2015

The Changing Workplaces Review

The United Food & Commercial Workers Union

UFCW your VOICE at work CANADA

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EXECUTIVE SUMMARY

Ontario's *Labour Relations Act* (LRA), first enacted following the Second World War, is a government arbitrated compromise and promise. The LRA exchanges the common law rule prohibiting worker combinations for a regime that regulates collective action in the workplace. The exchange rests on a promise that the law will maintain a fair balance between competing workplace interests. Arguably, that promise has been given constitutional status in *Mounted Police Association of Ontario v Canada (Attorney General)* (2015 SCC 1).

The United Food and Commercial Workers Union (UFCW) asks the Minister to keep the promised balance and respond to workplace trends that have changed the Act's application and effect in Ontario's workplaces.

Following trade liberalization and the subsequent transformation of Ontario's economy, more Ontarians are working in the service sector than ever before. This sector is characterized by smaller workplaces, high workforce dispersion, high turn over, and greater numbers of part-time employees. At the same time, capital markets have pressured employers to focus on their core competencies, incentivizing the dispatch of non-core activities, increasing the number of workplaces, and creating hyper-competitive downstream marketplaces where firms operate on thin profit margins.

The increased frequency of these characteristics in Ontario's labour market has made it more difficult for workers to meaningfully exercise their right to form unions.

Small workplaces amplify management's voice in the certification process, increasing the opportunities for and effectiveness of unfair labour practices. Workforce dispersion has increased the costs of organizing workplaces because labour organization under Ontario's labour relations regime occurs at the workplace level—the greater the number of small workplaces, the greater the costs to organize. And thin profit margins have made downstream employers especially resistant to collective bargaining.

At the same time, employers have greater access to temporary foreign labour. Temporary foreign workers are especially vulnerable and their interests are near-term rather than mid-term, making them more susceptible to employer influence and less likely to organize.

Organization generates long-term benefits, but carries short-term risks. Their choice is typically based on a calculation that takes into account both the unique harm they face from employer retaliation and the possibility that they may not benefit from collective bargaining during their temporary stay in Ontario.

The compounding effect of these workplace changes has altered the LRA's application and effect in the workplace, striking an unfair balance between workplace interests. The result is a higher bar for organization and collective action and diminished collective bargaining power for workers.

To ensure that the LRA maintains a fair and reasonable balance of workplace interests, the UFCW is making three recommendations:

i. *Make Ontario a card-check certification jurisdiction modeled after Quebec's legislation;*

ii. *Adopt Manitoba's automatic access model for first contract arbitration; and*

iii. *Expand sectoral bargaining structures into sectors of the economy that are not subject to trade competition, such as retail.*

The aforementioned trends have disrupted the market wage adjustment mechanism causing wage stagnation and a growth in minimum wage work. Trade liberalization allows capital to relocate to cheaper labour environments while greater access to temporary foreign workers creates slack in the domestic labour market.

As a result, working poverty has become a major problem in Canada. To assist Ontario's working poor, the UFCW urges the provincial government to take steps to assist Ontario's most vulnerable workers. Two areas that we have identified are:

iv. *Taking steps to ensure that all Canadians earn a living wage.*

v. *Better regulate workplace scheduling so that reduced scheduling is not used to deny notice entitlements.*

MODERNIZING ONTARIO'S LABOUR RELATIONS ACT

The United Food and Commercial Worker's Union

On behalf of the membership of the United Food and Commercial Workers Union (UFCW), Canada's leading private sector union, I am pleased to present our submission to The Changing Workplaces Review prepared for the purpose of better protecting Ontario's workers.

In 1979 the Retail Clerks International Union, which traces its roots back to 1890, merged with the Amalgamated Meat Cutters Unions to form the UFCW, the largest private sector union in North America.

The UFCW is a voice for all Canadian workers, including some of Canada's most socially and economically vulnerable. We work to better their lives. As the leading trade union in the retail, food processing, and hospitality sectors, we represent 250,000 workers across the country.

Our members live and work in communities across the country. They operate your local grocery stores, process your food, maintain your hotels, nursing homes, rental car agencies, and drug stores.

