

Making Work Work for All
A Submission to
the Changing Workplaces Review

18 September 2015

Income Security Advocacy Centre
425 Adelaide Street West, 5th Floor
Toronto, ON M5V 3C1



INCOME SECURITY ADVOCACY CENTRE
Centre d'action pour la sécurité du revenu

www.incomesecurity.org

The Income Security Advocacy Centre

The Income Security Advocacy Centre (ISAC) is a community legal clinic funded by Legal Aid Ontario. We were established in 2001 with a provincial mandate to advance the systemic interests and rights of low-income Ontarians with respect to income security programs through test-case litigation, policy advocacy, and community organizing.

We work closely with Ontario's 60 geographically-based community legal clinics, which assist low-income Ontarians in their local areas to resolve the problems they encounter with accessing benefit programs and services in their daily lives. We also work with groups and organizations across Ontario that share our goals. Since ISAC opened its doors, we have advocated for improvements to the income security of all low-income people in Ontario through reform of benefit programs and systems, rate increases in income security programs, the adoption and implementation of provincial poverty reduction strategies, and improvements in the labour market.

Our interest in the Changing Workplaces Review is in ensuring that Ontario's employment law regimes are sufficiently robust to ensure that all Ontarians have access to good quality work and effective enforcement to provide the income security they require.

The Changing Workplace: The role of public policy in labour market income security

Recent changes in the economy and labour market have resulted in a decline in the quality of work in Ontario, as the Changing Workplaces Review consultation guide outlines. As a result of these changes, Ontario workers have lost the assurance that paid employment will provide them the income security they need to support themselves and their families and the ability to live free from poverty. Increasingly, the labour market is failing Ontarians on that count. Good quality jobs with fair wages, benefits and working conditions are becoming increasingly unavailable to many. The labour market is increasingly becoming bifurcated, with a growing pool of low-wage jobs counterposed against a growing pool of high-wage jobs, with very little available – and very little upward movement – in betweenⁱ. Unionization rates have fallen in lockstep with rising income inequalityⁱⁱ. Outsourcing, temporary work, erratic scheduling, discrimination, unfair and insufficient wages, and other increasingly adverse conditions are experienced by a growing number of Ontariansⁱⁱⁱ. Precarious work is becoming an increasingly standard condition in Ontario's labour market, which is a departure from the “standard employment” model that informs current provincial labour market policy^{iv}.

Disproportionate impacts require strong regulation

The impact of these negative conditions is felt more by historically disadvantaged groups in Ontario society than others: women, racialized communities / communities of colour, Indigenous and Aboriginal peoples, newcomers, and persons with disabilities^v. Migrant workers are another disproportionately impacted group, particularly given the specific exclusion of some categories of migrant workers from certain employment standards protections^{vi}, the lack of enforcement of the protections they are granted^{vii}, and the precarious nature of their employment as it relates to their immigration status^{viii}. Similarly, people with disabilities are much less likely to be employed than those without disabilities^{ix}, are impacted by the lack of accommodations in the workplace and poor enforcement of the duty of employers to

accommodate^x, the continuing existence of sheltered and segregated workshops^{xi xii}, and the lack of good quality part-time work, which people with disabilities are much more likely to rely upon^{xiii}, among other issues. Given that the proportion of people with disabilities is growing relative to the general population^{xiv}, these issues are particularly important.

Not only is the share of low wage jobs in the labour market growing relative to other jobs^{xv}, but those jobs are increasingly being filled by women, racialized workers, and newcomers, and over the past decade the share of adults working at minimum wage has grown significantly^{xvi}. As income inequality increases in Ontario, strong and effective regulation is essential to ensuring that workers benefit from and are protected by rules that apply to all. An effective regulatory regime is essential to “building Ontario up” in ways that recognize and mitigate inequities in the labour market, and turn the tide on economic and social decline.

Job quality and social policy: Impacts of labour market policy on social benefits

The lack of a strong and effective regulatory regime in Ontario’s labour market also has implications for provincial social benefit policy. Failings in the labour market can often result in an increase in the use of publicly mandated and funded income security programs^{xvii}. But that increase can result in corresponding pressure to reduce public expenditures by restricting program access and cutting benefits. Not only do the benefit levels offered by these programs fail to keep people out of poverty, the cost pressure to reduce caseloads and benefit levels further decreases the income security of Ontarians and unfairly places the social and economic burden of labour market failures on people who are already struggling to get by.

Increasing costs also result in increasing pressure to focus social policy change not on providing security of income but on moving people from social assistance and other public benefit systems into the labour market. Without significant improvements in the quality of jobs, however, this focus only results in moving people from income insecurity while on benefits to income insecurity in work. A real and more lasting solution to benefit program policy challenges lies in creating a regulatory system that supports the creation and sustainability of quality employment.

