards consultations, 95% of individual respondents said that keeping their benefits was very important to somewhat important when changing jobs. About 37% said that employees should be able to keep their benefits when they switch jobs.

It is also important to note that as part of the *Budget Implementation Act, 2018, No. 2* that received Royal Assent in December 2018, eligibility periods for a number of leaves will be eliminated and the eligibility period for a third week of annual vacation will be reduced from 6 to 5 years. These changes will have a positive impact on employees who change jobs often.

Generally speaking, we can observe that large employers in the FRPS offer benefits to their permanent, full-time staff, and many employers with unionized workforces also offer benefits to their part-time staff. However, few casual or contract staff are entitled to benefits. The composition of the FRPS, with more permanent, full-time employees and more unionized workplaces than Canada overall, means that workers in the FRPS are better positioned with respect to benefits than their counterparts in provincially and territorially regulated sectors.

But, broader trends in the growth of non-standard work mean that this situation may not last. Nor do the overall numbers and averages do anything to improve the situation of those workers in the FRPS who currently have limited or no access to benefits, which includes the roughly 60,000 self-employed workers in the FRPS who have no employees and no access to benefits at all unless they purchase them independently, if they can afford to do so.

¹¹³ While the LISA is administered to households (excluding populations on First Nations reserves) and does offer more demographic information, Labour Program data analysts must approximate the FRPS using the LISA industry classification system to estimate which sectors are likely to be federally regulated. Several industries included under this approach (for example, trucking) are both federally and provincially regulated, meaning data derived from the LISA are not always exclusive to the federal jurisdiction.

¹¹⁴ Respondents were able to indicate participation in multiple types of employer-provided pension plans, so the data cannot be summed to indicate a total percentage of employees who participate in any type of employer-provided pension plan.

Against this backdrop, should the federal government take steps to enhance access to benefits in the FRPS and/or improve benefit portability? If so, what measures should be considered? If not, why not?

What the research says

Traditionally, the concept of benefits is one that attaches to an employment relationship. If someone switches employers, they take advantage of the benefits (or lack thereof) offered by their new employer, and have no linkage with the plan from their former position. Some jurisdictions and researchers are starting to explore the notion of a new approach to benefits, which recognizes increasingly rapid and frequent shifts between employers and jobs. This approach, often called “portable benefits” would sever the relationship between benefits and employer and create a new relationship between benefits and employee.

While the issue of “portable” benefits is a relatively new one, which has arisen as a result of the rise in non-standard work, there are some historical antecedents. As outlined below, some workers in certain sectors such as the arts or shipping have been engaged in temporary, contract and part-timework of a type for many decades and shift frequently between employers. Approaches to benefits recognizing this type of work have matured and evolved around their needs.

In terms of statutory minimums, there is limited research on this topic. In Australia, long service leave (an additional vacation entitlement after a certain period with an employer) is portable in some industries. In a 2017 McKell Institute Report, Markey et al. made the case for national portable long service leave in all of Australia. The case was made in part by arguing that workers are increasingly remaining in the workplace at older ages and this makes it more important for employees to have a period of recovery (long period of leave) partway through their working life.

At the same time, they observed that workers are highly mobile and three-quarters stay with their employer for less than 10 years, meaning that only a small portion of workers have access to the leave. They also noted that women are less likely to be able to access the leave because they are less likely to be employed with one employer for 10 years or more. The authors identify a number of possible benefits of expanding portable long service leave to all workers, including in areas such as worker retention, equity, mobility and flexibility/productivity. The main potential disadvantage to this approach is the cost to employers.

In Canada, little research has been conducted to date on the issue of portability of benefits. The Mowat Centre (Thirgood, 2017) proposed a potential future-state scenario where all workers had access to paid leave (such as vacation and sick leave) and other benefits (for example health and retirement) through a portable benefit account funded by employer contributions pro-rated to the hours a worker has put into the organization. It was noted that this idea would require federal provincial cooperation to be practicable. A 2019 report jointly issued by the Aspen Institute and Canada’s Common Wealth (Mazer et al., 2019) explores the feasibility of portable non-employer

retirement benefits as a supplement to existing single-employer models and the welfare state.

With reference to portability, in a 2016 report for the Aspen Institute, Rolf, Clark and Watterson Bryant argued that the existing social safety net in the United States was insufficient for workers in the 21st century. As a solution, the authors made a case for a portable benefits scheme that could take different forms, but would be portable, pro-rated and universal. Hanauer and Rolf (2015) proposed a “Shared Security Accounts” model that would provide American workers with a universal system for benefits funded by a contribution from employers and online platforms equivalent to 25% of the worker’s compensation.

A similar recommendation was made in a report by Strom and Schmitt (2016) with their model being administered through payroll deduction and likely pro-rated based on the amount of work done for an employer. In both of these studies there were also differing suggestions as to voluntary or mandatory participation, the scale of the portability (within a workforce, industry or all employers) and who contributes and at what amounts.

In Canada, Johal and Thirgood (2016) have described portable benefits as a transformational change that Canadian public policy makers could consider in our changing labour market. Johal and Cukier (2019) have also set out a range of policy and program considerations that must be considered as organizations or governments contemplate establishing a portable benefits model.

A survey of self-employed American workers conducted in 2017 found strong support for portable benefits, with 81% thinking such an approach was a good idea and only 7% thinking it was not a good idea. However, the survey did not specify who would pay for the benefits, which may inflate the support to some extent (Krueger, 2017).

What we heard

During our engagement activities we heard from unions, workers and organizations representing workers that access and portability should be considered two distinct areas of concern. We also heard that while access to benefits poses a serious challenge for non-standard workers, portability of benefits presents an opportunity for more equitable workplace practices.

We heard from workers and organizations representing workers that many different types of non-standard workers lack access to benefits, especially casual employees and gig workers; as well as temporary, part-time and contract employees, even in some unionized environments. They also told us that the development of portable benefits plans that are attached to and follow the worker would be helpful for employees in high turnover, precarious positions; older workers who may lose their jobs and benefits at a later life stage; marginalized workers; and workers juggling multiple jobs.

Some unions and worker organizations told us they believe equal pay for equal work, regardless of job status, should extend to benefits, although non-standard workers could be provided benefits on a pro-rata basis. Some worker advocates suggested portable benefits could be standardized, so any employer contributions would be the same. Another group suggested a model of legally regulated benefits structured with different levels of coverage, providing some consistency and predictability for workers and employers, and another suggested sectoral-based benefits.

A few organizations noted that some unions have portable benefits plans that workers pay into along with their dues. Though most organizations and workers we talked to agreed portable benefits would help many workers, several unions and worker organizations noted that they would be administratively complex, costly and difficult to implement between separate employers.

A few unions and worker organizations noted that universal benefits (for example, pharmacare) would eliminate some of the risk workers face when they lose or lack benefits, and relieve employers of some of the costs of private plans. We also heard that many pension plans are by their nature portable, and the CPP was offered as an example of a universal and portable plan in which all employees and employers make contributions and the plan remains attached to the worker, not the workplace.

Experts noted that voluntary, opt-in benefits insurance schemes can be prohibitively expensive for many workers, and often have low uptake for this reason. Experts also told us they thought there was a need to create a new system of social protection that was universal and not dependent on the standard employment relationship, which is no longer a reality for many workers. Experts said the CPP pension model could potentially be applied to benefits.

Indigenous organizations told us that some workers in Indigenous communities, particularly younger ones on temporary contracts, do not have pensions or benefits. We also heard that many are amongst the first generation of more highly-skilled workers in their families and they lack access to advice and resources to help them plan for retirement. To address this, it was recommended that individuals as young as high-school age be provided with more opportunities for education about the importance of pensions and benefits for themselves, their families and their communities.

For their part, employers and employer organizations told us there was some support for a new approach to benefits, but that they had concerns regarding potential costs and practical application.

Employers told us that access to benefits varies by workplace. One employer said they provided full benefits to its part-time workers but was moving to a pro-rated system. Some told us temporary employees have some, but not all, benefits, and that casual employees can voluntarily pay into the general employee plan, although take-up is low. One told us that part-time employees are not provided benefits, but their starting wage is generous. Some employers said they do not offer benefits to employees if they do not expect to have a long-term employment relationship. Another told us that if any

requirement to offer benefits to all employees were introduced employers may stop offering benefits due to escalating costs.

We heard that access varied across sectors. In trucking, some employers told us the majority of drivers have standard benefits packages and owner-operators can buy into a separate plan. In banking, we were told that benefits are seen as an element of competitive advantage in recruitment though they were not offered to all employees. Some airlines said they offered benefits to part-time employees and some did not. One employer association told us that benefits are negotiated in collective bargaining, while another said that small and medium enterprises require the ability to negotiate working conditions such as benefits to remain competitive.

We heard from Indigenous organizations that some larger band councils offer group benefit plans, but can sometimes only afford to pay a small portion. They told us that smaller ones often do not have the funds to cover any benefits. In addition, they noted that public insurance and pension legislation varies by region, adding additional complexity.

In general, employers told us that pensions and benefits should be kept separate because of how these plans are structured. One major employer organization told us that portability of benefits between employers would be administratively difficult and that employees should pay into a system independent of their employers. We also heard from some employers that the benefits providers may place additional restrictions on who can be covered by the plan. Others told us they had received advice from actuaries that multi-employer plans were not feasible.

Another employer organization said portability between employers would increase costs to employers who may not be able to afford it and would create problems with hiring. One employer noted that benefits packages are inconsistent across employers, making portability difficult, and that a standardized set of benefits would hinder competition in the labour market. Another noted that having different sets of benefits among employees in the same enterprise results in workplace inequities.

Several said they would support opt-in, voluntary, employee-paid benefits plan that were external to employers who would not be expected to contribute, and one suggested that non-standard workers could be provided a tax credit to offset costs. However, other employers noted that portable benefits plans are only economically feasible if the plan is mandatory.

Experts agreed that voluntary insurance schemes are expensive and suffer from adverse selection and that, to appropriately scale any universal benefits for non-standard workers, the program would likely have to be mandatory. Academics also provided some innovative models for our consideration as well as examples of pilot programs that are currently being considered. They too suggested expanding CPP or creating a benefits plan modeled on CPP.

Best practices and innovative concepts

A number of viable best practices and innovative concepts with respect to the provision of benefits exist in other jurisdictions and throughout the Canadian working landscape. The Panel has identified a number of these through research and engagement and highlighted the merits of some of these models below for consideration when developing benefits frameworks, whether overall or for individual sectors.

Broadly speaking, the spectrum of benefits provision involves two extremes, as measured by level of employer to government involvement. At one end is the private provision of benefits by employers, with scope and coverage being determined by employers based on affordability and a range of other factors such as the importance of such benefits in recruiting or retaining staff. At the other end of the spectrum are universal and state-administered programs such as the CPP and Medicare. For reasons outlined later in this section, the Panel did not make recommendations related to either of these approaches.

The more complex, “in-between” area is the focus of the initiatives outlined below, as the Panel believes these models are the most practical and feasible to explore for the purposes of this report. They represent some mix of contributions by employees and/or employers, or different administrative models which capture the challenges of workers moving between multiple employers during their working life or working on newly emerging technology platforms (for example, the gig economy).

Common Good initiative

This retirement plan model is structured for the non-profit and charitable sector which aims to set-up a nationally portable, high-quality collective retirement plan that combines the fundamental principles of exemplary pension plans with a more flexible design. As outlined in their consultation paper (Common Good, 2018), key features include:

- Boards of Directors have a legal duty to put plan members’ interests first
- Group established Tax-Free Savings Account (TFSA)/Registered Retirement Savings Plan (RRSP)
- Membership can be either mandatory or voluntary, and open to sector employees, freelancers and spouses
- Employee contributions would be flexible and employer contributions optional.
- Professionally selected investment options
- Post-retirement options that optimize savings into a stream of income with simple plan administration.

Tax-free workplace pensions

In her 2019 paper, Bonnie-Jeanne MacDonald suggests a design for workplace pensions which would assist lower earning worker by operating in a similar manner as current RRSP plans, with the critical exception of allowing them to grow in a tax-free

savings environment. Additionally, since this plan would not be considered “income,” it would also not be a factor in determining eligibility for federal or provincially income-tested benefits.

Member-funded pension plan

This is a model featuring benefits guaranteed for life, fixed employer contributions and an indexing reserve that has been in place in Québec since 2008 with fixed employer contributions (Lizée, 2018). The key to ensuring the sustainability of this plan is an indexing reserve equal to about 50% of liabilities funded through additional employer and employee contributions. Indexing is promised, but will only be granted when the plan is in a good financial position. The large reserve protects the plan against the risk of deficit while allowing periodical indexing to the full cost of living. The experience in Québec so far is that all MFPP pension plans have fully indexed benefits to the cost of living since inception.

This model has gained traction in the public sector, with both the Ontario public service employee plan, OPTrust, and the Colleges of Applied Arts and Technology (CAAT) plan setting up in 2018 multi-employer pension plans for those public sector and non-profit sector employees. Additionally, the CAAT DB Plus Plan (CAAT, n.d.), can accept employers from Canada-wide private sectors. This model achieves a guaranteed stream of income for retired workers via fixed employer contributions and guaranteed lifetime annuities, which protects retirees from outliving their retirement savings while conditional indexing aims to protect their purchasing power throughout retirement.

Multi-employer benefits and pensions

Workers in the FRPS longshore industry often work for a number of different employers at varying times. In order to maintain continuity for bargaining, payroll and benefits management for these workers, the British Columbia Maritime Employers Association collectively bargains on behalf of employers with the International Longshore Workers Association (BCMEA, n.d.), and provides benefits and pensions to employees which remain consistent despite workers shifting between different individual employers.

Artists and producers associations

In both Quebec¹¹⁵ and the FRPS¹¹⁶ workers in this sector may engage in agreements which clearly set out minimum terms and employment conditions. They may also include benefits in these employment agreements, which are paid into a shared security fund through producer and artist contributions. Unions and worker associations like the Canadian Freelance Union, a community division of UNIFOR, offer

¹¹⁵ *Act respecting the professional status and conditions of engagement of performing, recording and film artists*, CQLR, c S-32.1.

¹¹⁶ *Status of the Artist Act*, SC 1992, c. 33. The Act is discussed in more detail in Chapter 6 on collective voice.

benefits and protections for freelancers and self-employed members (UNIFOR, n.d.) which follow the worker from job to job for as long as they are a member.

Pooled RRSP plans, deferred annuity plans, and variable payment life annuities

These are other types of models that are widely available on the marketplace for purchase. Insurance plans offer individual employee benefit plans but premiums are set on a per individual circumstance basis and do not necessarily provide the cost advantage that pooled arrangements may.

Other provincial examples

In Quebec, those permanently settled individuals who are not eligible for a private health plan with prescription drug coverage must be registered with the Régie de l'assurance maladie du Québec (RAMQ). This public prescription drug insurance plan covers approximately 8,000 different medications, and individuals contribute a monthly deductible and portion of the co-insurance (RAMQ, n.d.). Additionally, multi-employer plans¹¹⁷ may be sectorally implemented by multiple employers who work within the same industry or geographical area in order to establish benefits options for employees. These plans are primarily found within unionized industries.

The Fair PharmaCare Plan (Province of BC, 2019) in British Columbia assists families with paying for prescription drugs, dispensing fees, and some medical supplies at a rate based upon income; therefore, lower-income families receive greater provincial support. Coverage is dictated by income, a yearly deductible, and family maximums. PharmaCare may pay between 70 to 100% of prescription drug costs depending on deductible and maximum limits. The Family Pharmacare Program in Nova Scotia offers a similar family-income based drug program.

In Alberta, broad medical coverage is offered, including and beyond prescription drugs, through a government-sponsored program with Blue Cross, which includes the administration of similar programs on behalf of the Government of the Northwest Territories (Province of Alberta, 2018). This program provides coverage for some services not covered by the Alberta Health Care Insurance Plan (AHCIP), including non-group coverage, coverage for seniors, and palliative coverage. Costs include an annual deductible and monthly premium with subsidies for low-income earners.

In Ontario, the Ministry of Children, Community and Social Services, administers the Transitional Health Benefit that provides Ontario Disability Support Payments (ODSP) recipients with continued drugs, dental, vision and medical supplies care should they leave ODSP for employment purposes or if comparable benefits are not provided by their employer.¹¹⁸

¹¹⁷ *Supplemental Pensions Plans Act*, CQLR c R-15.1.

¹¹⁸ S. 9.19 – [Transitional Health Benefit](#). Ontario Ministry of Children, Community and Social Services (2019).

Employers in Saskatchewan with 10 or more full-time employees must provide 50% of the benefits afforded to full-time staff to part-time employees who work between 15 and 30 hours a week, while those working over 30 hours a week receive full benefits.

International jurisdictions

In the United States, some advancements have been made to create programs that assist workers in gig-economy companies (such as Uber, Etsy, and TaskRabbit) with affordable and accessible benefits programs. Under the *Affordable Care Act's* "Essential Health Benefits," Stride Health (a private, California-based start-up) offers workers a variety of plans with varying premiums and deductibles.

Multi-employer plans in the United States include the Family Medical Care Plan (FMCP) which covers the National Electrical Contractors Association (NECA) and the International Brotherhood of Electrical Workers (IBEW). The FMCP is based upon an hourly-eligibility framework, and also includes a Special Fund Account Program whereby the employer may make contributions in an individual employee's name for expenses that are not covered by the plan (NECA, 2019).

There are also examples of innovative approaches to portable benefits being undertaken at the state level, including Illinois' Secure Choice Retirement Saving Plan (Illinois, 2019), California's CalSavers Secure Choice Retirement Savings Plan (California, 2019) and legislation recently introduced in the state of Washington that would establish a portable benefits fund to cover any business which relies on independent contractors to provide services.

In the United Kingdom, *Good Work: The Taylor Review of Modern Working Practices* (Taylor et al., 2017) recommended that portable benefits initiatives should be developed in collaboration with third parties in order to accommodate individuals as they move between jobs.