The Minister's decisions following the workplace review could have economic and social consequences in Ontario for decades. Re-aligning an outdated labour law regime with Ontario's changed and changing workplaces sets the province on a trajectory of prosperity. As the government is poised to act, the UFCW has consulted with our members and we are proposing three amendments to the Labour Relations Act (LRA) and two amendments to Ontario's Employment Standards Act and its associated Regulations to mend the growing gap between the workplace and workplace law:

i. *Amend section 10 of Ontario's LRA to replace Ontario's mandatory representational vote for certification with Quebec's card-check certification procedure found in Section 21 of Quebec's LRA;*

ii. *Amend Section 43 of Ontario's LRA to replace Ontario's no fault first contract arbitration model with Manitoba's automatic access model as drafted in sections 67-68 of Manitoba's Labour Relations Act;*

iii. *An amendment to Ontario's LRA that extends sectoral bargaining structures to amenable sectors of the economy such as retail;*

iv. *Taking steps to ensure that all Canadians earn a living wage; and*

vi. *Better regulate workplace scheduling so that reduced scheduling is not used to deny notice entitlements.*

DECLINE IN UNION COVERAGE & INCOME INEQUALITY

The decline of private sector union coverage is evidence that Ontario's *Labour Relations Act* is no longer working in Ontario's private workplaces.

Between 1981 and 2012, the percentage of Canadian workers covered by a union declined from 38% to 29.9%. In 2013, union coverage stands at 30%.

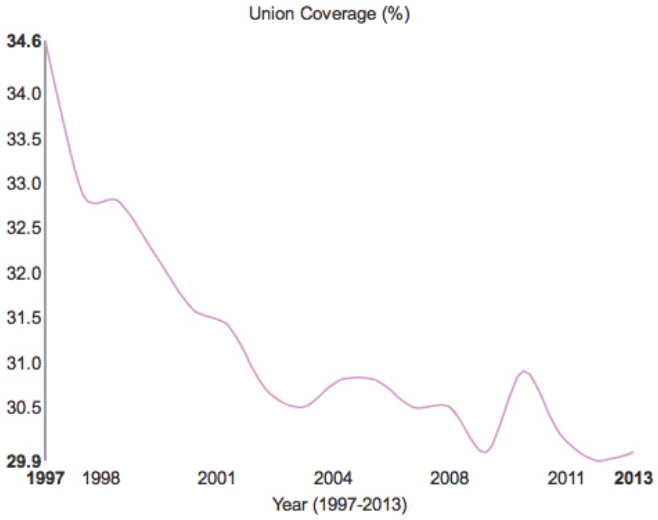


Figure 1. In 1997, 34.6% of all Canadian workers were protected by a union. By 2013, only 30% had that same protection.[1]

The decline of union coverage is unequal across sectors of the economy. The public sector has slightly increased in union coverage while there has been a substantial decline in private sector union coverage.

[1] Statistics Canada. 2014. Union Coverage in Canada, 2013. Statistics Canada Catalogue No LT-256-04-14. http://www.labour.gc.ca/eng/resources/info/publications/union_coverage/union_coverage.shtml (accessed July 13, 2015).

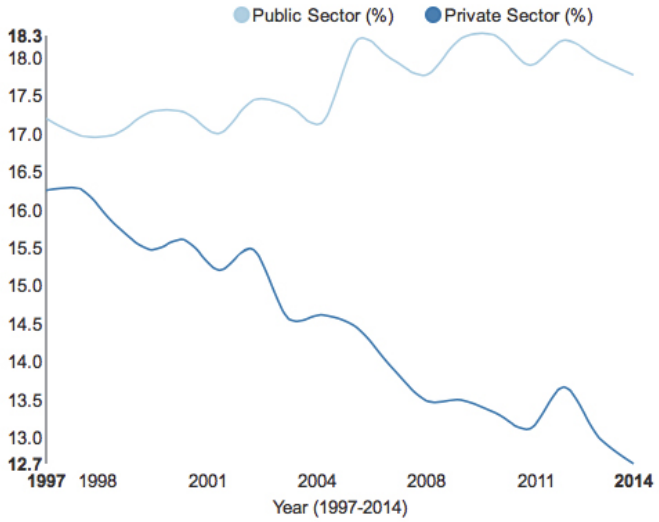


Figure 2. Between 1997 and 2014, public sector union coverage increased 0.57% relative to the overall workforce. In the same period, private sector union coverage fell 3.6%.[2]

The difference in coverage trends between the public and private sectors suggests that the labour relations regime is working for the public sector, but failing the private sector. Unlike private sector workplaces, the characteristics of public sector workplaces have remained relatively stable.