Another impact on social policy is the downward pressure exerted on social assistance benefit rates by low wages in the labour market. In the current context, that pressure results not only from the low level of the minimum wage but also from a regulatory regime that does little to protect workers from the unsteady, unpredictable, part-time work assignments that arise from the desire for “flexible” labour. As government policy makers strive to ensure that social assistance benefit rates are not “unfair” to people working in the labour market – that people on social assistance are always “better off working” – the low quality of work simply enforces the poverty of people who receive social assistance benefits, in addition to increasing the precarity of workers. The erosion of the labour market has become a barrier to effective social assistance reform as the pressure to keep benefit rates low relative to wages and other conditions in the labour market means that rates continue to be kept at punishingly low levels. Reversing this downward spiral requires improving the quality of work in the labour market through a stronger and fairer regulatory regime.

Given these interactions and the province’s commitment to the goal of reducing poverty in Ontario, government must create the regulatory conditions in which paid employment can actually provide a route out of poverty. Work must work, for all.

Principles and Frameworks to Guide Policy Change

ISAC agrees with the Workers Action Centre that a fundamental guiding principle for the Changing Workplaces Review should be decency^{xviii}. We also recommend that the Special Advisors adopt two other sets of principles for its policy recommendations.

First, we believe that the Special Advisors' recommendations and the government's eventual law and policy changes will benefit from a tool developed by the Law Commission of Ontario for policy makers around the implications for law and policy change for people with disabilities. *A Framework for the Law as It Affects Persons with Disabilities*^{xix} was developed in consultation with numerous stakeholders, including the Ontario government, and provides policy makers and others with an analytical framework through which to evaluate the impact of policy change on people with disabilities. Given that people with disabilities are among those disproportionately impacted by the quality and availability of jobs in the labour market, the Framework should be applied to all law and policy changes being contemplated to improve conditions in the labour market.

Second, we believe that it is critically important for both the Special Advisors and government to adopt and apply an equity lens. Using an equity lens would involve identifying the specific barriers to decent employment conditions faced by particular groups of Ontario workers and recommending specific labour market law and policy changes that would remove these barriers. Proceeding in this way would allow for a robust consideration of the changes that should be put in place to ensure all Ontario workers are protected. A number of equity lens policy tools are available online that could be instructive. For example, the Ontario Ministry of Health and Long-Term Care has developed a Health Equity Impact Assessment (HEIA) tool^{xx} to identify and mitigate against unintended health impacts of policy decision-making and thereby reduce health disparities among certain groups. While this tool may not be directly applicable to the work of the Special Advisors, it will be illustrative of the questions that should be asked and the steps that are required to ensure that employment standards and labour relations policy change are undertaken in ways that will best resolve disparities and inequities that currently exist in Ontario's labour market.

Recommendations for Policy Change

We support the recommendations for changes to the Employment Standards Act and the Labour Relations Act being made by the Workers Action Centre and the Ontario Federation of Labour.

These recommendations can be found in the following publications / submissions:

- *Still Working on the Edge: Building Decent Jobs from the Ground Up.*^{xxi} Workers Action Centre. 2015.
- *Preliminary Submission, Changing Workplaces Review.*^{xxii} Ontario Federation of Labour. 2015.