In France, fixed-term contracts are recognized as often being a characteristic of precarious work, and workers are compensated under France's *Code du travail* when a fixed-term contract does not continue into an indefinite employment relationship. A 10% end of contract indemnity is paid to the worker at the end of their term in these cases to compensate for the precarity of their situation.¹¹⁹ Exceptions to this approach exist in a number of situations, such as seasonal employment and contracts for young people. A 2012 Law Commission of Ontario report advocated that the province should explore a similar model for part-time and temporary workers.

In 2018, the European Council entered into negotiations with the European Parliament to construct a portable, voluntary retirement plan called the Pan-European pension product (PEPP), which could be offered to individuals working across the continent.

Recognizing that only 27% of Europeans between the ages of 25 and 59 have joined a pension plan, in 2019 the EU Parliament and Council agreed to a new portable

¹¹⁹ *Code du travail*, France § L1243-8.

voluntary retirement scheme. This plan is intended to provide an EU-wide savings plan that would complement employer-provided and state-based pension schemes, with portability across national boundaries and between plans (European Council, 2019).

Conclusions and recommendations

Access to benefits

Access to benefits is a significant challenge for many workers in Canada, particularly those engaged in non-standard work. It bears noting that women, racialized individuals, immigrants and people with disabilities are over-represented in non-standard forms of work.¹²⁰

Fewer than a quarter of Ontario workers (not specific to FRPS) engaged in non-standard forms of work had access to extended health, dental and insurance benefits in 2011, as compared to more than 75% of workers in standard employment relationships. A similar divide is seen in terms of access to an employer pension plan; just under 17% of workers engaged in non-standard work had a plan, while more than half of workers engaged in standard employment had a plan (Mitchell & Murray, 2017).

The prospect of a continued increase in non-standard work arrangements as the nature of work evolves and technological advances “unbundle” traditional full-time, permanent positions is real. Since the mid-1990s, 60% of job growth in advanced economies has been in the form of non-standard employment (OECD, 2015). These trends could play out at an increasingly rapid rate in the FRPS, which, as noted earlier, for the most part has relatively better benefits coverage of workers than Canada overall.

Data gaps make it difficult to grasp the precise extent of non-standard working arrangements and the types of benefits and scope of coverage for workers engaged in those types of working arrangements in the FRPS. There is no question, however, that many non-standard workers are in vulnerable positions, with little job security and being paid low wages. These workers have arguably a stronger case, from the perspectives of equity and dignity, for access to benefits than workers in higher-paid, standard forms of employment.

Recent amendments to the Code in December 2018 have gone some ways to addressing access to statutory minimum benefits (for example, vacation, various types of leaves) by reducing or eliminating eligibility periods (see Table 8). Once in force, this will benefit workers who change jobs frequently by entitling them immediately or more quickly to, for example, maternity leave or personal leave.

¹²⁰ See Chapter 3 on labour standards protections for non-standard workers for more details.

Table 8: Recent changes in continuous service requirements for statutory benefits under Part III of the Code

Benefit	Continuous Service Requirement	
	Prior to Dec. 2018 changes	Upon coming into force (2018 changes)
General holiday pay	30 days	None
Sick leave	3 months	None
Maternity leave	6 months	None
Parental leave	6 months	None
Leave related to critical illness	6 months	None
Leave related to death or disappearance of a child	6 months	None
Paid vacation (3 weeks)	6 years	5 years

However, increasing access to employer-provided benefits is a more contentious area, with clear cost implications for employers. For example, an extension of the “equal pay for equal work” concept to “equal benefits for equal work” could see part-time workers entitled to either pro-rated or full benefits, depending upon potential minimum hours worked thresholds.

Ontario’s Changing Workplaces Review (2017) concluded that the extension of benefits and pensions on an “equal benefits for equal work” principle to part-time, temporary, contract, casual and seasonal workers was not feasible due to significant concerns about unintended consequences for full-time workers and other practical considerations (Mitchell & Murray, 2017). In particular, the Review found the following obstacles to benefits and pensions being made more accessible to non-standard workers:

- Cost issues, which preclude many employers from offering benefits plans even to full-time employees (particularly the costs of pharmacare plans);
- The challenges of pro-rating benefits plans from an administrative point of view, which would typically mean the requirement for a second plan for part-time employees, thereby driving up costs even further;
- Some part-time employees may have benefits coverage from another family member, making mandatory coverage unattractive to them despite the fact that mandatory coverage would make the plan more affordable overall; and
- A survey of experts found that many firms (particularly smaller firms) could stop providing benefits across the board.

The Panel recognizes these concerns, and many of them were reflected during our consultations with employers. Furthermore, the mandated extension of benefits to part-time and temporary employees could well lead to a concomitant reduction in wages for those workers (Gruber, 1994; Summers, 1989). Extending benefits and pensions access to a broader range of workers, while appealing from an equity and fairness perspective, could lead to a host of unintended consequences that might leave workers, including full-time workers, worse off than they currently are. Taken together, these challenges make for a compelling case that the extension of benefits to a broader suite

of workers is something best done through public provision of those benefits at this time, rather than mandating employers to do so.

From a public policy perspective, the most efficient and rational approach to extending health and retirement benefits to workers in the FRPS, and all other workers for that matter, would be to extend the scope of existing public programs such as Medicare (for example, to cover dental care, pharmacare and more mental health services) and the CPP. The recent release of the Advisory Council on the Implementation of Pharmacare, for example, makes a strong case for universal pharmacare as a better approach to Canada's current patchwork system of coverage (Health Canada, 2019). But, these are political decisions with significant cost (and benefit) implications that are outside the scope of this report.

Recognizing that the Code does not distinguish between forms of employment with respect to entitlement to benefits, the one recommendation we can make with respect to increasing access to benefits for workers in the FRPS is the following:

Recommendation 19: The Panel recommends the inclusion of a clear definition of employee in Part III of the Code (as outlined in the chapter on non-standard work).

This would ensure that those workers who should be entitled to various statutory minimums are in fact able to access those minimums, and are not instead improperly classified as independent contractors.

It is also worth noting that s.15 of the *Pension Benefits Standards Act (1985)*¹²¹ provides for eligibility of part-time employees in pension plans in the FRPS after 24 months of service. It is unclear how widely known this provision is and to what extent there are part-time employees who could be enrolled in plans under this provision but are not.

Recommendation 20: The Panel recommends further consultation and awareness raising to ensure that part-time employees in the FRPS are, where appropriate, being enrolled in employer-sponsored pension plans.

Finally, we would also note that we also heard about the issue of "lost pensions" during our consultations. In some cases, members of plans when they leave an organization may (typically inadvertently) walk away from their and their employer's pension contributions. While there is no reliable data on this issue for the FRPS, we can expect that this issue could become more significant over time as workers continue to move between jobs. To give a sense of the potential scale of this issue, the Ontario Teacher's Pension Plan has roughly 30,500 members it cannot locate and there are over \$680 million in unclaimed pensions in the UK (Bickis, 2019).

¹²¹ *Pension Benefits Standards Act, 1985*, RSC 1985, c. 32.

Although the onus is on the pension plan to find the member, this is no easy matter.

Recommendation 21: The Panel recommends that the federal government, led by the Canada Revenue Agency, review what it can do to help Canadians working in the FRPS, and more broadly, with the issue of lost pensions.

A model like the Bank of Canada's "Unclaimed Balances" website, where Canadians can find old bank accounts may be a user-friendly approach to explore.

Portability of benefits

Beyond and apart from the issue of access to benefits is the notion of portability. Should workers have the ability to carry benefits with them from job to job, rather than have those benefits reside with the employer and cease to have value for the employee upon commencing a new role? In a rapidly changing world of work where workers will likely be changing jobs more frequently, the idea of decoupling benefits from the employment relationship has merit. The federal government's recent introduction of the Canada Training Benefit is an example of this type of "take it with you" benefit that does not rely upon a continued term with an employer. Similarly, a number of pension plans can facilitate the carry-over of a pension through negotiated reciprocal transfer agreements.

The advantage of portable benefits plans for workers in non-standard jobs, especially those who are also in precarious working environments, is that they would receive some medical, health and retirement coverage with a reduced cost through scale (that is, by workers joining together rather than individuals relying on private schemes). From a political and fiscal perspective, this approach also avoids any significant level of public investment that would accompany more transformational expansions to Medicare, CPP and other programs. Finally, portable benefits plans could be designed with optional rather than mandated contributions from employers.

The Panel also sees advantages in the ability of a portable benefits model to provide certain types of health and retirement benefits to workers without regard for their employment status. Recognizing that workers in precarious forms of employment or non-standard forms of work tend to have far less access to these types of benefits, there is also an economic argument that paying for coverage in some form now will reduce societal costs in the long run, in areas such as medical and social services costs.

One key issue that must be raised in the context of a portable plan is whether the plan should be mandatory or optional. The former could be viewed as an unfair intrusion into the spending decisions of individuals with limited means, while the latter is known to be not nearly as effective in terms of take-up rates (Service, 2015). This is an issue which bears further study and consultation to assess the preferences of workers who might benefit from the plan and weighing potential lower take-up rates against less scale and higher costs.

We should also be reminded that in 2006 Harry Arthurs recommended the following in his report entitled *Fairness at work: Federal labour standards for the 21st century*:

“Vulnerable workers, especially temporary, part time, agency and autonomous workers, are often ineligible for the benefits (drug, dental or disability insurance, and pensions) provided by employers to the full-time, permanent workforce. Workers of all kinds employed by small firms are also unlikely to have the access to such benefits, as are the proprietors of these firms themselves. The federal government should investigate the feasibility of establishing a public or private sector ‘benefits bank’, which would assist vulnerable workers and small businesspersons to secure coverage.”

Given the strong sentiment expressed by employers during consultations that new mandated approaches to benefits would be unaffordable, the potential unintended consequences of mandating enhanced access to benefits and the relatively better position of the FRPS with respect to benefits provision than Canada generally, we believe that a “benefits bank” or “portable benefits” plan is the best short-term step to explore that would be of value to workers in the FRPS who are not currently in receipt of benefits or sufficient benefits.

Recommendation 22: The Panel recommends that the federal government explore, through stakeholder consultations and research, the potential development of a portable benefits model for workers in the FRPS.

The government should consider the following key elements in its research and consultations on a portable benefits model:

- Convene a group of workers, organizations that support workers and unions, experts (pension and benefit) and employers to work through key strategic considerations that would underpin the development of a portable benefits plan for the FRPS, or that could potentially be part of a broader national portable benefits scheme (for example, working with the not-for-profit sector model currently under development);
- Separately decide strategy for benefit options and strategy for pension saving plans. Included in this would be a review of what benefits would be covered and what pension model makes sense; and
- Consider potential overlap and duplication with other similar plans (for example, the Saskatchewan Pension Plan which is a defined-contribution plan open to any Canadian or the broad range of private schemes), and whether providing enhanced opportunities to contribute to CPP may be an option.

The following key questions should be considered during the review:

- Should employee contributions be mandated or optional? If optional, should the default assumption be ‘opt-in’ to drive higher take-up rates? How would issues around adverse selection impact opt-in plans?
- How could employer participation be incentivized?

- How would a portable plan interact and play out in workplaces with collective agreements?
- Who would qualify? How are entitlements accumulated and tracked?
- Who manages the system? An independent, third party body would seem to be the best approach, but a host of options exist.
- How can technology be leveraged to support these programs?
- What are the barriers to implementation and what could be the unintended consequences of this proposal?

As an interim step, workers, unions and other worker organizations, employers and employer organizations and the federal government may wish to engage in discussions with other portable benefits plans which are being explored and established in Canada, such as the Common Good plan for non-profit sector workers. This could avoid the administrative complexity of setting up a new plan and might provide a quick option for workers seeking to enhance their access to benefits.

The federal government can play a leadership role in undertaking further research on these issues and, where warranted, potentially investing in the start-up costs associated with establishing portable benefits plans, whether specific to the FRPS, or more broadly applied programs. These types of costs would be prohibitive for the types of workers who are traditionally not covered by existing benefits programs and public funding to set up these programs could clearly be justified as an investment to forestall or avoid downstream costs for governments in areas such as social services and healthcare.

Developing solutions that would address key gaps for workers in the FRPS would be a starting point, but developing solutions that work for all Canadians should be the ultimate goal of federal policy incursions in this space.

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Chapter 6: Collective voice for non-unionized workers

Judicial rulings, continued decline in unionization, non-standard work, employer efforts to boost retention and performance and new approaches to compliance and enforcement are shining the spotlight on the ability of workers to join together to express their views and have a say in decisions affecting their working conditions. Against this backdrop, we were asked to consider and provide advice on the extent to which there are gaps in opportunities for collective voice for non-unionized workers in the federally regulated private sector (FRPS) on labour standards issues and how they could be addressed.

What's the issue?

In 1970, Albert O. Hirschman argued in a landmark book that people have three choices in the face of an objectionable state of affairs: leave, complain or stay. “Exit”, “voice” and “loyalty”, as he termed them, are interconnected. Voice is a way to change the situation, rather than escape it. Freeman (1980) and Freeman and Medoff (1984) later applied the concepts of exit and voice to the labour market, contrasting the market response of individual exit (that is, quitting to find more satisfactory conditions elsewhere) and the non-market response of collective representation to alter undesirable working conditions.

Freeman and Medoff (1984) argued that a central role of unions in the labour market is to provide the employees they represent with collective voice regarding workplace conditions. Collective voice has been increasingly seen as an essential means for individual workers to address what the Supreme Court of Canada has stated to be “the presumptive imbalance between the employer’s economic power and the relative vulnerability of the individual worker.”¹²²

A fundamental rationale for collective voice is that many features of the workplace have the characteristics of “public goods”. In the context of the workplace, the concept of public goods can range from health and safety to appropriate levels of heating or air conditioning, working in a congenial and supportive environment, or being able to complain without fear of reprisal about arbitrary or inappropriate treatment by a supervisor.

A widely accepted principle of resource allocation is that obtaining the optimal amount of a public good requires collective rather than individual decision making (Olson, 1965). In other words, if we rely on the choices made by employers and

¹²² *UFCW, Local 401 v. Alberta (Information and Privacy Commissioner)*, 2013 SCC 62 at para 32. See also Slinn & Tucker (2013).

employees individually (for example, via the exit response) there will be too few resources devoted to promoting optimal working conditions.¹²³

Voice mechanisms can yield benefits for both employers and workers. For instance, access to collective voice mechanisms ranks high amongst the factors that encourage employee retention, along with good wages and access to training (Spencer, 2017; Batt et al., 2002). It has been shown to improve job quality (Piasna et al., 2013) and reduce exit behaviours, including quit rates (Freeman & Medoff, 1984). Various studies suggest that it can lead to improved compliance with labour laws (Vosko, 2013; Fine, 2013). Others emphasize it is intrinsically good because it promotes a commitment to democracy in the workplace (Bryson et al., 2013).

During our engagement activities, virtually all participants saw a clear link between collective voice on labour standards and harmonious relations in the workplace. A number of employers and some experts emphasized that in today's tight labour market providing opportunities for collective voice is imperative for attracting and retaining top talent. Some participants underscored the connection between exercising voice and workers needing to be aware of their rights in order to do so, especially if they are in non-standard jobs. Others emphasized the important role that collective (and individual) voice can play in compliance and enforcement on labour standards issues.

There are “competing meanings” to the concept of “employee voice” (Dundon et al., 2004; Budd, 2014). Voice has been defined by McCabe and Lewin (1992) as the combination of two elements: the expression of complaints and grievances and the participation of employees in the decision-making processes of the organization that have repercussions on working conditions. Lewin and Mitchell (1992) draw a distinction between mandated voice (for example, through legislation) and voluntary voice (for example, through collective bargaining or employers' human resource practices). Budd (2014) has advocated for an “inclusive” definition that sees voice as “expressing opinions and having meaningful input into work-related decision-making” (see also Budd, 2004; Befort & Budd, 2009). He says that voice must nevertheless also be capable of reaching instrumental ends or “one can seriously question whether it is true voice” (Budd, 2004).¹²⁴

The Panel sees the concept of collective voice as combining two complementary facets, namely the ability of workers to collectively express their views and to have a say in decisions affecting their working conditions, such as wages, leave entitlements, scheduling and health and safety, without risk of reprisal. Collective voice should also be viewed as a process of identifying and learning to promote shared goals.¹²⁵ From a labour policy perspective, collective voice mechanisms should allow employees to contribute meaningfully to such a process.

¹²³ See Freeman (1980) for details.

¹²⁴ Hyman (2005) goes further and believes that “voice is an effective means to achieve one's aim, or it is a charade”.

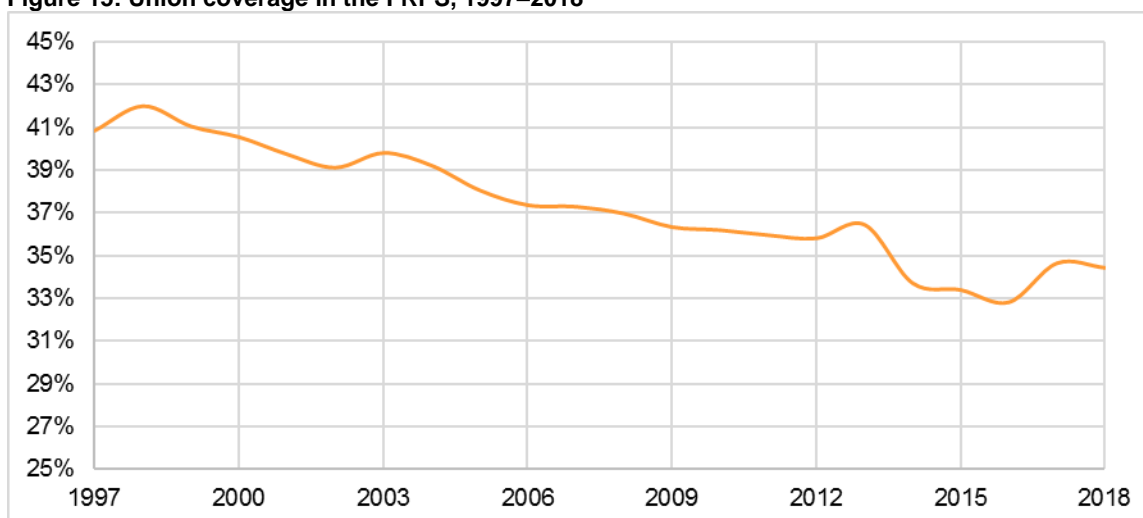
¹²⁵ For some, unionization is often the culmination of this longer process (Bogg & Estlund, 2014).