The decline in private sector union coverage and slight increase in public sector coverage suggests that Ontario's LRA no longer strikes the appropriate balance of workplace interests. The LRA is an old law that continues to apply to new and changing private sector workplaces. At the same time the income gap between the bottom 90% of income earners and the top 10% of earners has widened.

[2] Statistics Canada. Table 282-0077 Labour force survey estimates (LFS), employees by union coverage, North American Industry Classification System (NAICS), sex and age group, unadjusted for seasonality (table). CANSIM (database). Last updated July 10, 2015.
http://www5.statcan.gc.ca/cansim/a47 (accessed July 13, 2015).

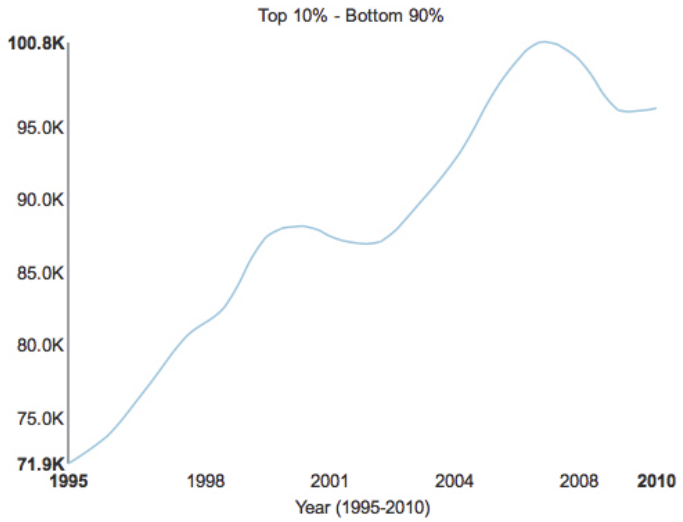


Figure 3. In 1995, the top 10% of income earners made $71,900 more than the bottom 90% of earners. By 2010, that number had grown to $96,300, increasing the income gap by over 25%.[3]

Unions make communities more economically equal and have a clear track record of both protecting society's most vulnerable workers and building and sustaining the middle class.

Ontario's private sector workplaces have undergone significant change, making the LRA ill suited for the private workplace. The LRA's failure to meet workplace changes has hurt the majority of Canadians, and is creating greater income disparity.

[3]Ivaredo, Facundo, Anthony B. Atkinson, Thomas Piketty and Emmanuel Saez, The World Top Incomes Database, http://topincomes.g-mond.parisschoolofeconomics.eu/, 14/07/2015.

THREE ECONOMIC TRENDS TRANSFORMING ONTARIO'S PRIVATE WORKPLACES

There is a growing gap between Ontario's labour law and its workplaces. The removal of trade barriers unlocked capital, causing the de-industrialization of Southern Ontario, which changed the nature of work for many Ontarians. Meanwhile, firms have shed non-core activities that had traditionally been internal to the firm, dislocating employment. And most recently, the Temporary Foreign Worker Program (TFWP) and the International Mobility Program (IMP) have provided Canadian businesses with unprecedented access to foreign labour markets, creating labour market slack.

Together, these three trends have transformed and continue to transform Ontario's workplaces, yet Ontario's labour law has been remarkably static. This widening gap has left labour associations ill equipped to organize workers and bargain on their behalf, increasing precarious and low-wage employment.[4] It is our view, and the view of the workers we represent, that the five amendments we recommend will narrow the gap between the modern workplace and an outmoded labour law, reducing precarious employment in Ontario, better securing Ontario's middle class, and building stronger communities.

1) Trade liberalization: the service sector's increasing share of Ontario's job market and workforce dispersion

The structure of Ontario's *Labour Relations Act* was designed in the aftermath of the Second World War. When the Act was designed, light and heavy industry figured prominently in Ontario's economy. Typical of industrial production is a highly concentrated workforce.

The Act's certification procedure, located in Sections 7-15 of the Act, responds to and makes sense for the industrial workplace that existed following WWII.