-
- ⁱ Zizys, T. 2011. *Working better: Creating a high-performing labour market in Ontario*. Toronto: Metcalf Foundation. <http://metcalfoundation.com/wp-content/uploads/2011/05/working-better.pdf>
- ⁱⁱ See, for example, Lynk, M. 2009. Labour Law and the New Inequality. *Just Labour: A Canadian Journal of Work and Society*. 15: Nov. p.125-139. http://www.justlabour.yorku.ca/volume15/pdfs/11_lynk_press.pdf
- ⁱⁱⁱ Block, S. 2015. *A higher standard: The case for holding low-wage employers in Ontario to a higher standard*. Toronto: Canadian Centre for Policy Alternatives. https://www.policyalternatives.ca/sites/default/files/uploads/publications/Ontario%20Office/2015/06/Higher_Standard.pdf
- ^{iv} Law Commission of Ontario. 2012. *Vulnerable workers and precarious work: Final report*. Toronto: Law Commission of Ontario. <http://www.lco-cdo.org/en/vulnerable-workers-final-report>
- ^v Block, S. and G-E Galabuzi. 2011. *Canada's colour coded labour market: The gap for racialized workers*. Toronto: Wellesley Institute. http://www.wellesleyinstitute.com/wp-content/uploads/2011/03/Colour_Coded_Labour_MarketFINAL.pdf
- ^{vi} See discussion of this issue in Thomas, M. et.al. 2015. *The Employment Standards enforcement gap and the overtime pay exemption in Ontario*. A paper presented at the 4th Conference of the Regulating for Decent Work Network. Geneva, Switzerland. http://www.rdw2015.org/uploads/submission/full_paper/342/Employment_Standards_Enforcement_Gap_Overtime_Exemptions.pdf
- ^{vii} Faraday, F. 2012. *Made in Canada: How the law constructs migrant workers' insecurity*. Toronto: Metcalf Foundation. <http://metcalfoundation.com/wp-content/uploads/2012/09/Made-in-Canada-Full-Report.pdf>
- ^{viii} Faraday, F. 2014. *Profiting from the Precarious: How recruitment practices exploit migrant workers*. Toronto: Metcalf Foundation. <http://metcalfoundation.com/wp-content/uploads/2014/04/Profiting-from-the-Precarious.pdf>
- ^{ix} Statistics Canada. 2008. *Participation and Activity Limitation Survey of 2006: Labour force experience of people with disabilities in Canada*. <http://www.statcan.gc.ca/pub/89-628-x/89-628-x2008007-eng.pdf>
- ^x Banks, K., R. Chaykowski and G. Slotsove. 2013. The disability accommodation gap in Canadian workplaces: What does it mean for law, policy, and an aging population? *Canadian Labour & Employment Law Journal*. 17:2. p.294-344. http://labourlawjournals.com/abstracts/pdf/CLELJ_17_2_Banks_Chaykowski_Slotsve.pdf
- ^{xi} Canadian Association of Community Living. 2011. *Achieving social and economic inclusion: From segregation to 'employment first'*. Canadian Association of Community Living. <http://www.cacl.ca/publications-resources/achieving-social-and-economic-inclusion-segregation-employment-first>
- ^{xii} Center for Inclusion and Citizenship. 2011. *Social and economic outcomes: Are supported employment services for individuals with developmental disabilities a good investment? A review of the literature*. School of Social Work and Family Studies, University of British Columbia. <http://www.communitylivingbc.ca/wp-content/uploads/Employment-Is-it-a-Good-Investment-lit-review.pdf>
- ^{xiii} Schur, L. 2003. Barriers or opportunities? The causes of contingent and part-time work among people with disabilities. *Industrial Relations: A Journal of Economy and Society*. 42:4. p.589-622, October. <http://onlinelibrary.wiley.com/doi/10.1111/1468-232X.00308/abstract>
- ^{xiv} Human Resources and Skills Development Canada. 2009. *Advancing the Inclusion of People with Disabilities: 2009 Federal Disability Report*. Human Resources and Skills Development Canada. <http://www.ontla.on.ca/library/repository/seroth/229851/2009.pdf>. The data referenced here is based on the 2006 PALS survey. Unfortunately, more recent data is not able to demonstrate trends given that the 2012 Canadian Survey on Disability is not comparable to PALS data due to methodological differences – see “Canadian Survey on Disability, 2012: Concepts and Methods Guide” at <http://www.statcan.gc.ca/pub/89-654-x/89-654-x2014001-eng.htm> .

-
- ^{xv} Block, S. 2015. *A higher standard: The case for holding low-wage employers in Ontario to a higher standard*. Toronto: Canadian Centre for Policy Alternatives. https://www.policyalternatives.ca/sites/default/files/uploads/publications/Ontario%20Office/2015/06/Higher_Standard.pdf.
- ^{xvi} Block, S. 2013. *Who is working for minimum wage in Ontario?* Toronto: Wellesley Institute. <http://www.wellesleyinstitute.com/wp-content/uploads/2013/10/Who-Makes-Minimum-Wage.pdf>
- ^{xvii} See, for example, Curry, B. 2010. *Ontario seeks Ottawa's help as welfare cases spike*. The Globe and Mail. March 15. <http://www.theglobeandmail.com/news/politics/ontario-seeks-ottawas-help-as-welfare-cases-spike/article1209524/> and the discussion of increased unemployment due to the 2008-09 recession, increases in EI and social assistance caseloads, and the level of poverty experienced by Canadians in Pasma, C. 2010. *Bearing the brunt: How the 2008-2009 recession created poverty for Canadian families*. Ottawa: Citizens for Public Justice. http://www.cpj.ca/files/docs/Bearing_the_Brunt.pdf
- ^{xviii} Gellatly, M. 2015. *Still working on the edge: Building decent jobs from the ground up*. Toronto: Workers Action Centre. http://www.workersactioncentre.org/wp-content/uploads/dlm_uploads/2015/03/StillWorkingOnTheEdge-WorkersActionCentre.pdf
- ^{xix} Law Commission of Ontario. 2012. *A framework for the law as it affects persons with disabilities: Advancing substantive equality for persons with disabilities through law, policy and practice. Final Report*. <http://www.lco-cdo.org/en/content/persons-disabilities>.
- ^{xx} See the Ministry of Health and Long-Term Care Health Equity Impact Assessment website at <http://www.health.gov.on.ca/en/pro/programs/hea/>.
- ^{xxi} *Still Working on the Edge* is available at <http://www.workersactioncentre.org/updates/new-report-released-still-working-on-the-edge/>.
- ^{xxii} The OFL's *Preliminary Submission* is available at <http://ofl.ca/wp-content/uploads/2015.06.17-PreliminarySubmission-LabourLaw.pdf>.