Collective voice in the federally regulated private sector

The traditional mechanism for collective voice is unionization. Part I of the Code is therefore intrinsically about collective voice because it establishes the legal framework for unionization. Based on the *Wagner Act* model of industrial relations,¹²⁶ it sets out the key elements of the collective bargaining regime for employees and employers in the FRPS, including provisions regarding the right to form and join unions, union certification, collective agreements, dispute resolution, strikes and lock-outs.

Figure 15 shows the ongoing decline in the percentage of employees in the FRPS covered by a collective agreement based on data from the Labour Force Survey (LFS).¹²⁷ The union coverage rate has fallen from over 40% in the late 1990s and early 2000s to 34% in 2018. Nonetheless, union representation in the FRPS is substantially higher—more than double—that in Canada’s overall private sector where union coverage dropped to about 16% in 2018 (Statistics Canada, 2018). The rate of decline in the FRPS is also less than that in Canada’s total private sector, where union coverage fell by approximately 25% compared to 17% in the FRPS.

Figure 15: Union coverage in the FRPS, 1997–2018



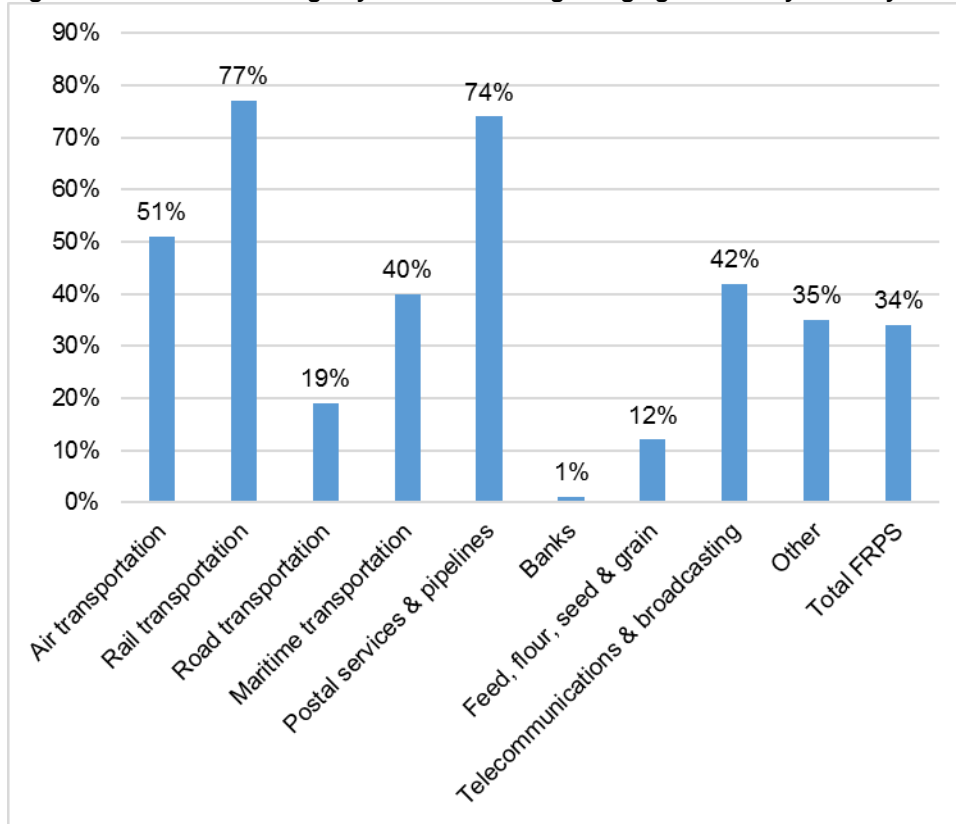
Source: Panel estimates based on Labour Force Survey microdata, 1997–2018.

Based on the 2015 Federal Jurisdiction Workplace Survey (FJWS), the proportion of employees covered by a collective bargaining agreement in the FRPS varies significantly by sector (see Figure 16). It ranges from a high of about 77% of employees in the rail transportation sector to a low of 1% of employees in the banking sector.

¹²⁶ Tucker (2014) provides a good overview of this model, as well as what he calls the “selective weakening” of some of its elements.

¹²⁷ Note that the FRPS cannot be precisely identified in the Labour Force Survey. Our identification is based on 4-digit industries that mainly fall under federal jurisdiction (for example, banking, telecommunications, airlines). However, even at the detailed 4-digit industry level some enterprises fall under provincial jurisdiction.

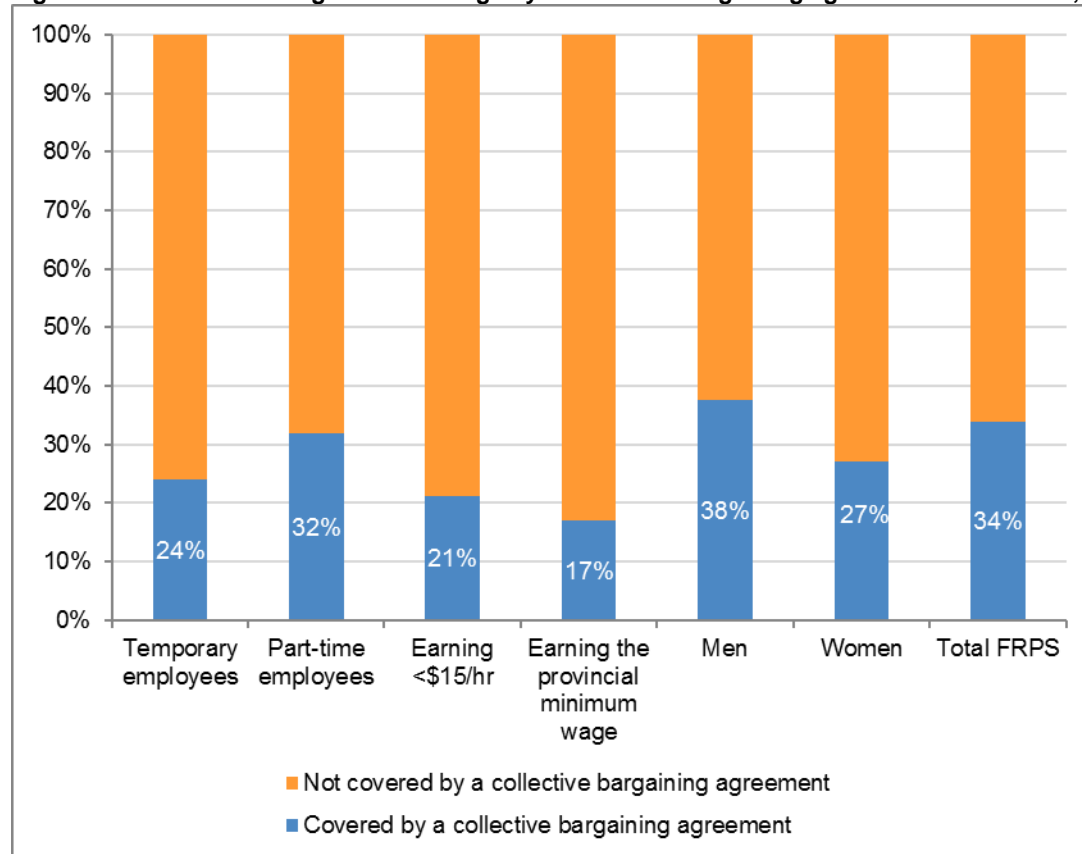
Figure 16: Rates of coverage by a collective bargaining agreement by industry in the FRPS, 2015



Source: 2015 Federal Jurisdiction Workplace Survey.

Data from the 2017 LFS suggests that, as shown in Figure 17, union coverage rates are much lower for temporary employees in the FRPS (about 24%), as well as for employees earning less than \$15 per hour (about 21%) and those earning exactly the minimum wage (about 17%). In Canada's provincially/territorially regulated private sector union coverage rates are also much lower for these types of workers. In the FRPS, women have lower rates of coverage (around 27%) than men (around 38%), in contrast to Canada as a whole where unionization rates for women exceed those for men, largely because of the substantial representation of women in the highly unionized public sector (Card et al., 2018).

Figure 17: Rates of coverage/non-coverage by a collective bargaining agreement in the FRPS, 2017



Source: 2017 Labour Force Survey.

There is a substantial body of research on the extent of unsatisfied demand for union representation in Canada and elsewhere (Riddell, 1993; Freeman & Rogers, 1999; Bryson et al., 2005). According to several surveys, between one-third and over 40% of non-unionized workers in Canada report that they would like to join a union if they had the opportunity (Campolieti et al., 2011; Gomez, 2016). The extent of unsatisfied demand is largest in sectors with low rates of union coverage, such as retail trade and financial services. Evidence indicating that there is unsatisfied demand for unionization—the “representation gap”—has been a common factor in calls for union renewal through “organizing the unorganized”, especially since the 2000s (Kumar, 2008; Rose, 2008).

At the same time, the desire for alternative, non-union models of collective representation is high. Using 2014 data, Gomez (2016) estimated that 73% of Canadian workers are either definitely or probably willing to participate in an employee organization other than a traditional union that discusses workplace issues with management. In comparison, just under 40% would prefer to belong to a union. In addition, there are reasons to believe that support for non-union mechanisms for collective voice is higher amongst some groups, such as millennial workers who now make up the largest cohort in the Canadian workforce, have high expectations about being engaged in the workplace and are more likely to opt for “exit” when they are unhappy in the workplace (Hawkins et al., 2014).

We also underscore the importance of looking at the Code as a whole when considering opportunities to enhance collective voice. Other types of mechanisms for collective voice beyond unionization and collective bargaining are found to some extent in both Part II (Occupational Health and Safety) and Part III of the Code.

Part II requires employers in the FRPS (and the federal public service) with 20 or more employees to establish joint workplace health and safety committees to implement and monitor hazard prevention programs, deal with complaints and investigations and participate in decision-making about changes that may impact health and safety. When the employer has 300 or more employees, the committees must also develop health and safety policies and programs. At least two employees must sit on each committee and employees must make up at least half of the total membership. In organizations where employees are not represented by a union, the employee members must be selected by the other employees. Employers with fewer than 20 employees must have a health and safety representative (rather than a committee).

Part III of the Code has historically provided minimal mechanisms for workers to express their collective views on working conditions: employers are required to consult with workers on the development of sexual harassment policies; and joint planning committees must be established to deal with group terminations. While there is also a requirement for employers to consult with workers on the development of sexual harassment policies, this will be moved to Part II when amendments to the Code included in Bill C-65, which received Royal Assent in October 2018, come into force.

What we heard

Participants in the Panel's engagement activities offered divergent views on the extent to which there are gaps in opportunities for collective voice for non-unionized workers on labour standards issues in the FRPS and, if there are, how they could be addressed. While there was general agreement that collective voice is vitally important, different reasons were given for why.

We heard from some unions and workers, in particular, that being able to raise concerns about labour standards issues in the workplace is not enough. For them, meaningful collective voice also entails active listening by the employer and having action taken in response to concerns that have been raised. We also heard from a range of stakeholders that, in providing our advice, we should carefully consider the kinds of issues where collective voice is or should be exercised, such as on statutory labour standards only or on working conditions more generally.

There were two quite polarized schools of thought on whether there is a need to address gaps in opportunities for collective voice for non-unionized workers. Some participants, mainly employers, told us that there is no problem, that sufficient voice mechanisms are already in place. They pointed to mechanisms such as "open door" policies, employee surveys and affinity or resource groups as good examples, in addition to unionization. A few noted that, in unionized workplaces, unions often speak on behalf of all workers, including those who are not union members. In non-union

workplaces, several employers indicated it should be left up to the employer and workers to agree on the best way for concerns to be addressed collectively.

On the other hand, we heard from almost all unions and workers and many experts that enhancing opportunities for collective voice for non-unionized employees and, to a less extent, workers in general, should be an urgent objective. Any type of collective representation other than a union, they said, lacks the certified monopoly to represent and negotiate on behalf of employees. For some, the preferred approach is to address barriers to unionization and thereby improve access to collective bargaining and representation for non-unionized workers. Several unions and experts argued for extending non-standard workers' access to collective bargaining, for example at the sectoral level.

Others told us that in addition to addressing barriers to unionization or in the absence of change to the current legislative framework for collective bargaining, there is a need to give serious consideration to collective voice mechanisms that complement unionization. We often heard that non-standard workers especially, who are less likely to be unionized, should have a clear right to take action collectively to improve their terms and conditions of employment without fear of reprisal.

There was some support for joint employer-worker committees that would operate within a prescribed statutory framework and ensure collective representation on enforcement and compliance issues related to labour standards. However, we heard from a variety of stakeholders that labour standards are far more contentious than occupational health and safety, an issue for which workers and employers are likely to share a common interest. Unions and workers' representatives expressed skepticism about the effectiveness of joint committees in non-unionized workplaces. Some also mentioned that these committees are often "employer dominated" and cannot adequately redress the power imbalance.

Others urged us to reflect on mechanisms such as sectoral approaches where union coverage rates are low. We were also asked to consider different ways that workers and third-party advocates could be "nudged" to work more closely together to express and resolve labour standards issues.

Indigenous representatives spoke to us about the importance of culturally sensitive voice mechanisms. Several noted that while non-unionized band employees may express workplace concerns on social media, at band meetings or by filing human rights or labour standards complaints, grievances have also more recently been handled at the community-level by redress committees.

Conclusions and recommendations

Driven primarily by the benefits of collective voice, debate about the future of unions and the challenges faced by non-standard workers seeking to exercise collective voice, several additional non-union collective voice mechanisms are now discussed. This review of collective voice for non-unionized workers is timely as the

Supreme Court has given clear guidance on this issue. In *Mounted Police Association of Ontario v. Canada*, the Court stated that the constitutionally protected right of freedom of association under section 2(d) of the Charter of Rights and Freedoms “stands as an independent right with independent content, essential to the development and maintenance of the vibrant civil society upon which our democracy rests”.¹²⁸

Through its research and engagement activities, the Panel has identified a number of models and frameworks that would permit workers to exercise collective voice. Some of these are proposals while others have been implemented in Canada or other jurisdictions. In assessing them it is important to take into account whether the mechanisms are statutory or non-statutory, whether they operate in the workplace or are external to it and whether they apply generally or are sector/workplace specific.

Their degrees of independence from the employer and whether they ensure a level of protection against reprisal for those who participate should also be considered. In addition, the capacity of workers to support or use different voice mechanisms and the relationship of the mechanisms to formal collective bargaining are key. Finally, the effectiveness of the models in terms of ensuring workers are heard and concerns are resolved needs to be considered.

Recognizing their potential value to overall enterprise performance, a significant minority of non-union firms have put in place forms of collective voice. Lipset and Meltz (2000) surveyed U.S. and Canadian adults about features of their workplaces and found that about 20% of non-union employees in each country worked in an enterprise with some form of collective representation other than a certified independent union, such as self-directed work teams and other initiatives that involve employees in discussions on compensation and benefits, or health and safety.

These types of non-union employee representation differ substantially in their form, function, subject matter, mode of representation, extent of power and degree of permanence (Taras & Kaufman, 2006). A commitment to employee input into decision making is also typically a feature of “high performance workplaces” (Kochan & Osterman, 1994).

In our engagement activities we also learned of channels such as annual surveys, whistleblower hotlines and quality circles that allow employees to express their views and make complaints and suggestions, especially in large organizations. Many of these channels provide individual voice rather than collective voice. Even though they can be valuable, especially if there is no fear of reprisals and suggestions and complaints are acted upon, we focus here on initiatives that are likely to provide collective voice to a broader array of workers and workplaces.

Addressing legal barriers to unionization

Many worker and employer characteristics are related to union coverage. For example, part-time workers are less likely to be unionized than their full-time

¹²⁸ *Mounted Police Association of Ontario v. Canada (Attorney General)*, 2015 SCC 1 at para 49.

counterparts. Similar differences exist between temporary and permanent employees, employees of small and large firms and younger and older workers.¹²⁹ These relationships between union coverage and worker and employer characteristics are observed in many developed countries as well as in Canada. As the structure of the economy and the workforce has changed, so have the prospects for union representation.

For example, the decline in manufacturing employment (that often had large workplaces) and the rise in the service sector (with many smaller workplaces) has been one factor contributing to lower unionization. Although many service sector firms are large in size and have many employees, at the workplace level they often have only a few employees, and these workplaces have a much lower propensity to unionize.

Although the structural characteristics of the economy and the workforce influence unionization, a country's industrial relations institutions as well as its laws and regulations governing union representation and collective bargaining also play a role. In this section we discuss potential legal barriers to unionization in the FRPS, barriers that might prevent or make it more difficult for workers that desire union representation from realizing that desire.

Building on earlier literature, Legree, Schirle, and Skuterud (2017) have identified different legal rules that influence the likelihood of workers obtaining union representation or influence the bargaining power of unions once certified. The authors point out that some legal rules are more favourable to unions, such as those imposing first contract arbitration, prohibiting temporary replacement of workers, banning permanent replacement, ensuring re-instatement rights and banning professional strike-breakers.^{130 131} Other legal rules are less favourable to unions, such as those imposing secret-ballot certification elections, compulsory conciliation, cooling-off periods, mandatory strike votes and employer-initiated strike votes.^{132 133}

Based on our research and engagement activities, some provisions of Part I identified by Legree, Schirle, and Skuterud (2017) are supportive of union representation. A particularly important one is the 2017 transition back to a certification system based on "card check" from one based on secret-ballot elections. Studies by Johnson (2002) and Riddell (2004) provide strong evidence that changing from card check to mandatory voting substantially reduced the success rate of applications for union representation in Canadian provinces that made this switch in their labour

¹²⁹ See, for example, Benjamin et al. (2017), Table 14.3.