Capital mobility has changed employment opportunities in Ontario, pivoting Ontario's economy away from manufacturing and towards the service sector. Free trade agreements have facilitated this pivot, and continue to restructure the Canadian economy.[5]

[4]Specific features of labour market insecurity characterize precarious jobs and include: high levels of uncertainty, low income, a lack of control over the labour process, and limited access to regulatory protections. See the Law Commission of Ontario's report for a complete typology of precarious employment: Andrea Noack & Leah Vosko, "Precarious Jobs in Ontario: Mapping Dimensions of Labour Market Insecurity by Workers' Social Location and Context" (2011) Law Commission of Ontario.
[5]Currently Canada is party to 11 free trade agreements. 9 are in force. The most significant agreement is the North American Free Trade Agreement (NAFTA), which came into force January 1, 1994. Other ratified agreements include bilateral and multilateral agreements with Korea, Honduras, Panama, Jordan, Columbia, Peru, Costa Rica, Chile, Israel, and the European Free Trade Association. The federal government is currently engaged in negotiations with 9 other trade potential partners.

Following the ratification of the North American Free Trade Agreement (NAFTA), there has been a rapid decline in manufacturing jobs in Canada as a percentage of overall employment.

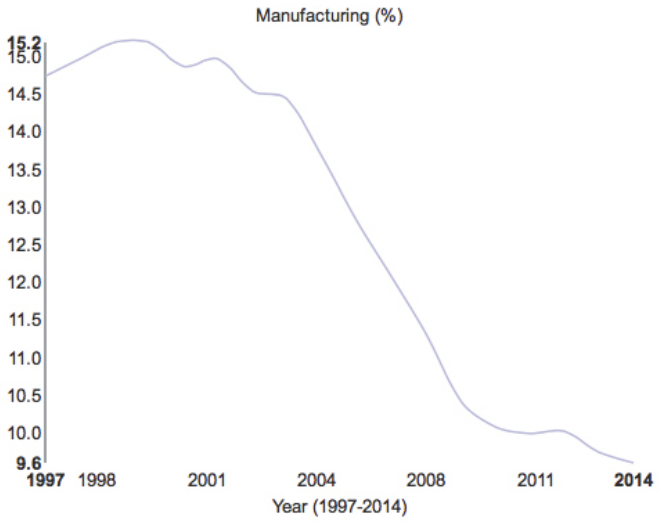


Figure 4. In 1997, manufacturing represented 14.74% of all employment in Canada, but by 2014 it represented only 9.6%.[6]

From 2000 to 2007, manufacturing jobs were reduced by one-sixth. In 2000, approximately 1.7 million people were employed in manufacturing, but only 1.4 million people held manufacturing positions in 2007. As a share of total employment, manufacturing positions dropped from 16% to 12% during that same interval.[7] In 2015, manufacturing jobs total 9.4 per cent of overall employment.

Service sector employment increasingly dominates Canada's labour market as trade liberalization continues to transform the country's economy.

Statistics Canada reported that the number of service sector jobs had risen to 78.4 per cent of all Canadian employment for the same year. In other words, more than three quarters of Canadians are employed in retail, food services, education, professional services and health care.[8] As manufacturing has dropped, service sector employment has increased.

[6]Statistics Canada. Table 282-0008 Labour Force survey estimates (LFS), by North American Industry Classification System (NAICS), sex and age group (table). CANSIM (database). Last updated Jan 1, 2015. http://www5.statcan.gc.ca/cansim/a47 (accessed July 13, 2015).
[7]Statistics Canada, <http://www.statcan.gc.ca/pub/11-402-x/2011000/chap/man-fab/man-fab-eng.htm>.
[8]Grant Tavia, "Service jobs reach record as manufacturing hits new low", The Globe and Mail (11 April 2015).