¹³⁰ First Contract Arbitration is a statutory mechanism that allows either party in unsuccessful negotiations to apply to the Labour Board to direct the settlement of a first collective agreement by arbitration.

¹³¹ These measures all point to the same goal which is banning employers from hiring workers, on a permanent or temporary basis, to replace existing employees who are participating in a labour strike or lockout.

¹³² Compulsory conciliation generally refers to as a stage in negotiations that involves a neutral third-party from the Ministry of Labour who attempts to assist the parties in resolving their dispute by suggesting possible areas of compromise, bringing a different point of view, clarifying issues and using many other techniques designed to bring the parties closer together and narrow the disagreement.

¹³³ The cooling-off period refers to a certain period before a strike or lockout deadline.

relations legislation. The reverse was true for changes from secret ballot elections to card check.

However, there are other provisions of the Code that may be less favourable to union representation. For example, in a study of a set of major reforms in Ontario, first contract arbitration was found to enhance unionization (Riddell, 2013). Adding a provision requiring first contract arbitration in the event of an impasse in negotiations to Part I would enhance the likelihood that a newly certified union will succeed in obtaining an initial collective agreement. Even if arbitration is rarely used for the initial collective agreement, having this provision in place would enhance the union's bargaining power in reaching a first agreement.

Recommendation 23: The Panel recommends further study of legal barriers in Part I of the Code to union representation in the FRPS.

In our view, and based on existing research and what we heard from some we consulted, it is important for there to be a more fulsome examination of potential limits on access to collective bargaining and representation in Part I. We also underscore that the existing legal framework limits access to employees and thereby heightens the need for alternative collective voice mechanisms for those non-standard workers who are not employees. In light of this, the Expert Panel recommends further study of legal barriers in Part I of the Code to union representation in the FRPS. This study should be carried out with extensive engagement with stakeholders.

Third-party advocates

Employee voice can be channeled through participatory initiatives, which involve third parties, such as community organizations. These organizations are community-based “mediating institutions” (Fine, 2013) that provide collective voice to workers by providing advocacy, resources and collective representation (Fine & Gordon, 2010; Vosko et al., forthcoming; Choudry et al., 2009). Community organizations have the potential “to enable greater access to information about workplace violations, identify collective and systemic dimensions of employer non-compliance, facilitate networking, help to counter the power dynamics of the employee-employer relationship and at times works to mobilize workers collectively” (Vosko et al., forthcoming). Such organizations exist throughout Canada, some bringing together specific groups of workers such as migrants, and sometimes financially supported by unions. As we heard during our engagement activities, these organizations often operate with limited resources, a situation that may undermine the scope of their activities and limit their possible means of intervention.¹³⁴

Different unions have also reached out to non-member workers who are in hard-to-organize occupations, are geographically dispersed or do not have one workplace. In 2013, Unifor launched an initiative called “community chapters”. Community chapters

¹³⁴ Workers Action Center (WAC) in Toronto, Au bas de l'échelle and the Immigrants Workers Center/Centre des travailleurs et travailleuses immigrants in Montreal, Halifax Workers' Action Centre and the Migrant Workers Centre in Vancouver.

provide some benefits of collective voice and power for workers who are less likely to be able to certify traditional bargaining units in their workplaces. The chapters must adhere to Unifor's constitution and are associated with a Unifor local. Members pay minimal dues and can opt in to health care benefits. The first two community chapters were national in scope: the Canadian Freelance Union which represents self-employed media and communications workers and the Unifaith Community Chapter which represents clergy and other workers at the United Church. Local community chapters have also been established, such as the East Danforth Community Chapter in Toronto.

In addition, some Canadian jurisdictions have established workers' advisor or advocate offices under occupational health and safety legislation. They provide advice and representation to workers in workplace injury cases and on occupational health and safety issues more generally, including issues related to reprisal. In Ontario, for example, the Office of the Worker Adviser, an independent agency of the Ontario Ministry of Labour, provides advice, services and representation for non-unionized workers on workplace insurance matters and occupational health and safety reprisal. Established in 1985, the Office has 16 regional/district locations across the province and, in partnership with local organizations, delivers educational services in smaller communities.

In Manitoba, the Worker Advisor Office in the Labour and Regulatory Services Branch of the Department of Growth, Enterprise and Trade provides support and representation to injured workers, both non-union and union, who are dealing with the provincial Workers Compensation Board.

In Quebec, the Labour Standards, Equity, Occupational Health and Safety Commission (LSEOHSC) is a unique institution in the Canadian landscape. This body is responsible for implementing the provincial *Act respecting labour standards* and has the power to institute legal proceedings, in its own name and on behalf of an employee, to claim unpaid wages. The LSEOHSC also represents employees who bring forward complaints related to reprisals, psychological harassment and dismissals made without good and sufficient reason before the Labour Board. In contrast with legal aid, the legal representation provided by the LSEOHSC is not subject to any rate schedule and is provided by lawyers employed by the LSEOHSC (Vallée & Gesualdi-Fecteau, 2016).

Recommendation 24: The Panel recommends providing funding to community organizations that facilitate participatory initiatives outside the workplace.

Such funding would allow these organizations to better support workers who wish to file complaints with the Labour Program but also enhance their capability to provide collective representation to workers. Participatory initiatives generally operate outside the workplace and are fully independent from employers. Combined with our recommendation about granting workers protection for concerted activities (see below), workers could freely engage with community organizations without fear of retaliation by their employer.

Anti-reprisal protection for concerted activity

Studies show that many workers are unlikely to speak out about problems in the workplace if they do not have access to collective voice mechanisms because they fear reprisal. This is particularly true for non-unionized workers and those in non-standard work, as well as women. For instance, using survey data collected in 2005, Lewchuk (2013) concludes that “the precariously employed were six to seven times more likely to report that raising health and safety issues would have negative employment consequences”.

In the United States, section 7 of the *National Labor Relations Act* (NLRA) provides non-supervisory employees, both union and non-union, with the right to engage in “concerted activity for the purpose of collective bargaining or other mutual aid or protection”. As defined by the U.S. Supreme Court, “mutual aid and protection” includes employees’ efforts to “improve current terms and conditions of employment or otherwise improve their lots as employees through channels outside the immediate employee/employer relationship”¹³⁵

The Act does not limit the manner, time or place in which employees engage in “concerted activity”. While section 7 lists workers’ protected rights, section 8 makes it unlawful for an employer to “interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7”. The employer’s conduct will be considered as retaliation if it tends to interfere with the free exercise of employee rights under the NLRA and “demonstrating motive or actual coercion is therefore not generally required” (Rogers & Archer, 2016). Sections 7 and 8 were introduced when the NLRA was enacted in 1935.

Section 7 of the NLRA protects concerted activities by unionized workers and non-unionized workers, whether they are seeking to unionize or not (Rogers & Archer, 2016). The spectrum of protected concerted activities is wide and includes concerted complaints or grievances presented to employers regarding compensation, benefits or working conditions, as well as informal discussions between employees about their working conditions (Fullerton & Millman, 2008). The protected activities must generally be undertaken by two or more employees seeking to improve their terms or conditions of employment.

Thus, two or more employees addressing their employer about improving their pay will be exercising their right to protected concerted activity. However, the protection can also extend to the actions of one employee, on the condition that such actions have “the object of initiating or inducing or preparing for group action or [have] some relation to group action in the interest of the employees.”¹³⁶¹³⁷ Section 7 will apply when an

¹³⁵ *Eastex, Inc. v. NLRB*, 437 US 556 (1978).

¹³⁶ *NLRB v. Interboro Contractors, Inc.*, 388 F.2d 495 (2d Cir. 1967). On recent developments of the Interboro doctrine, see *Practical Law Labor & Employment* (2016).

¹³⁷ *Mushroom Transp. Co. v. NLRB*, 330 F.2d 683, 685 (3d Cir. 1964) in Bemberg (2018). However, saying “we” in front of other workers doesn’t necessarily grant a worker’s statement the mandatory concertedness for the statement to be protected by Section 7: *Alstate Maintenance, LLC & Trevor Greenidge*, 367 NLRB 68 (2019), overturning a 2011 jurisprudence (*WorldMark by Windham*, 356 NLRB

employee speaks to his employer on behalf of one or more co-workers about improving workplace conditions (NLRB, n.d.). Non-union work stoppages and walkouts are generally protected,¹³⁸ unless they are “unlawful, violent, [...] in breach of contract [or] “irresponsible” because they threaten property damage” (Rogers & Archer, 2016). Section 7 has been interpreted to extend the “Weingarten” rule (that is, that an employee in a unionized workplace may request the presence of a union representative at an investigatory interview which employee reasonably believes might result in disciplinary action) to cover employees in non-union workplaces.¹³⁹

The use of social media is, to a certain extent, protected by section 7 as employees have the right to address work-related issues and share information about pay, benefits, and working conditions with coworkers on Facebook, YouTube, and other social media. To be protected, the use of social media must have some relation to group action, or seek to initiate, induce or prepare for group action, or bring a group complaint to the attention of management (Neylon O’Brien, 2011; Bemberg, 2018).

For instance, an employer's decision to dismiss an employee who posted a comment on Facebook encouraging a terminated colleague to hire a lawyer and sue the company was over-ruled by the National Labor Relations Board (NLRB). The Facebook comment was found to be a protected concerted activity that did not interfere with the employer’s operations.¹⁴⁰

However, complaints that are made publicly and are maliciously false will not be protected.¹⁴¹ Many employers have social media policies that aim to limit what their employee may publish. When such policies are found to be overly broad (that is, when they prohibit lawful activities either explicitly or by being too vague), the NLRB can order the employer to rescind or modify them.¹⁴²

Protected concerted activities provide statutory protection against reprisals for employees wishing to collectively voice concerns. This form of collective voice is independent from the employer who is required to not interfere. The American experience suggests that it can be useful in circumstances in which employees face particularly egregious working conditions and are otherwise unable to bring about change or improvements.

For example, in a leading 1962 case (*NLRB v. Washington Aluminum Co.*)¹⁴³ workers had complained about the cold temperatures in the facility during the winter. On a particularly cold day workers arrived to find the plant completely unheated and

765 (2011), which “blurred the distinction between protected group action and unprotected individual action”) and reinstating the principles from *Meyers Industries*, 268 NLRB 493 (1984).

¹³⁸ The first case to protect non-union walk-outs was *NLRB v. Washington Aluminum*, 370 US 9 (1962), where employees walked out of their workplace on a cold day because it lacked heating (without making any demands to the employer beforehand).

¹³⁹ *Epilepsy Found. v. NLRB*, 268 F.3d 1095 (2001).

¹⁴⁰ *Butler Medical Transport, LLC*, 365 NLRB No. 112 (2017).

¹⁴¹ NLRB, [“What’s the law—Strikes, Pickets and Protests”](#).

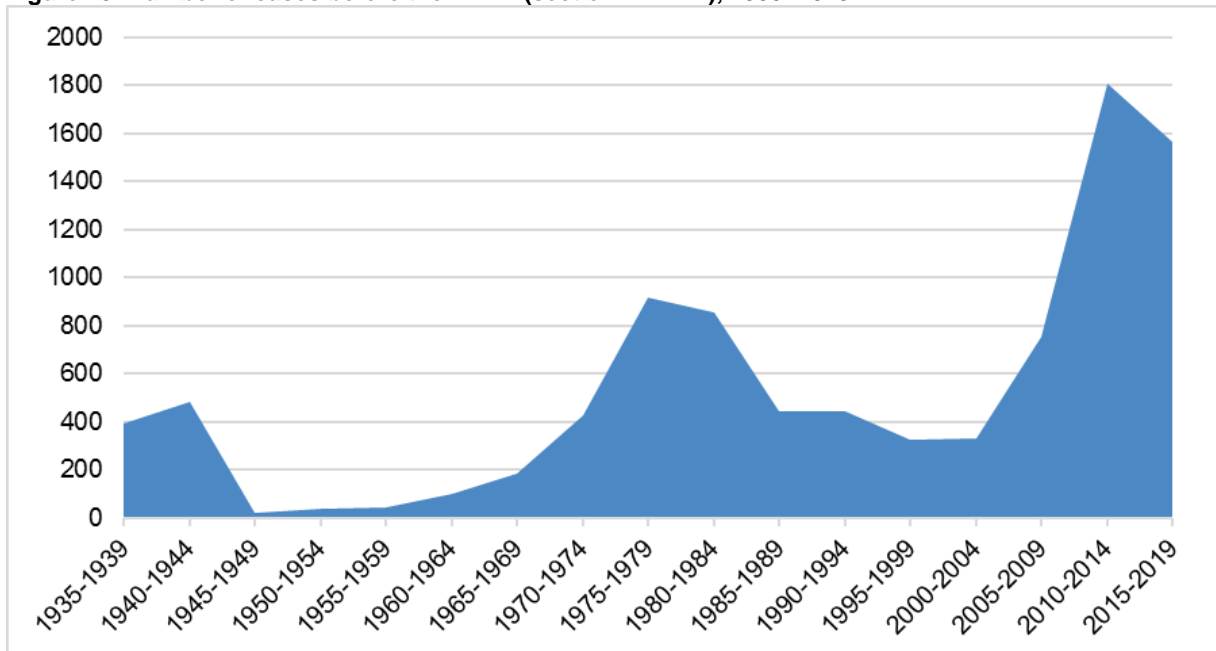
¹⁴² *Novelis Corporation*, NLRB 639 (2016). See also the NLRB Operations management memo (2012 *NLRB OM Memo* Lexis 299) for a paragraph-to-paragraph analysis of several social media policies.

¹⁴³ *NLRB v. Washington Aluminum*, 370 US 9 (1962).

seven walked out. The U.S. Supreme Court upheld the NLRB’s ruling that the company’s termination of these workers was unlawful. Similarly, in a more recent case a group of restaurant workers who had been terminated after protesting working conditions appealed to the NLRB which ordered them reinstated (Greenhouse, 2015).

A search on Lexis Advance US conducted in March 2019 yielded 8,993 NLRB cases dealing with section 7, going back as far as 1935. Although this is a small number over a period of more than 80 years, the number of cases per year has grown substantially in recent years during a time when private sector unionization has also fallen sharply. Figure 18 plots the number of cases per year over the 1935 to 2019 period. The number has increased significantly over the past two decades.

Figure 18: Number of cases before the NLRB (section 7 NLRA), 1935–2019



Source: Panel analysis of NLRB/Lexis Advance US.

However, it is important to note that the number of cases related to section 7 is likely to understate the importance of this provision because of the “threat effect”—employers who are aware of the law and previous interpretations by the courts will adjust their behaviour in order to be in compliance and avoid a costly lawsuit.

Unlike some other mechanisms, the NLRA protection for concerted activity has the advantage of having been available and used in the United States, a country that shares many commonalities with Canada’s labour relations system. It is unclear whether the collective voice achievable with the support of such a protection might develop into more sustained collective activity, such as achieving union representation. Nevertheless, adopting a protection for concerted activity might be helpful for workers in the FRPS with particularly poor working conditions.

Recommendation 25: The Panel recommends introducing a protection for concerted activities in Part III of the Code.

Our recommendation regarding this protection is two-fold. First, Part III should state that employees have a right to participate in concerted activities. Second, employees who have been dismissed, suspended, laid-off, demoted or otherwise disciplined because they have exercised their right to concerted activity should be protected against such reprisals.¹⁴⁴ Adding a protection for concerted activity to Part III would also likely enhance workers' willingness to join participatory initiatives channelled through community organizations. The Panel views this right as a potentially useful incremental change to Canada's labour relations system in the FRPS and one that would bring the Code more in line with recent Supreme Court interpretations of the guarantee of freedom of association in section 2(d) of the Canadian Charter of Rights and Freedoms.

Joint workplace committees

Joint workplace committees, also called statutory workplace committees, statutory works councils or workplace consultative committees, usually have members elected by non-managerial employees and meet with management on a variety of matters impacting employees. They can participate, to a certain extent, in management decisions. In non-union firms, they can be voluntary; in unionized enterprises, they may be established under the collective agreement. These committees can also be mandated by legislation, as is now the case for joint occupational health and safety committees in many Canadian jurisdictions.¹⁴⁵

Mandated joint health and safety committees were first introduced in Saskatchewan in 1972 and subsequently adopted elsewhere. As stated by Bernard (1995), "while these mandated joint health and safety committees are a far cry from European-type comprehensive works councils, they nevertheless constitute a significant development in North American industrial relations by taking the giant step of legislating worker participation outside of and beyond the framework of traditional collective bargaining." Joint committees have also been mandated in other areas of importance to

¹⁴⁴ Protection against reprisals is already provided for in s. 246 of Part III of the Code. Specifically, para. 246.1(1)b(iv), which provides protection against reprisals when an employee exercises any right conferred by Part III, would apply to the right to participate in concerted activities.

¹⁴⁵ *Canada Labour Code*, RSC 1985, c. L-2, s. 135-137. See also: in British Columbia, s. 125-140 of the *Workers Compensation Act*, (RSBC 1996, c 492); in Alberta, s. 16-30 of the *Occupational Health and Safety Act* (RSA 1980, c O-2) and s. 196-202 of the *Occupational Health and Safety Code* (Alta Reg 87/2009); in Saskatchewan, s. 3-22 to 3-27 of *The Saskatchewan Employment Act* (SS 2013, c S-15.1) and s. 38-49 of the *Occupational Health and Safety Regulations*, 1996 (RSS, c O-1, r 1); in Manitoba, s. 40 of the *Workplace Safety and Health Act* (RSM 1987, c W210) and s. 3.1-3.14 of the *Workplace Safety and Health Regulation* (Man Reg 217/2006); in Ontario, s. 9(2) of the *Occupational Health and Safety Act* (RSO 1990, c O.1); in New Brunswick, s. 14-18 of the *Occupational Health and Safety Act* (ANB 1983, c O-0.2); in Nova Scotia, s. 29-32 of the *Occupational Health and Safety Act* (SNS 1996, c 7); in Prince Edward Island, s. 25 of the *Occupational Health and Safety Act* (RSPEI 2004, c 42); in Newfoundland, s. 37-40 of the *Occupational Health and Safety Act* (RSN 1990, c O-3); in Yukon, s. 12 and 13 of the *Occupational Health and Safety Act* (RSY 1986, c 123); and in the Northwest Territories, s. 7.1 of the *Safety Act* (RSNWT 1988, c S-1) and s. 37-52 of the *Occupational Health and Safety Regulations* (R-039-2015).

workers such as mass layoffs, work sharing, and pension arrangements (Adams, 1986).¹⁴⁶

In contrast, several European countries mandate joint committees, often referred to as works councils, that provide workers with a broad form of collective voice in the workplace. European Union (EU) member states are required, under European Council (EC) directive, to provide for the right to establish European Works Councils in multinational companies or groups of companies that have at least 1,000 employees in the EU or the European Economic Area.¹⁴⁷

Through the works councils, workers are informed and consulted by management about the status of the company and European-level decisions that could affect employment or working conditions. A works council can be composed of employee representatives alone, as is the model in Germany, or both employee and employer representatives, as is the model in France. The latter model is the most common.

For example, in the Netherlands, under the Works Council Act, it is mandatory for employers with more than 50 employees to have a works council in place consisting of elected employees which meets with the employer at least twice a year to discuss labour standards issues as well as occupational health and safety and employment equity issues.¹⁴⁸

The role of the works council is to represent and protect the interests of employees vis-à-vis the employer. Works councils have rights, including the right to be consulted prior to major decisions and measures and the right of consent in the event of certain changes regarding terms of employment. However, works councils typically do not engage in collective bargaining over wages and do not have the right to strike. These features of employer-employee interactions are the responsibility of unions (European Trade Union Institute, 2016).

Germany is consistently one of Europe's most successful economies and has a long tradition of works councils. As a consequence, adopting German-style works councils has often been recommended in Canada and the U.S. (for example, Adams, 1986, 2008; Beatty, 1987; Weiler, 1990). However, to date no Canadian jurisdiction has adopted this approach, perhaps because of resistance from stakeholders and uncertainty about how well it would function in the Canadian context.

In addition, it is important to recognize that the relevance of works councils has declined significantly in Germany's private sector in recent years although they remain highly relevant in the public sector (Oberfichtner & Schnabel, 2017). It appears that the

¹⁴⁶ These committees or other consultative mechanisms are generally mandated in legislation other than the Code, such as pension legislation or Employment Insurance legislation in the case of the Work-Sharing program.

¹⁴⁷ [Directive 2009/38/EC](#) of the European Parliament and of the Council of May 6, 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees.

¹⁴⁸ [Works Council Act](#) (unofficial translation of the Wet op de ondernemingsraden).

same forces that have contributed to the decline in unions in the private sector in North America and elsewhere have also reduced the use and influence of works councils in Germany.

In his 2006 report, Arthurs recommended legally sanctioning through the Code the creation of workplace consultative committees (WCCs) that would facilitate consultation between employers and workers on labour standards issue in non-unionized workplaces. Arthurs stated that WCCs could be “formed by nomination, election or lottery, or volunteers or any other manner, so long as the employer does not attempt to control the outcome of the consultation through its selection of WCC members”.

Research has extensively documented the conditions for such committees to be effective.¹⁴⁹ Senior management has to be highly committed to their success. Workers’ fear of reprisal if they speak out must be alleviated by providing meaningful legislated protection. The grievance process must be independent, mutually acceptable to both parties and be binding. It must also be effective, anonymous and confidential, and must allow third-party complaints. The committee members must have sufficient training, information and meetings and inspections should be scheduled frequently. In addition, much research indicates that the size of the firm and the presence of a union are key factors to ensure that such WCCs are effective.

One possible approach for enhancing collective voice in the FRPS would be to expand the duties of the joint workplace health and safety committees required under Part II of the Code to cover issues such as the introduction of new technology in the workplace, flexible work arrangements, overtime requirements and disconnect policies. Many aspects of the workplace have potential impacts on employees’ health broadly defined. These kinds of “cross-cutting” or hybrid issues have both work arrangements and occupational health and safety dimensions and, as such, typify the blurring of lines that is taking place in today’s world of work.

While this could be a potentially promising approach, the Panel’s view is that it is premature given that existing mandated health and safety committees appear to operate well in unionized organizations but much less effectively in non-union enterprises. Based on the cautions we heard about the effectiveness and capacities of these committees in non-unionized workplaces, as well as academic research that tends to confirm this conclusion, the first step should be to better understand the barriers to effective performance of health and safety committees in non-union enterprises in the FRPS and how those obstacles could best be removed.

Recommendation 26: The Panel recommends that the Labour Program initiate research on the barriers to effective performance of health and safety committees in non-union enterprises in the FRPS and how those obstacles could best be removed.

¹⁴⁹ The bulk of studies generally examine joint initiatives pertaining to occupational health and safety. For a comprehensive review of these studies, see Yassi et al. (2013). For further details, see Walters et al. (2005); Bryce & Manga (1985); Bernard (1995); Milgate et al. (2002).

More generally, less is known about the incidence and nature of joint workplace committees and other related collective voice mechanisms in non-unionized environments in the FRPS. During our engagement activities, we did hear about a variety of workplace **consultation** mechanisms in the banking sector, where the union coverage rate is the lowest, and in large non-union courier companies. For example, one major bank runs an employee engagement survey twice a year that allows employees to provide feedback on more than 30 aspects of their current work experience and solicits their views on how the employer can foster a better workplace. The participation rate is high, with about 90% of employees participating in 2017, and the survey is managed by an independent third party. It is not clear to us, however, that these types of mechanisms provide workers with as effective opportunities to express their views collectively compared to joint workplace committees that are more institutionalized.

This benchmarking exercise could begin with large organizations, which appear to be most likely to have such voice mechanisms. It should be done in consultation with stakeholders, or by incorporating relevant questions in the next FJWS.

Recommendation 27: The Panel recommends that the Labour Program undertake a benchmarking exercise to obtain systematic information on the prevalence of joint workplace committees and related voice mechanisms, both individual and collective, among non-unionized firms in the FRPS, whether and how worker representatives are chosen to participate and how the effectiveness of these mechanisms is assessed.

Graduated models of legislated collective representation

Some experts and others contend that the *Wagner Act* model of labour relations adopted in Canada and the U.S. has failed to provide meaningful representation for the majority of employees in the private sector and that it is time to move away from this core model. One specific criticism of the model is its “all or nothing” feature: only if a majority of workers in the bargaining unit express their preference for union representation, either through card check or a secret ballot vote, will the union be certified and will workers be assured of a form of collective voice that provides meaningful involvement in workplace decisions.

Thompson (1995) and Doorey (2013) have proposed forms of graduated models of legislated collective representation. These proposals are motivated to an important extent by the existence of substantial evidence of unsatisfied demand for collective representation in many Canadian non-union workplaces. They are also motivated by research that concludes that many employees in non-union enterprises would prefer to participate in an employee organization other than a traditional union for the purposes of discussing workplace issues with management (for example, Gomez, 2016; Hawkins et. al., 2014).

Thompson's (1995) model of graduated representation has three levels. The most basic level would be the right to be informed about employer actions on specific subjects, such as hiring, layoffs and work schedules, without any requirement that the employer consult on these subjects. The next level of representation would be consultation with employees or their representatives on subjects such as redundancies and layoffs, technological change, training, promotions and transfers. In addition, compensation would be subject to consultation. Employers would retain the right to act unilaterally, but would be required to discuss these matters with an employee committee. The third level of representation would include the two previous levels and add to them requirements that committees agree to certain management actions, such as dismissals for cause, major changes in work schedules and economic matters prior to any employer actions.

Employees could obtain any of these levels of representation by free vote such as a minority of perhaps one-third for the first level, 40% for the second level and 50% plus one for the third. The right of employees to choose among these models would be guaranteed by law. Choices would be valid for a fixed period of time.

Doorey's (2013) proposed approach also involves three levels—what he refers to as “thin”, “thicker” and “even thicker” rights that are already established by the courts in Canada. The thickest rights are those associated with union certification. They would include all of the rights and obligations typically associated with the *Wagner Act* model, such as the right to engage in collective bargaining with the employer, the obligation of both parties to bargain in good faith and the right to strike in the event of an impasse.

Thin and thicker rights apply in situations in which union representation has not been attained. Thin rights include: (i) the freedom to establish, join and maintain employee associations while ‘thicker rights’ also include: (ii) protection from reprisals for doing so (i.e. the right not to be punished, terminated or interfered with by the employer when exercising a right of association; (iii) the right to make collective representations to the employer through the employee association; and (iv) the obligation on the employer to receive collective employee representations, to engage in meaningful dialogue and to consider representations in good faith.

These two models of collective voice in non-union settings are broadly similar. The principal difference is that Thompson's proposal involves several levels of representation depending on the demonstrated degree of support for collective representation among employees while Doorey's would legislate the same set of rights and obligations in all organizations without a certified union but the legislated rights might be limited to “thin” rights or extend to include “thicker rights”.

Recommendation 28: The Panel recommends that further examination and analysis be carried out on graduated models of legislated collective representation.

This examination should be carried out with extensive engagement with stakeholders. It should include an analysis of the prevalence of different rights being exercised in non-union firms in the FRPS, such as the freedom to establish, join and

maintain employee associations, the right not to be punished, terminated or interfered with by the employer when exercising a right of association, the right to make collective representations to the employer through the employee association and the obligation on the employer to receive collective employee representations, to engage in meaningful dialogue and to consider representations in good faith. As part of this examination, the Labour Program should also initiate research on the extent to which there is unsatisfied demand for collective representation in the FRPS.

Sector-specific approaches

During our engagement activities, we heard that workers in certain sectors, such as truckers and freelancers in the broadcasting industry, face specific challenges when it comes to collective voice. Workers who wish to unionize must be considered an “employee”, which is not always the case. In some instances, for example, casual employees have been excluded by the Canadian Industrial Relations Board (CIRB) from being able to join a bargaining unit because they do not share enough common interest. In addition, those who work in geographically disparate locations face more difficulty joining together to collectively express their concerns. For these and other reasons, some stakeholders offered support for a tailored approach in specific sectors where the power imbalance is hard to address.

Based on our research and engagement activities, there are two key promising approaches for providing forms of collective voice for workers in specific sectors. These approaches also have the added benefit of aiming to set sector-specific labour standards.

***Status of the Artist Act* model**

The federal *Status of the Artist Act* seeks to improve the economic, social and political status of professional artists.¹⁵⁰ Under the Act, which came into effect in 1992, a group of artists in the FRPS who are independent contractors can be recognized and certified by the CIRB as an artists’ association with the exclusive right to represent its members for the purposes of collective bargaining with producers.

Artists include authors, directors and other professionals who contribute to the creation of a production. “Artists’ association” is defined as “any organization [...] that has among its objectives the management or promotion of the professional and socio-economic interests of artists who are members of the organization, and includes a federation of artists’ associations”.¹⁵¹

“Producer” is defined as “a government institution or broadcasting undertaking... that engage one or more artists to provide an artistic production”. Producers covered include broadcasting undertakings regulated by the Canadian Radio-television and

¹⁵⁰ *Status of the Artist Act*, SC 1992, c. 33.

¹⁵¹ Section 25 of the Act specifies the procedures that artists’ associations must follow in order to be certified. These include having requirements for membership and giving regular members the right to take part and vote in meetings of the association and to participate in a ratification vote on any scale agreement that affects them.

Telecommunications Commission, federal government departments and most federal government agencies and Crown corporations that engage one or more artists to provide an artistic production. Producers may also form associations for the purpose of bargaining.¹⁵² The Act does not apply to artists in employer-employee relationships, who are covered by other statutes such as the Code if they work in the FRPS and the *Public Service Staff Relations Act* if they work for certain parts of the federal public sector.

Under the *Status of the Artist Act*, a group of self-employed artists working in the federally regulated arts sector, which includes the National Gallery of Canada, the National Film Board, the National Arts Centre, the Canadian Broadcasting Corporation and Canadian Heritage, can be recognized and certified by the CIRB as an artists' association with the exclusive right to negotiate with producers for the purpose of entering into or amending scale agreements.

The CIRB is responsible for defining the sectors of cultural activity suitable for collective bargaining and determining the certification procedure of associations of artists and producers for the purposes of collectively bargaining scale agreements.¹⁵³ The CIRB also settles labour disputes, hears complaints regarding unlawful pressure tactics and unfair practices and issues fines and other sanctions.¹⁵⁴

The Act allows for scale agreements between a producer and an artists' association which set the floor for compensation and other conditions for artists' services, while allowing for more favorable terms to be negotiated on an individual basis.¹⁵⁵ Scale agreements include many of the provisions typically found in collective agreements, including ones related to hours of work, scheduling and collective bargaining procedures. They may also include provisions unique to the particular artistic craft and ones related to licensing fees, royalties, or copyright, which are important parts of many artists' compensation.

Scale agreements are effective for the duration of the term specified unless terminated by the CIRB.¹⁵⁶ Agreements bind all members of the association at the time they are signed and must contain provisions for final settlement. The Act contains notice to bargain requirements and states that the other party must bargain in good faith and make every reasonable effort to enter into a scale agreement.¹⁵⁷ Under the Act, work slowdown, work stoppage or lockout, except in limited circumstances, are prohibited.¹⁵⁸

Approximately 25 artists' associations are currently certified by the CIRB. As part of a 2002 evaluation of the Act undertaken by Canadian Heritage, certified artists'

¹⁵² *Status of the Artist Act*, SC 1992, c. 33, s. 24.

¹⁵³ *Status of the Artist Act*, SC 1992, c. 33, s. 26.

¹⁵⁴ *Id.*, s. 47-57.

¹⁵⁵ *Id.*, s.33.

¹⁵⁶ *Id.*, s.49.

¹⁵⁷ *Id.*, s.32.

¹⁵⁸ These circumstances are: "beginning thirty days after a scale agreement expires and ending on the day that a new agreement is entered", or "beginning six months after the date of certification of an artists' association and ending on the day that a scale agreement is entered into, where there is no scale agreement binding the producer and the artists' association in respect of that sector" (s. 46).

associations indicated during interviews that they believed certification gave their organizations a legitimacy and credibility they otherwise would not have.¹⁵⁹ They also said that they valued the Act for giving them the ability to “speak with one voice” with employers and to bring economic pressure to bear. Many felt that, in the absence of the legislation, their ability to represent the interests of their members would be compromised. Similar status of the artist legislation has been adopted in Quebec (1987), Saskatchewan (2002) and Ontario (2007).^{160 161 162}

During our engagement activities, we heard about freelancers in the broadcasting industry as well as truckers who are often considered independent contractors. These workers are scattered in diverse physical locations and have limited opportunities to interact in-person. Even though some associations and unions are active in these sectors, establishing practical means to enable workers to express their views collectively is often perceived as being out of reach. Providing these workers with a framework similar to the *Status of the Artist Act* could provide a meaningful pathway to more effective collective voice.

Recommendation 29: The Panel recommends studying the feasibility of introducing an independent legal framework that would enable freelancers working for federally regulated broadcasters and truckers who are considered as independent contractors to organize collectively.

This legal framework could be similar to what is provided for in the *Status of the Artist Act*. The examination should be carried out with extensive engagement with stakeholders.

Decrees

Another sectoral approach is the decree system in place in Quebec. *The Act respecting collective agreements decrees* was enacted in 1934. Its goal was, and still is, two-fold: to modulate the competition between enterprises operating in the same sector so that it is not done on the basis of working conditions or to the detriment of employees; and to ensure that workers covered by decrees have enhanced access to better working conditions than those set out in the *Act respecting labour standards*.

Under the decree system, any party to a collective agreement may ask the Minister of Labour to extend the agreement to all enterprises and workers in a given sector and a specific territory. The Minister will evaluate the conditions set forth in the collective agreement to ensure the conditions of the decree do not have the effect of undermining employee retention and growth in employment. The Minister can then agree to extend the collective agreement by way of a decree.

¹⁵⁹ See also Choko (2017).

¹⁶⁰ *Act respecting the professional status of artists in the visual arts, arts and crafts and literature, and their contracts with promoters*, CQLR c. S-32.01.

¹⁶¹ *The Arts Professions Act*, SS 2009, c. A-28.002.

¹⁶² *Status of Ontario's Artists Act*, SO 2007, c 7, Sched 39.

The companies covered by the decree must respect its content, whether their workers are unionized or not and whether non-union employers agree or not. The decree will be specific to a trade, industry, commerce or occupation; be valid in a certain territory; and have a specified term.¹⁶³ The decree will contain provisions regarding wages and other working conditions and can prohibit strikes, lock-outs, slackening of work and picketing.¹⁶⁴ Any employer governed by the extension may grant better conditions and higher wages than established in the decree, unless the decree explicitly forbids it.¹⁶⁵ Interestingly, the Act provides for joint liability between the main undertaking and its subcontractors for all wage claims.¹⁶⁶ The Act also stipulates that successive employers are liable for any unpaid wages.¹⁶⁷

Once a decree is issued, the parties to the original collective agreement will form a committee to oversee and ascertain compliance and manage complaints. The Parity Committee, as it is called, is also responsible for considering complaints.¹⁶⁸ In addition, if the decree provides benefits to employees, the Parity Committee will be responsible for their management¹⁶⁹. The Minister oversees the activities of the Parity Committee¹⁷⁰ and may appoint additional members¹⁷¹.