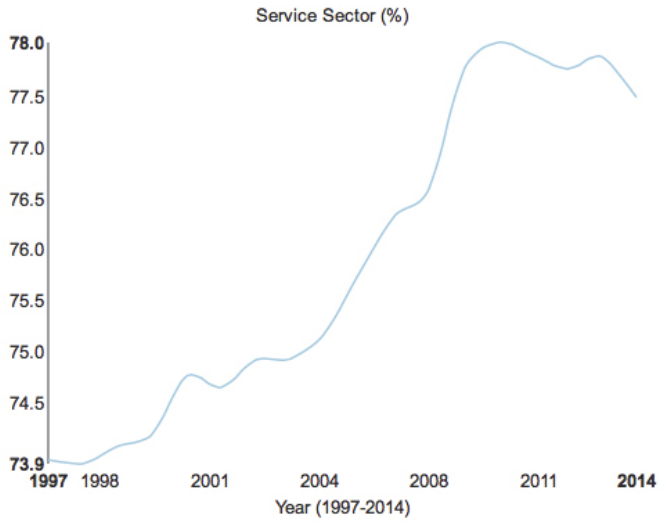


Figure 5. In 1997, service sector employment represented 73.94% of all employment in Canada, but by 2014 it represented 77.5%.[9]

[9]Supra note 6.

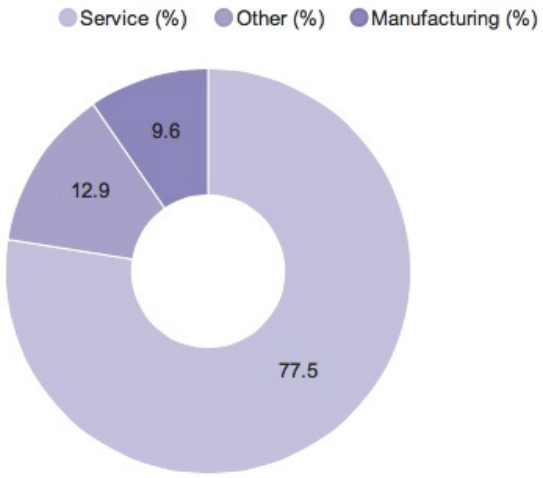


Figure 6. In 2014 the labour market was defined by 77.5% service sector employment and 9.6% manufacturing.[10]

Unlike industrial production, the service sector typically does not concentrate its workforce in any single workplace; instead, the service sector's workforce tends to be widely dispersed over many workplaces. In sectors like retail and food services, workforces are especially dispersed over many small workplaces.

The Act's model for certification happens at the workplace level. That model worked for light and heavy industry partly because workforces were concentrated, but the model does not fit the service sector's dispersed workforce. This structural mismatch has affected the application of legislative provisions that regulate the organization and certification of unions, and the collective bargaining process.

2) Domestic outsourcing: Downstream hyper competitiveness, increased organizing costs and employer resistance to collective bargaining

Until the 1970s, employers typically employed workers to perform an array of activities peripheral to the business's core competencies. A large business would employ janitors, security guards, payroll administrators, and information technology specialists. However, in a process that accelerated in the 1990s and 2000s, employers began divesting this work, outsourcing it to smaller domestic and foreign businesses.[11]

This technique reduced costs and dispatched the many legal responsibilities connected to being the employer of record. This process has led to what Dr. David Weil, now the Administrator of the Wage and Hour Division of the United States Department of Labor, has called the "fissured workplace."[12]

[10] Supra note 6.
[11] David Weil, The Fissured Workplace: Why Work Became So Bad For So Many and What Can Be Done to Improve It (Cambridge: Harvard University Press 2014).
[12] Ibid.

Employment divesture has transferred employment to downstream businesses that operate in highly competitive environments, which has placed downward pressure on wages and employment benefits. It has also contributed to the growing income gap.

Prior to employment divestures, company gains would distribute throughout the entire company's workforce; however, as a result of outsourcing, these profits are not as widely distributed today.[13]

The new organization of the workplace undermines the mechanisms that once led to the workforce sharing part of the value created by their large vertically integrated employers. By shedding non-core business activities, upstream businesses have changed a wage-setting problem into a contracting decision. The result has been a stagnation of real wages for many of the jobs formerly done inside the vertically integrated firm, increasing the percentage of precarious jobs.

As businesses divested and outsourced employment, the number of small workplaces proliferated. Ontario's labour relations regime provides for organization at the workplace level. Consequently, the cost of labour organization has increased, and fewer workers have the benefit of union protection and collective action.

And because the downstream workplace is especially competitive, profit margins have eroded.[14] As a result, employers have been especially resistant to the collective bargaining process, concerned that increased labour costs will price their product or service out of the market. A sectorial bargaining regime would take wages out of competition, eliminating this concern.