Quebec unions and some employers' associations generally see the decree system as beneficial for all parties, although they have argued that some issues of concern need to be addressed. These include what they see as the parity committees' lack of transparency and accountability and their real or potential conflicts of interest, as well as the representativeness of the parties who sign the original collective agreements. Further, according to Bernier (2018), when considering whether to accept a request for an extension of a collective agreement, the Minister should examine if the union can demonstrate significant union presence and activity in the sector.

Recently, the National Assembly considered Bill 53 which was the subject of a broad consensus. The purpose of the bill was to modernize the decree system and, in particular, to address the concerns raised previously regarding transparency, accountability and a conflicts of interest. Even though the bill died on the order paper, several briefs tabled following its introduction show that most stakeholders - employers and unions—supported the proposed changes (Assemblée nationale du Québec, 2016). The Employers Council of Quebec, for instance, stated that many employers perceive more advantages than disadvantages from the decree regime (Conseil du patronat du Québec, 2016). In 2015, 14 decrees were in force in Quebec, covering 75,000 workers (for example, in the automotive services, building service employees and building materials industries).

¹⁶³ *Act respecting collective agreements decrees*, CQLR c. D-2, s. 8.

¹⁶⁴ *Id.*, s. 37.

¹⁶⁵ *Act respecting collective agreements decrees*, CQLR c. D-2, s. 13.

¹⁶⁶ *Id.*, s. 14.

¹⁶⁷ *Id.*, s. 14.1.

¹⁶⁸ *Id.*, s. 16 & 24.

¹⁶⁹ *Act respecting collective agreements decrees*, CQLR c. D-2, s. 22(m).

¹⁷⁰ *Id.*, s. 23.

¹⁷¹ *Id.*, s. 17.

Until 2000, Ontario's *Industrial Relations Act* provided a similar mechanism for establishing a schedule of wages and working conditions that was binding on all employers and employees in a particular industry across a geographical zone (Klee, 2000). The Act was designed to bring workers and employers together under the auspices of the state to establish minimum wages and work standards. The ISA was repealed in 2000. In its last years, the Act had largely fell into disuse. The ISA had narrow application and essentially only affected the garment industry.

For several observers, sectoral standards-setting mechanisms such as the decree system provide a step towards more independent standard-setting, including collective bargaining (Slinn, 2019; Bernier, 2018). In our engagement activities, we heard that several unions would support a system comparable to the one in place in Quebec. Such a legal framework could enable workers in sectors with low unionization rates to access an approach to collective voice that would be tailored to their reality. Workers' voice would be channelled through parity committees or "conferences" that enable sector-specific tripartite social dialogue. These committees would enable workers to be heard and bring their complaints forward.

Recommendation 30: The Panel recommends that further study be carried out on the advantages and disadvantages of introducing a legal framework to enable extensions of collective agreements in specific sectors in the FRPS where unionization rates are very low.

This study should include extensive engagement with stakeholders.

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Chapter 7: Cross-cutting issues

In addition to the five issues we have explored in this report, our Terms of Reference asked us to “offer advice and recommendations regarding areas for further research, analysis and/or policy development, data gaps and approaches for filling them, results measurement and other matters related to the five issues.” During the course of our work, it became evident there were, in fact, other areas that merit further consideration and recommendations. Those three issues are: enforcement and compliance; data; and monitoring and review.

Directly or indirectly, more effective approaches on these three issues will help ensure that our recommendations on the initial five issues, as well as further amendments to the *Canada Labour Code* (Code) and its regulations, can be implemented, monitored and adjusted effectively. More broadly, our recommended approach would also ensure the Labour Program can carry out its mandate by keeping Part III of the Code current and relevant in our constantly-evolving labour market and economy.

Enforcement and compliance

What’s the issue?

Ensuring compliance with laws is fundamental to any government’s approach to protecting the public interest and achieving specific policy goals, whether in the realm of labour standards, health and safety, the environment or numerous other domains. The most thoughtful and well-conceived rules will never be of any value if the regulated community does not comply with those rules, and if enforcement is scattershot.

Compliance with rules and regulations in the field of labour standards can be undermined or constrained by a number of factors, including willful disobedience or flouting of rules to gain a competitive advantage or to save on costs. Misunderstanding or even a lack of awareness of what the rules are or how they should be applied can also lead to compliance issues for employers, particularly smaller firms (Banks, 2015; Ontario, 2015). Enforcement can also be challenging due to jurisdictional issues. Confusion about whether an employer is federally or provincially regulated can pose challenges for employees seeking to make a complaint, while some employers may try to constitute themselves in the most favourable jurisdiction (Arthurs, 2006).

Consequently, approaches to ensuring compliance can be guided by the reasons for non-compliance—where education and outreach can help firms understand what the rules are, it is quite likely that compliance will increase. Similarly, employees need to know what their rights and entitlements are under Part III in order to ensure they are in fact benefiting from those rights. Knowledge and understanding of rights and

obligations, both on the employer and employee side, will assist in achieving higher levels of compliance (Banks, 2015).

Where non-compliance is rooted in willful misbehaviour, enforcement through sanctions (for example, monetary penalties) will deter such behaviour in the future both for the firm itself and for others who might consider disobeying rules.

Two fundamental purposes of Part III are to provide a level floor of minimum standards for all employees and to prevent unfair advantages for employers that do not comply with labour standards. However, traditional approaches to ensuring compliance, including those taken by the Labour Program, have relied upon complaints by employees about potential contraventions of the Code, and what can be viewed as a reactive and routine approach to inspections. This approach has significant drawbacks.

The literature shows that sectors known for extensive violations of employment standards generate only a small number of complaints (Noack et al., 2015; Weil, 2008; Weil & Pyles, 2005). Where employees are not represented by unions it is also fair to assume many will not feel comfortable making a complaint about labour standards issues for fear of retribution (Vosko et al., 2017). Consequently, and perhaps obviously, it is the most vulnerable (for example, temporary foreign workers, temporary workers) who are most impacted by non-compliance and ineffective enforcement efforts.

Employees face a range of barriers to enforcing their rights through individual complaints. For example, employees who file complaints must provide their name, which is shared with their employer during the complaints process. Studies demonstrate that, in most cases, complaints are filed by employees who no longer work for the employer targeted by the complaints because of fear of reprisals (Gesualdi-Fecteau & Vallée, 2016; Vosko et al., 2012; Vosko et al., 2017).

Sixteen percent of labour standards complaints filed with the Labour Program over the past three years were withdrawn, according to internal Labour Program data on complaints. This may be due to the investigation process in which an employee must prove their case, with documentary evidence. Some employees do not receive proper employment records from their employers and some face difficulties proving their cases in a quasi-judicial process without adequate support or representation. Other employees may face barriers in accessing information about how to file a complaint and participate in investigations or face language and literacy barriers.

The complaint-driven approach produces “relatively low levels of compliance at relatively high cost” (Vosko et al., 2017). Furthermore, this model is less effective in today’s world of work, which is driven by many factors such as complex supply chains, a growth in non-standard work and misclassification of employees as self-employed (ILO, 2017). A decline in unionization also means that more emphasis is placed on labour inspectors identifying and responding to issues in the absence of coordinated efforts at the workplace level to ensure compliance with various labour standards.

It is also vital to note that firms have a strong interest in high levels of compliance and effective enforcement efforts as well. The vast majority of firms are compliant with

labour standards legislation and it is in their interest that non-compliant firms are handled effectively and sanctioned or brought into compliance. We heard from some employers in the trucking sector, for example, that they would welcome more rigorous enforcement efforts, with a particular focus on some smaller firms in the sector.

Both firms and employees have a strong and shared interest in ensuring the labour standards that are on the books are enforced rigorously and compliance is heavily promoted, a message we heard consistently during our consultations from a broad range of stakeholders.

Given the challenges outlined above and the importance of ensuring effective compliance, a proactive approach should guide the efforts of organizations that are in charge of ensuring compliance with labour standards.

There are only 79 Labour Program inspectors across the country, and they are expected to stay on top of the operations of over 36,800 known workplaces. The Labour Program receives approximately 4,177 complaints per year on matters pertaining to labour standards. We consistently heard from workers, civil society groups and worker associations that existing compliance and enforcement efforts are proving inadequate—with one saying enforcement is “non-existent”—and that more needs to be done to enforce basic labour standards. Some workers noted that they have never seen a federal Labour Program inspector in their place of work, over the course of years of employment.

Employers and employer organizations told us that non-compliance is often due to a lack of awareness. In particular, they said that while the majority of large employers understand their obligations, smaller employers may not.

In light of these challenges, a system that continues to be complaints-based and reactive with relatively limited resources will not be able to sufficiently target high-risk offenders and serious repeat violators of labour standards.

We recognize that the Labour Program’s inspectorate is receiving new resources and powers in the coming years (see Table 9). These are important steps forward, particularly the monetary penalties which could act as a significant deterrent to non-compliance for employers.

Table 9: New authorities for inspectorate

Authority	Coming into force date
Creation of a new Part IV that provides for, amongst other things, the establishment of an administrative monetary penalties system, including what constitutes a violation, rules around violations, the review and appeal processes related to violations and numerous regulation-making authorities	Expected 2020 or later
Enhanced powers of Labour Program inspectors to issue payment orders	Expected 2019
Creation of a new Head of Compliance and Enforcement within the Labour Program with consolidated powers, duties and functions	Expected 2020 or later

We have set out some recommendations that could help in achieving better compliance with labour standards and protecting workers, particularly those who are most vulnerable, more effectively.

Approaches to enforcement in other jurisdictions

International Labour Organization

The International Labour Organization (ILO) has recommended several enforcement and inspection strategies to improve compliance across sectors. A 2017 report designed for labour inspectorates sets forth a six-step model to ease the shift from traditional enforcement models towards one of strategic compliance. The model espouses a labour inspectorate-driven approach that is both proactive and targeted, and which aims to achieve both enforcement and compliance (ILO, 2017). The six steps include exploring and assessing:

- The labour inspectorate with a focus on three key areas—its mandate, resources, and enforcement/compliance data;
- Priority issues and targets within any given sector;
- The influences on compliance or non-compliance;
- Stakeholder influence in regards to creating sustained compliance;
- A creative approach to intervention strategies, including education and targeted campaigns; and
- The introduction of a strategic compliance plan that tailors an approach which is rooted in diagnosing the causes of non-compliance and which uses a wide-range of intervention tools, including involvement of outside parties and stakeholders.

United Kingdom

In 2017, the UK government released an independent report titled *Good Work: The Taylor Review of Modern Working Practices* (Taylor et al., 2017), which assessed and offered recommendations on a number of modern working practices, including new forms of work, digital platforms, and employment rights and responsibilities. The report emphasized that the UK Employment Agency Standards Inspectorate (EAS) must protect agency workers, including reviewing the efficacy of “pay between assignments” arrangements, and recommended giving the EAS power to impose civil penalties on employers that are non-compliant, instead of relying on prosecution.

The SAFERjobs initiative, which was launched in 2008, aims to protect workers’ safety and promote workers’ rights, and is a joint initiative of industry associations, law enforcement and government agencies. SAFERjobs partners generate worker-led intelligence which assists in proactive enforcement and compliance.

Australia

The Australian Fair Work Ombudsman (FWO) is an independent statutory agency that provides education and assistance, as well as ensures compliance with the *Fair Work Act*, and conducts inspections and enforcement. Their compliance model

includes a combination of complaints investigations coupled with public education campaigns, as well as fostering regular collaboration and consultation with employer and employee organizations.

The FWO recently engaged in a range of exploratory activities which were designed to understand and address the systemic causes behind non-compliance, with the long-term goal being to establish a “culture of compliance” within the workplace (Government of Australia, 2017). The methods employed included the development of targeted campaigns and stakeholder assistance in order to target vulnerable workers susceptible to workplace exploitation; anonymous reporting systems; and intelligence-led campaigns and detailed inquiries designed to address non-compliance in high-risk sectors.

What we heard

Issues related to compliance and enforcement were raised a number of times during the course of the engagement activities.

One union told us that no enforcement system that relies on individual employees to bring forward complaints will operate effectively without union support. They said that, while proactive enforcement should be a focus, its effectiveness largely depends on the will of the government to expend resources to fund it. In terms of awareness, we heard that it is hard to find information about the Code on the Government of Canada’s website. We also heard that there are barriers for workers trying to access officials in the Labour Program who can answer their questions or assist them with filing a complaint. Indigenous organizations told us that their communities do not have the resources to educate workers about labour standards.

Several workers’ representatives have also told us that the information about federal labour standards as well as the process to lodge complaints is opaque and hard to access.

We heard a range of views from compliance and enforcement staff with the Labour Program, which helped to inform a number of our recommendations from the perspective of those who are on the ground and see how the “rubber meets the road” in terms of interpretation of difficult issues, how firms and workers perceive and interpret standards and a range of other key insights.

Enforcement staff told us that triangular employer-employee relationships are sometimes mediated through shell companies that have no assets but hire and pay the employee, while day-to-day control over the employee’s work is controlled by the real company.¹⁷² The concept of “related employers” could help with payment collection in these types of cases. This approach has typically only been applied in the longshoring

¹⁷² For further information on how the Labour Program interprets tripartite employment relationships, see Interpretation and Policy Guideline, [Determining the “Real Employer” – IPG – 068](#).

industry which historically has had multiple employers due to the nature of work (though few complaints are made, due to the heavily unionized nature of the sector).

In addition to raising the issue of a lack of awareness among small employers in particular, employers also expressed concern about regulatory burden. One group of employers told us that, as all levels of government layer on new regulations, businesses have to contend with more compliance and reporting requirements. They cautioned that if the burden is too high, employers will stop hiring people directly for certain types of work and will use a service provider instead.

We heard some ideas for how to address issues around compliance and enforcement. One union recommended the development of strategic enforcement programs and sector mapping. One employer organization recommended taking an “education before enforcement” approach. One worker association recommended a plain language guide to federal labour standards. We also heard a suggestion for making online information more accessible and easy-to-understand and removing barriers to accessing officials (for example, by extending service hours so workers can call the Labour Program outside of typical work hours). To address the regulatory burden, one group of employers recommended a “smarter” approach to regulation that would address inconsistencies between federal departments and different jurisdictions, among other things.

Several agreed that a prevailing “information gap” and lack of clear statutory language about federal labour standards created awareness problems that may lead to systemic violations, and that clearer language and the development of resources and guidelines for employers and workers could help address this challenge.

Conclusions and recommendations

The Panel notes that the Labour Program must have adequate resources to enforce labour standards—recent investments in this regard are promising, but must be sustained and potentially enhanced to ensure that the Program can properly deal with complaints and undertake more proactive enforcement and compliance-related activities.

Recommendation 31: The Panel recommends that the Labour Program, and in particular the Compliance, Operations and Program Development Branch, take the following steps to improve compliance, enforcement and operations:

- a. Enhance ability to collect on payment orders, particularly through partnership with the Canada Revenue Agency (CRA) to focus on pursuing corporate entities rather than particular bank branches/accounts;
- b. Recognize the concept of “related employers” for the purpose of collection on payment orders;
- c. Provide comprehensive interpretation guidelines and tests for employers and employees; in particular, on employer, employee, employment relationship, and jurisdiction;
- d. Develop online tools to help employers and employees determine jurisdiction and whether a worker is an employee or independent contractor for the purposes of labour standards, modelled on the holiday pay calculator;
- e. Ensure client-facing service delivery is streamlined, easy to use and accessible for employees who may find the complaints process confusing or overly bureaucratic; for example, explore how inspectors can contact workers and employers via email and not just postal mail (as is currently the case), in order to accelerate case-processing times and allow for more time to investigate complaints;
- f. Make the Labour Program’s online presence easier to navigate and understand;
- g. Re-emphasize the need for more proactive education and information campaigns about labour standards at workplaces across Canada, with a focus on higher-risk sectors and more vulnerable workers;
- h. Prioritize greater information-sharing between federal agencies (for example, CRA, other parts of ESDC), as well as provincial governments, to identify higher-risk employers and workplaces in order to more efficiently deploy enforcement resources; and
- i. Provide financial support to third-party advocates, such as community legal clinics and non-profit worker advocate organizations.

Data

Policy research and analysis—and future policy development—on the five issues we examined face significant data challenges. In carrying out our mandate to provide the Minister with evidence-based advice and recommendations, we were limited in our ability to accurately assess the nature of the FRPS and changes over time, as well as the impacts of potential policy measures on employers, workers and the Canadian economy. Similarly, the Labour Program is limited in its ability to analyze and monitor the FRPS, key current and emerging federal labour standards issues and the outcomes of the many recent amendments to Part III of the Code.

Statistics Canada surveys

There are two Statistics Canada surveys that are particularly useful for information about the universe of employers and employees covered by Part III of the Code: the Labour Force Survey (LFS) and the Federal Jurisdiction Workplace Survey (FJWS)

Labour Force Survey

The LFS is one of Statistic Canada's flagship household surveys and is the basis for authoritative estimates of employment by industry and occupation at the regional and national levels. The LFS provides detailed information on demographic factors such as age, gender, educational attainment, immigrant status and Aboriginal status, as well as wages, hours of work, full-time versus part-time employment, unionization rates, employer size and various dimensions of non-standard work arrangements such as casual, contract, temporary and seasonal employment. It also has a large sample size and is carried out monthly, with microdata files that are released very soon after the survey is carried out, and so provides high quality, timely information. The scope of the questions in the survey has broadened significantly since it was first administered in 1945, with substantial improvements being made since the mid-1990s with the addition of questions about some types of non-standard work, immigrant status and Indigenous peoples.

The LFS provides the best available picture of the overall Canadian workforce, especially on the demographic front. Unfortunately, in certain ways it has not kept up with today's workplace realities nor, as we learned through our work, some of the current and forward-looking interests of policy makers, researchers and stakeholders. From the perspective of Part III in particular, there are critical gaps.

The LFS does not identify whether employed respondents work in workplaces covered by Part III. As a result, the FRPS must be approximated by using the LFS industry classification system to identify industries that are likely to be federally regulated. This is especially problematic when an industry, such as trucking, is both federally and provincially regulated, because data derived using this methodology are not always exclusive to the FRPS.

While the LFS does provide some information about self-employed workers, it does not differentiate between self-employed workers who are dependent and independent contractors, a key issue related to the coverage of Part III.

Recommendation 32: The Panel recommends that the Labour Program work with Statistics Canada to add a “FRPS identifier” to the monthly LFS. This would not require adding a question to the LFS questionnaire, which is already comprehensive. Instead, the FRPS identifier could be a derived variable.

Examples of derived variables include Industry and Class of Worker, which identifies whether employed respondents are in the public or private sector. Employed respondents are asked “Who did (the respondent) work for?” Statistics Canada then determines the appropriate Industry using its Business Register, a regularly updated list of all employers in Canada, as well as internal protocols for industry classification.

The proposed FRPS identifier would be added to the Class of Worker variable, separating the Private sector identifier into FRPS and Provincially Regulated Private Sector. One issue that will arise is that employees of federal Crown corporations are covered by Part III of the Code, but classified as public sector by Statistics Canada. A mechanism for addressing these differences would need to be developed.

The FRPS identifier would enable higher quality, timely empirical research on the FRPS and the consequences of labour and labour market policies. It would be valuable for academics and other researchers, stakeholders and the Labour Program.

Federal Jurisdiction Workplace Survey

The FJWS is a partial response to the limitations of the LFS. It is an occasional survey of FRPS employers conducted by Statistics Canada for the Labour Program. First conducted for 2004 and subsequently for 2008 and 2015, the FJWS collects data on the workplace and workforce characteristics of FRPS employers, excluding governance employers on First Nation reserves.

The FJWS is a survey of FRPS employers and is not administered to workers or employees. It generally asks about industrial sector, the numbers and types of employees, the wages and benefits offered to employees and collective bargaining agreement coverage, although the survey questions have varied over the three cycles.

The FJWS has led to better data gathering in relation to the FRPS. However, it too has important gaps.

Given the target population is FRPS employers, the survey collects limited socio-demographic information about employees, including those in non-standard work. Further, the available information is difficult to disaggregate due to confidentiality requirements related to the size of the population surveyed, posing significant challenges for gender based analysis plus (GBA+) of the FRPS. Information on Indigenous employees and employers is a particular gap.

Due to its infrequent nature, the FJWS does not easily permit comparisons over time nor a longitudinal analysis, and is not always consistent in its approach. For example, the most recent 2015 FJWS does not provide a provincial or territorial breakdown, and the 2008 FJWS combined territorial data with the provinces of Alberta and B.C. In addition, the survey does not collect information from First Nations reserves although certain governance activities are subject to Part III of the Code. As such, the Panel was limited in its ability to accurately consider the FRPS in relation to First Nations communities and Canada's three territories.

With a few exceptions, the FJWS only considers employees directly employed by federally regulated businesses.¹⁷³ Like the LFS, the FJWS collects limited information on non-standard workers who are not in a direct employee-employer relationship. While the survey does cover self-employment in general, it does not capture its diverse forms, which comprise an important aspect of non-standard work, and therefore cannot provide specific data in relation to gig/platform work, independent/dependent contractors and freelancers.

The FRPS collects limited information about the prevalence of temporary help agencies in the FRPS.

Recommendation 33: The Panel recommends that the FJWS be conducted on a sustained and regular basis (for example, every two to four years) in order to permit higher quality, longitudinal analysis.

Recommendation 34: The Panel recommends that the scope of the existing FJWS be broadened to include workers as well as employees in the FRPS.

Broadening the scope of the FJWS would provide important insight into an under-examined perspective on working conditions in the FRPS, and richer data for analysis owing to the ability to link together responses across questions at the individual level. This would include the ability to link demographic information with working conditions to better support GBA+ analysis specific to the FRPS. While linking data from employers and employees is costly and inevitably raises sample size and confidentiality concerns that would need to be confronted, Statistics Canada has previous experience in this area (such as the Workplace and Employee Survey) that could be built upon.

Recommendation 35: The Panel recommends that a special supplement to the LFS be commissioned on an annual basis to provide more detailed insight into key issues related to current workplace realities in the FRPS and Canada overall.

The special supplement would examine issues such as different types of work arrangements, the decoupling of work from the physical workplace and, as suggested in

¹⁷³ The exceptions include questions which were asked in the 2015 FJWS about interns and the number of temporary workers paid through a temporary help agency over the calendar year; and in the 2004 FJWS, questions asked about the number of owners who worked in a company.

an earlier chapter, collective voice mechanisms in non-unionized workplaces. The supplement would have particular benefit for forward-looking policy and research work if it addressed issues such as disconnecting from e-communications after work hours where, as the Panel found, there are signs of an emerging policy issue. A stronger evidence base would assist with monitoring this development.

Administrative data

The Panel benefited greatly in its work from access to administrative data derived from the Labour Program's compliance and enforcement activities. Access to this data and the ability to discuss it on several occasions with Labour Program officials gave us important "on the ground" insights into the five issues.

Recommendation 36: The Panel recommends that the Labour Program consider how broader access to administrative data could be provided, such as through the Government of Canada Open Data portal, for use by researchers, stakeholders and others with interest in federal labour standards, within the confines of confidentiality rules.

Making administrative data available to a wider audience could also have the indirect benefit of helping boost the Labour Program's capacity to carry out its policy and operational responsibilities, especially if combined with effective knowledge translation strategies.

Qualitative Data

While quantitative data are strong indicators of certain aspects of the labour market and the workplace, qualitative data should not be overlooked. Workers' stories can and should be seen as powerful aspects of labour policy research and analysis, especially when considering under-examined or emerging aspects of labour policy and hard-to-contact or vulnerable workers, as the Panel found through its own engagement activities. Qualitative research should also entail the sharing of research and best practices among or within government departments and outside organizations. This is especially important in the context of qualitative research involving vulnerable workers, especially those who are non-unionized, where the challenges of connecting with potential research subjects can be significant and values and ethics issues can arise.

Recommendation 37: The Panel recommends that the Labour Program play a leadership role in developing methodologies for gathering and analyzing qualitative data on labour standards issues, including from non-unionized and vulnerable workers; using these methodologies to support policy and program work; and identifying best practices and sharing them with others within and outside government.

GBA+

The Panel was asked in its terms of reference to apply a GBA+ lens throughout its work. Assessing the different ways that diverse groups of people experience the

application of federal labour standards and are affected by changes is a critical part of doing good evidence-based policy work and advancing gender equality. For the Panel, this was a challenging task given the limited ways that existing data related to the five issues can be disaggregated (for example, due to sample size, or the instrument used to collect information).

Recommendation 38: The Panel recommends that the need to undertake GBA+ analysis be a priority consideration in future steps taken by the federal government to address the data gaps identified by the Panel.

We also make the observation that the need to have more, better quality data related to First Nations and more generally Indigenous people across the country, in particular, is pressing. It is pressing not just for evidence-based policy advice but also for the Indigenous people, organizations and communities that Part III aims to protect.

Monitoring and review

The federal government took important steps in 2018 to modernize Part III of the Code to better reflect the realities of the 21st century workplace and address issues faced by workers and employers. We hope that this report and the recommendations of the Panel can also help address the five issues we were asked to explore. However, it is important that these reviews are conducted regularly and that results are used to inform policy and legislative development in a regular fashion.

Ad hoc reviews and those occurring infrequently with large gaps of time since the last such exercise run the risk of the Code falling significantly out of step with the realities of the labour market, and not keeping pace with the types of issues facing employers and workers. As the prospect of technological change driven by artificial intelligence and further automation looms, there is a strong likelihood that the pace of change in Canada's economy and labour market will continue to accelerate. This only underscores the critical nature of regular, periodic reviews of the Code to ensure its provisions are updated. Regular reviews would also benefit stakeholders, both employers and workers, who would be less likely to face radical shifts in legislation and regulation driven by long periods between reviews or to deal with lengthy phases in which key issues go unaddressed.

The Panel believes it is critical that a regular, independent review process be established to ensure newly-introduced standards—including any stemming from this report—are meeting policy objectives, are interpreted as intended, and are complied with and effectively enforced.

Recommendation 39: The Panel recommends that the federal government regularly review progress on modernizing federal labour standards and protecting those in precarious forms of work while maintaining a level playing field for employers. Such a review should be conducted every five years.

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Annex A: List of recommendations

Recommendation 1: The Panel recommends that a freestanding federal minimum wage be established and adjusted annually.

Recommendation 2: The Panel proposes two options for setting the federal minimum wage:

- a. A common federal minimum wage in all provinces, benchmarked at 60% of the median hourly wage of full-time workers in Canada; and
- b. A minimum wage set at 60% of the median wage in each province.

Recommendation 3: The Panel recommends that the federal minimum wage be adjusted annually based on data from the Labour Force Survey (LFS) regardless of which approach to setting the federal minimum wage is pursued.

Recommendation 4: The Panel recommends that in the case of economic circumstances occurring in which 60% of the median wage does not keep up with increases in the cost of living, the minimum wage be increased by the CPI.

Recommendation 5: The Panel recommends establishing a “low wage” commission to research minimum wage policy and its impacts across Canada on employers, employees and the economy.

Recommendation 6: The Panel recommends that Part III define the concept of “employee”.

Recommendation 7: The Panel recommends that a process be established to review existing regulations under Part III that set exemptions, exceptions and special rules.

Recommendation 8: The Panel recommends that section 168 of Part III of the Code be clarified to ensure that an employer cannot rely on a greater benefit with respect to one standard to offset a lesser benefit with respect to another standard.

Recommendation 9: The Panel recommends that a joint and several liability provision be added to Part III.

Recommendation 10: The Panel recommends adding a positive duty to comply with applicable labour standards when contracting takes place between a federally regulated undertaking and provincially/territorially regulated entities.

Recommendation 11: The Panel recommends that the Labour Program collaborate with provincial and territorial counterparts to develop clear guidelines to assist in the correct determination of jurisdiction for labour standards.

Recommendation 12: The Panel recommends that a definition of “continuous employment” that includes periods of layoff or interrupted service of less than 12 months be included in Part III.

Recommendation 13: The Panel recommends that a pilot project be launched to explore possible changes to Part III and the regulations made under it to address issues related to misclassification, pay and record-keeping practices and other relevant matters in the federally regulated trucking industry.

Recommendation 14: The Panel does not recommend that there be a statutory right to disconnect at this time.

Recommendation 15: The Panel recommends that employers subject to Part III consult with their employees or their representatives and issue policy statements on the issue of disconnecting.

Recommendation 16: The Panel recommends that Part III include a statutory definition of “deemed work”.

Recommendation 17: The Panel recommends that Part III provides a right to compensation or time off in lieu for employees required to remain available for potential demands from their employer.

Recommendation 18: The Panel recommends that further research be undertaken to evaluate the impacts of increases in work intensification through e-communications and related productivity requirements in the FRPS.

Recommendation 19: The Panel recommends the inclusion of a clear definition of employee in Part III of the Code (as outlined in the chapter on non-standard work).

Recommendation 20: The Panel recommends further consultation and awareness raising to ensure that part-time employees in the FRPS are, where appropriate, being enrolled in employer-sponsored pension plans.

Recommendation 21: The Panel recommends that the federal government, led by the Canada Revenue Agency, review what it can do to help Canadians working in the FRPS, and more broadly, with the issue of lost pensions.

Recommendation 22: The Panel recommends that the federal government explore, through stakeholder consultations and research, the potential development of a portable benefits model for workers in the FRPS.

Recommendation 23: The Panel recommends further study of legal barriers in Part I of the Code to union representation in the FRPS.

Recommendation 24: The Panel recommends providing funding to community organizations that facilitate participatory initiatives outside the workplace.

Recommendation 25: The Panel recommends introducing a protection for concerted activities in Part III of the Code.

Recommendation 26: The Panel recommends that the Labour Program initiate research on the barriers to effective performance of health and safety committees in non-union enterprises in the FRPS and how those obstacles could best be removed.

Recommendation 27: The Panel recommends that the Labour Program undertake a benchmarking exercise to obtain systematic information on the prevalence of joint workplace committees and related voice mechanisms, both individual and collective, among non-unionized firms in the FRPS, whether and how worker representatives are chosen to participate and how the effectiveness of these mechanisms is assessed.

Recommendation 28: The Panel recommends that further examination and analysis be carried out on graduated models of legislated collective representation.

Recommendation 29: The Panel recommends studying the feasibility of introducing an independent legal framework that would enable freelancers working for federally regulated broadcasters and truckers who are considered as independent contractors to organize collectively.

Recommendation 30: The Panel recommends that further study be carried out on the advantages and disadvantages of introducing a legal framework to enable extensions of collective agreements in specific sectors in the FRPS where unionization rates are very low.

Recommendation 31: The Panel recommends that the Labour Program, and in particular the Compliance, Operations and Program Development Branch, take the following steps to improve compliance, enforcement and operations:

- a. Enhance ability to collect on payment orders, particularly through partnership with the Canada Revenue Agency (CRA) to focus on pursuing corporate entities rather than particular bank branches/accounts;
- b. Recognize the concept of “related employers” for the purpose of collection on payment orders;
- c. Provide comprehensive interpretation guidelines and tests for employers and employees; in particular, on employer, employee, employment relationship, and jurisdiction;
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- f. Make the Labour Program’s online presence easier to navigate and understand;

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Recommendation 38: The Panel recommends that the need to undertake GBA+ analysis be a priority consideration in future steps taken by the federal government to address the data gaps identified by the Panel.

Recommendation 39: The Panel recommends that the federal government regularly review progress on modernizing federal labour standards and protecting those in precarious forms of work while maintaining a level playing field for employers. Such a review should be conducted every five years.



Annex B: Terms of reference

Context

Federal labour standards were established in the 1960s, when workers could often expect a full-time, secure job with benefits and decent wages. Over 50 years later, ever-increasing global competition, rapid technological changes and socio-demographic shifts have fundamentally altered the way businesses operate and the way Canadians work. Federal labour standards have not kept up.

Today, many Canadians struggle to support their families in part-time, temporary and low-wage jobs, often working several jobs to make ends meet and continually juggling their responsibilities at work and outside of work. They may also lack access to labour standards protections, as well as benefits, have unpredictable incomes and worry about losing their job and finding the next one. Though employees in the federally regulated private sector are more likely to be covered by a collective agreement and have full-time, permanent employment than those in industries regulated by the provinces and territories, still about two-thirds (or 610,500) are non-unionized and rely on federal labour standards for their basic protections and about 160,000 are in temporary employment or other forms of non-standard work.

The Government of Canada is committed to modernizing federal labour standards to reflect the realities of the 21st century workplace and protect vulnerable Canadians across the country working in the federally regulated private sector. As a first step, Part III of the *Canada Labour Code* was amended in 2017 to introduce a right to request flexible work arrangements; create new unpaid leaves; place limits on unpaid internships; and strengthen compliance and enforcement. These amendments will come into force as soon as necessary regulations are in place.

As a second step, the Minister of Employment, Workforce Development and Labour (hereinafter the Minister) held consultations between May 2017 and March 2018 on what a robust and modern set of federal labour standards should include. As noted in the *What We Heard* report released in August 2018, the consultations identified a number of areas, such as scheduling, eligibility periods, personal leave, equal treatment, misclassification and termination of employment, where there was sufficient evidence and consensus for the Government to move forward with proposed legislative changes. These changes were included in the *Budget Implementation Act, 2018, No. 2*, which was tabled in the House of Commons on October 29, 2018 and received Royal Assent on December 13, 2018.

At the same time, the consultations revealed that further study was warranted on five important issues related to the changing nature of work and the future of workers in the federally regulated private sector:

- Work-related e-communications outside of work hours;
- Labour standards protections for workers in non-standard work;
- Access to and portability of benefits for those who change jobs frequently or who spend part of their working life in non-standard work;
- The ability of non-unionized workers to join together to express their views and have a say in decisions affecting them (“collective voice”); and
- The federal minimum wage.

These issues merit further study because less evidence is available and there are divergent views on possible policy responses. They also raise fundamental questions about the principles underpinning federal labour standards.

Mandate

The Minister has established an independent Expert Panel to:

- Examine the five issues identified in the 2017–2018 consultations as meriting further study;
- Hold consultations with stakeholders, experts, the public and others on the issues; and
- Submit a report to the Minister providing evidence-informed advice and recommendations regarding the issues and any related matters by June 30, 2019.

The Expert Panel will operate at arm’s-length from the Government and provide independent advice. It will operate transparently and in a manner reflecting the Government of Canada’s policy on Open Government.

Composition

The Expert Panel consists of 7 members, including a Chair, named by the Minister. Members will:

- Contribute their expertise and personal knowledge to the work of the Panel and participate on the Panel in a personal capacity and not as representatives of any organizations with which they are associated; and
- Work collaboratively and, to the extent possible, seek to reach consensus.

The Chair is responsible for overall management of the Expert Panel and will:

- Chair meetings of the Panel and guide members towards consensus when making decisions;
- Lead development and drafting of the Panel’s report;
- Act as a public spokesperson for the Panel; and
- Act as the principal liaison for the Panel with the Secretariat supporting it and provide the Secretariat with regular updates on the Panel’s work.

In the event that any member of the Expert Panel resigns or is unable to continue as a member, the remaining members will constitute the Expert Panel unless the Minister decides to replace the member.

Issues

The Expert Panel will examine the following five issues.

Federal minimum wage

For more than 20 years, the federal minimum wage has been pegged in the *Canada Labour Code* to the minimum wage rate in the province or territory in which the employee is usually employed. Should this approach be maintained or should a freestanding federal minimum wage be reinstated? If a freestanding rate were to be adopted, how should it be set, at what level and who should be entitled to it?

Labour standards protections for non-standard workers

Labour standards generally apply to workers in traditional employment relationships. Today, however, many workers are engaged in non-standard employment and may not have access to these protections. In this context, who should be covered by federal labour standards? What protections should apply to non-standard workers in the federally regulated private sector?

Disconnecting from work-related e-communications outside of work hours

In today's world of work, mobile technologies and other factors, such as alternative work arrangements, the 24/7 economy, gig work and organizational cultures have blurred the boundaries between what it means to be "at work" and not "at work". In this context, should limits be set on work-related e-communications outside of work hours in the federally regulated private sector? If so, how should this be done and why?

Benefits: access and portability

Benefits, including statutory minimums such as annual vacations and leaves as well as employer-provided benefits such as medical and retirement savings plans, make crucial contributions to the personal and financial security of Canadian workers. Access to employer-provided benefits has traditionally been based on full-time long-term employment with one employer. Workers who change jobs frequently and those who spend part of their working life in non-standard work may not have access to them. Should the federal government take steps to enhance access to employer-provided benefits in the federally regulated private sector and/or improve portability? If so, what measures should be considered?

Collective voice for non-unionized workers

Judicial rulings, continued decline in unionization, new types of work arrangements and employer efforts to boost productivity are shining the spotlight on the

ability of workers to join together to express their views and have a say in decisions affecting their working conditions. To what extent are there gaps in opportunities for collective voice for non-unionized workers on labour standards issues in the federally regulated private sector? How could they be addressed?

In examining these issues, the Expert Panel will:

- Consider the results of research and analysis from a range of sources, including research and analysis that it undertakes itself and/or is undertaken on its behalf;
- Identify and examine relevant approaches in Canada and other jurisdictions, including innovative and promising practices; and
- Apply a Gender Based Analysis+ (GBA+) lens throughout its work.

Consultations

The Expert Panel will consult and engage with workers (both employees and non-employees), employers, experts, civil society groups and Canadians, especially those with experience in the federally regulated private sector, in order to deepen its understanding of the five issues and receive feedback on potential recommendations, as well as to foster broader dialogue and strengthen the evidence base for future policy-making.

It will also ensure that meaningful consultation opportunities are accessible to different groups, including people with disabilities, Indigenous peoples and low-wage workers.

Report

The Expert Panel will submit a report to the Minister by June 30, 2019 designed to inform the Government's thinking about next steps to modernize federal labour standards with respect to the five issues.

The report should provide an overview of the Expert Panel's work (including how it has applied GBA+ analysis), outline the Panel's key findings and present its advice and recommendations to the Minister.

The Expert Panel's advice and recommendations should address, with justifications, the extent to which each of the five issues is of concern in the federally regulated private sector, appropriate legislative and/or non-legislative responses and key considerations from an implementation standpoint. The Panel may also wish to offer advice and recommendations regarding areas for further research, analysis and/or policy development, data gaps and approaches for filling them, results measurement and other matters related to the five issues.

If the Expert Panel is not able to reach consensus on its advice and recommendations, this should be noted in the Panel's report, with accompanying reasoning.

Secretariat

The Expert Panel will be supported by a Secretariat housed within the Labour Program of Employment and Social Development Canada. The Secretariat will provide assistance with respect to operational activities, as well as research and consultation.



Annex C: Biographies of Panel members

Sunil Johal (Chair)

Sunil Johal is Policy Director at The Mowat Centre, a public policy think tank at the University of Toronto. He leads the centre's research activities, manages the policy team and teaches a variety of executive education courses. He is frequently invited to advise governments and international organizations about disruptive technologies and regulatory and policy issues.

Sunil has contributed expert commentary and advice on policy issues to a range of organizations and media outlets, including the G20, World Economic Forum, Brookings Institution, *The Globe and Mail*, *The Toronto Star*, CBC, *The Washington Post*, *The Guardian*, the National Governors Association, the Organisation for Economic Co-operation and Development (OECD), senior elected and bureaucratic officials from all three levels of government in Canada, and many domestic and international private sector firms.

Sunil is a member of Service Canada's Service Advisory Committee, the Scientific Advisory Committee of the Future of Work in the Global South initiative, the Climate Blueprints Advisory Committee of the Metcalf Foundation, and is a Fellow with the Public Policy Forum and Brookfield Institute. He has been a member of the board of directors of the Toronto Region Immigrant Employment Council since 2015.

Before joining the University of Toronto in 2012, Sunil was a director with the Ontario Ministry of Economic Development and Innovation where he led the government's efforts to modernize services to business and its regulatory environment. He has also held senior executive and policy roles with Ontario's Cabinet Office and Ministry of Finance and the Treasury Board of Canada Secretariat.

Sunil has been a lecturer with Ryerson University's Department of Politics and Public Administration since 2009 and is a faculty member of the Maytree Policy School. He holds degrees from the London School of Economics, Osgoode Hall Law School and the University of Western Ontario.

Richard Dixon

Richard Dixon is a retired senior human resources and labour relations executive with over 35 years' experience. He held VP roles at Nav Canada, CN Rail and Unisource Canada as well as senior roles at Abitibi-Price.

He has his Honours BA from King's University College, University of Western Ontario and his Master of Industrial Relations from the University of Toronto. He also completed his Institute of Corporate Directors designation. He has served on a

multitude of different groups, including being the Chair of the Federally Regulated Employers—Transportation and Communications (FETCO), past chair of the Ashbury College Board of Governors, and Director at the Newfoundland Teachers Pension Plan Corporation. He has also been an adjunct professor at Queen’s University’s Master of Industrial Relations Program.

Richard’s experience includes general human resources issues, innovation in benefit programs, creative pension plan designs, effective training and development initiatives, and building progressive and respectful labour management relations.

Over the years, Richard’s interest in mental health in the workplace has produced award winning programs. His knowledge was built from his time on the Mental Health Commission of Canada’s Workforce Advisory Committee as well on the board of Peer Accreditation Canada.

Mary Gellatly

Mary Gellatly is community legal worker in the Workers’ Rights Division at Parkdale Community Legal Services (PCLS) in Toronto. Mary is a clinical instructor in employment law for the PCLS intensive law program in partnership with Osgoode Hall Law School. She has over 25 years of experience in the area of workers’ rights and migrant workers’ rights. She was one of the co-founders of the Workers’ Action Centre.

Mary conducts community action research with the Workers’ Action Centre and develops labour policy. She has also published several articles and policy reports, including, “Still Working on the Edge: Building Decent Jobs from the Ground Up” (Workers’ Action Centre, 2015); “Unpaid Wages, Unprotected Workers: A Survey of Employment Standards Violations” (Workers’ Action Centre, 2011); and “Working on the Edge” (Workers’ Action Centre, 2007). She has also co-authored research reports on labour standards, including “New Approaches to Enforcement and Compliance with Labour Regulatory Standards” (Law Commission of Ontario, 2011).

Mary is co-lead of Closing the Employment Standards Enforcement Gap: Improving Protections for People in Precarious Jobs, a collaborative research initiative of 16 cross-sectoral partner organizations, including researchers from seven Ontario universities. Funded by the Social Sciences and Humanities Research Council of Canada, this five-year project seeks to inform effective employment standards policies in Ontario.

Dalia Gesualdi-Fecteau

Dalia Gesualdi-Fecteau is a member of the Quebec Bar, a professor with the Faculty of Political Science and Law at the Université du Québec à Montréal (UQAM) and a researcher with the Interuniversity Research Centre on Globalization and Work (CRIMT). Recipient of the Association Henri Capitant award for best doctoral dissertation as well as the prize for the best thesis in the social sciences at the Université de Montréal, Dalia takes a sociolegal approach to study labour policy and the

access to justice issues. She began her career as a lawyer with the Legal Affairs Branch of Quebec's Labour Standards Commission (now the Labour Standards, Equity and Occupational Health and Safety Commission). From 2005 to 2012, she represented non-unionized employees and litigated landmark cases in front of Quebec's Court of Appeal and the Supreme Court of Canada.

Dalia's current research examines the architecture of labour laws and institutions and non-standard work and employment standards enforcement. She also leads a hub on the human and financial costs of justice through the Accessing Law and Justice (ADAJ) consortium. Her recent publications focus on labour inspection, the nexus between immigration policies and working conditions and work time boundaries.

Kathryn A. Raymond, Q.C.

Kathryn A. Raymond, Q.C. is a senior partner with BOYNECLARKE LLP in Dartmouth, Nova Scotia. Kathryn has over 30 years of experience in legal practice in administrative law and employment law, in which she represents the interests of both employers and employees. Kathryn has been awarded the designation of Queen's Counsel in the practice of law.

Kathryn also has a significant practice as an adjudicator of workplace-related disputes as a labour relations arbitrator/mediator, as a workplace investigator and through various adjudicative appointments as a neutral. These include, among others, as a member of the Nova Scotia's Minister of Labour's List of Arbitrators for labour relations cases and as a Nova Scotia Human Rights Board of Inquiry hearing human rights complaints. She gained extensive practical experience in applying and interpreting labour standards legislation as a Vice-Chair of the Nova Scotia Labour Board.

Kathryn is alive to the differing perspectives to be considered among stakeholders in developing legislation and policy, having been involved in statutory and regulatory development in Nova Scotia and policy development with both the Nova Scotia and Ontario governments. In particular, Kathryn worked for a time in the 1990s in the public sector as in-house counsel to the Ontario Ministry of Health and for over 25 years in the public healthcare sector in Nova Scotia. An advocate of effective workplace dispute resolution, Kathryn has been invited to speak at over 90 conferences. Currently, she is Chair of the Nova Scotia Administrative Law Section of the Canadian Bar Association and is a member of the Regional Advisory Committee of the Advocate's Society. She previously served as Chair of the Nova Scotia's Barristers' Society Task Force on the Model Code of Conduct and advised counsel as Chair of the Society's Ethics and Professional Responsibility Advisory Committee.

W. Craig Riddell

W. Craig Riddell is Professor Emeritus, Vancouver School of Economics, University of British Columbia (UBC). He graduated from the Royal Military College of Canada in 1968 and received MA (1972) and PhD (1977) degrees from Queen's

University. He was Assistant Professor of Economics at the University of Alberta from 1975 to 1979. Prior to his retirement, he was Royal Bank Research Professor of Economics at UBC, where he taught from 1979 to 2016. He also held visiting appointments at University of California, Berkeley, University of California, Santa Barbara, Australian National University, University of Sydney and University of New South Wales.

Craig currently serves on Statistics Canada's Advisory Committee on Labour and Income Statistics and the Board of Directors, Centre for the Study of Living Standards. He is also Research Fellow at the Institute for Research on Public Policy, Montreal; Centre for Research and Analysis of Migration, London; and IZA Institute of Labor Economics, Bonn, Germany.

He has published widely in labour economics, labour relations and public policy, including income inequality, education, skill formation, unemployment, social programs, immigration, and unionization. He is also co-author of *Labour Market Economics: Theory, Evidence and Policy in Canada, 8th edition*, Canada's leading labour economics textbook.

Craig is former Head of UBC's Department of Economics, Past-President of the Canadian Economics Association and former Director of the Canadian Labour Market and Skills Research Network. He has received numerous awards, most recently the 2016 UBC Dean of Arts Award, the 2016 Doug Purvis Memorial Prize for the book *Income Inequality: The Canadian Story* (edited with David Green and France St-Hilaire), and the 2012 Mike McCracken Award for contributions to labour market data.

Craig's previous government advisory roles include the Expert Panel on Older Workers, Government of Canada, 2007-2008; British Columbia Task Force on Employment and Training, 1989-1991; and Research Coordinator for Labour Markets and Labour Relations, Royal Commission on the Economic Union and Development Prospects for Canada, 1983-1985.

Rosa B. Walker

Rosa B. Walker is a member of Peguis First Nation of Manitoba. She is currently the Founder, President and Chief Executive Officer of the Indigenous Leadership Development Institute Inc. in Manitoba and was formerly the Executive Director of Taking Charge! Inc., a federal and provincial initiative that assists single parents on social assistance to enter the workforce. She was also employed at the Assembly of Manitoba Chiefs in the capacity of Managing Director, Workplace Diversity. Rosa worked with the Bank of Montreal in the capacity of Manager, Workplace Equality for Manitoba and Saskatchewan.

Rosa received a BA from the University of Winnipeg and is a graduate of the Social Work Diploma Program at Confederation College, Thunder Bay, Ontario.

Rosa was formerly a board member of the National Aboriginal Economic Development Board, the Aboriginal Training and Employment Services, National

Aboriginal Youth Association, Inc., and Accreditation Canada. She is currently a board member for First Peoples Economic Growth Fund and Empowering Indigenous Youth in Governance and Leadership.

Rosa is a member of the University of Winnipeg's Faculty of Business and Economic Alumni Committee and Global College Advisory Council. She received the YM-YWCA Women of Distinction Award for 1999 and was named to Canada's Most Powerful Women: Top 100 in 2014.



Annex D: Organizations and experts consulted

The Expert Panel engaged with employers and employer organizations, unions, worker organizations, civil society groups, Indigenous organizations, federal Crown corporations, experts and individual workers. In addition to the 88 organizations listed below, approximately 30 individual workers (including young workers) and a group of small businesses participated in roundtable meetings with the Panel in Montreal, Toronto, Halifax, Vancouver, Ottawa and Winnipeg or by teleconference. The Panel also received 14 written submissions. The Panel held meetings in-person and by teleconference with about 24 experts across the country.

Roundtable meetings and teleconferences

Employers and employer organizations

- Air Canada
- Air Transat
- Armour Transportation Systems
- Atlantic Provinces Trucking Association
- Bank of Montreal
- Bank of Nova Scotia
- BC Maritimes Employers Association
- BC Trucking Association
- Bell Canada
- Brinks Canada
- Canada Post
- Canada Mortgage and Housing Corporation
- Canadian Association of Counsel to Employers
- Canadian Bankers Association
- Canadian Chamber of Commerce
- Canadian Federation of Independent Business
- Canadian Imperial Bank of Commerce
- Canadian Nuclear Laboratories
- Canadian Trucking Alliance
- Canadian Western Bank
- Capital One Bank
- CBC/Radio-Canada
- Canadian National Rail
- Canadian Pacific Railway
- Conseil du patronat du Québec
- Eassons Transport

- Federally Regulated Employers – Transportation and Communications (FETCO)
- FedEx Canada
- Fifth Third Bank
- Halifax Chamber of Commerce
- Halifax Employers Association
- Halifax International Airport Authority
- IMP Group Limited – Aerospace Division
- Jazz Aviation LP
- JD Irving
- Laurentian Pilotage Authority
- Logistec Corporation
- Maritime Employers Association
- Montreal Port Authority
- National Bank
- NAV CANADA
- Port of Halifax
- Purolator
- Royal Bank of Canada
- Seaboard Transport
- Secunda Canada LP
- Shaw Communications
- Swissport Canada Inc.
- TELUS
- Toronto-Dominion Bank
- UPS Canada
- Vancouver Fraser Port Authority
- VIA Rail
- Western Grain Elevators Association
- WestJet

Unions

- Canadian Labour Congress
- Canadian Media Guild
- Canadian Media Guild – Freelance Branch
- Canadian Union of Public Employees
- Confédération des syndicats nationaux
- International Association of Machinists and Aerospace Workers
- International Longshore and Warehouse Union
- Public Service Alliance of Canada
- Unifor
- Unifor (Quebec)
- Unite Here!

- United Steelworkers
- Teamsters Canada

Worker organizations and civil society groups

- Atkinson Foundation
- Atlantic Council for International Cooperation
- Au bas de l'échelle
- BC Employment Standards Coalition
- Centre des travailleurs et travailleuses immigrants/ Immigrant Workers Centre
- Civic Action
- Force Jeunesse
- Pride at Work
- United Way Greater Toronto
- Women's Economic Security
- Workers Action Centre - Halifax
- Workers Action Centre - Toronto
- YWCA Halifax

Indigenous organizations

- First Nations Health and Social Secretariat of Manitoba
- First Peoples Economic Growth Fund Inc.
- First Peoples Development Inc.
- Manitoba Metis Federation
- Mi'kmaw Native Friendship Centre
- Norway House Cree Nation
- Peguis First Nation Training & Employment

Written submissions

Employers and employer organizations

- Canadian Bankers Association
- Canadian Chamber of Commerce
- Canadian Federation of Independent Business
- Chartered Professionals in Human Resources Canada
- Northumberland Ferries & Bay Ferries
- Ontario Agri Business Association

Unions

- Canadian Media Guild
- Canadian Labour Congress
- Directors Guild of Canada

- International Longshore and Warehouse Union
- Public Service Alliance of Canada
- Unifor
- Unifor (Québec)
- United Steelworkers

Experts

- Alex Mazer, Common Wealth
- Bruce Archibald, Dalhousie University
- David Walters, Cardiff University
- Elizabeth Mulholland, Prosper Canada
- Eric Tucker, Osgoode Hall Law School
- Frank J. Reid, University of Toronto
- Gilles Trudeau, Université de Montréal
- Guylaine Vallée, Université de Montréal
- Harry Arthurs, Osgoode Hall Law School
- Iglia Ivanova, Canadian Centre for Policy Alternatives
- Jean Bernier, Université Laval
- Judy Fudge, McMaster University
- Keith Ambachtsheer, University of Toronto
- Leah Vosko, York University
- Mark Thompson, University of British Columbia
- Michel Lizée, Policy Options
- Rafael Gomez, University of Toronto
- Richard P. Chaykowski, Queen's University
- Sara Slinn, Osgoode Hall Law School
- Stéphanie Bernstein, Université du Québec à Montréal
- Stephanie Ross, McMaster University
- Timothy Bartkiw, Ryerson University
- Thomas Lemieux, University of British Columbia
- Urwana Coiquaud, HEC Montréal



Annex E: Members of the Secretariat to the Expert Panel on Modern Federal Labour Standards

Margaret M. Hill, Executive Director

Jacinthe Bergeron, Senior Project Management Specialist

Meagan Curran, Policy Analyst

Nadia Demers, Administrative Officer

Pablo Gutiérrez, Research Assistant

Allison Hunwicks, Research Assistant

Marie Kwan, Junior Policy Analyst

Zoe McKnight, Policy Officer

Geneviève Richard, Research Assistant