3) Access to foreign labour: Increased worker vulnerability and near term interests

Since the last review of Ontario's labour relations regime in 1995, and the Employment Standards Act in 2000, the federal government has increased business's access to foreign labour. In 2002, the federal government added the low-skilled stream to the TFWP, and additional pathways under the IMP were created as, among other things, the government expanded the working holiday program. These migration programs allow Canadian employers to employ foreign nationals in Canada temporarily, increasing the stock of available workers.[15]

[13] Ibid.
[14] Interview of Nick Van Halteren by Chris Grisdale (24 February 2015) [Nick Van Halteren]. Mr. Van Haltern is the owner and operator of Greenwood Mushroom Farm, located in Ashburn, Ontario. The farm produces about 300,000 pounds of mushrooms per week from two operations, and most of the farm's sales are in Ontario and Quebec. The owner reports that the business's operating margin is approximately 10 per cent.
[15] In 2002 the Federal Government introduced the low-skilled stream of the TFWP, providing businesses an avenue to access global labour markets for unskilled positions.

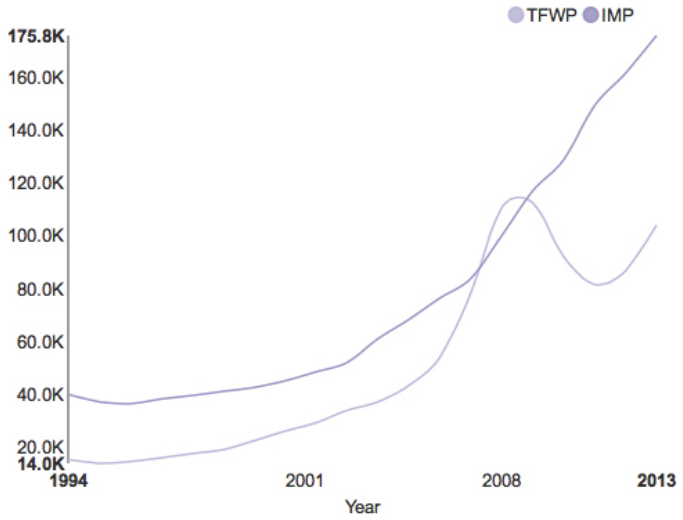


Figure 7. In 1994, there were 15,468 temporary foreign workers with work permits valid on December 31st and 40,068 temporary foreign workers under the international mobility program with valid work permits on December 31st. By 2013, those numbers had changed to 104,160 and 175,779, respectively.

The increased scope and use of these programs has occurred in all sectors of the economy, though concentrated in some, and has contributed to wage stagnation, precarious employment, and new obstacles for organizing labour.[16]

The TFWP is intended to fill bona fide shortages in the labour market. The Labour Market Impact Assessment (LMIA) is designed to identify those businesses that genuinely cannot secure domestic workers to fill a position. The administration of the LMIA is controversial and potentially defective.[17]

[16]Canada, Legislative Assembly, Standing Committee on Finance, in Official Report of Debates (Hansard), No 115 (23 April 2013) at 8. Mark Carney, the previous Governor of the Bank of Canada and current Governor of the Bank of England, warned that over-reliance on temporary foreign workers for lower-skilled jobs will prevent the wage adjustment mechanism from otherwise driving up wages.

[17]A series of media reveals suggests that the labour market impact assessment, the mechanism designed to avoid over reliance on temporary foreign workers and maintain the integrity of the domestic labour market, is ineffective. See: "HD Mining to withdraw Chinese mine workers; Company blames legal battle with unions for action", The Vancouver Sun (29 Jan 2013); "A temporary fix for foreign workers: Harper hits the brakes", Toronto Star (4 May 2013); "Tim Hortons franchise faces B.C. labour probe: Temporary foreign workers exploited, says labour groups", Toronto Star (7 December 2013); "B.C. McDonald's faces foreign-worker probe", Edmonton Journal (8 April 2014).

To the extent that the LMIA is defective, the labour supply is increased, driving down the price of labour or causing wage stagnation.[18] The IMP, which is an umbrella category, aggravates the problem. The IMP is intended to meet other government objectives and, as a result, there is no LMIA requirement for employment. The IMP has again increased the supply of labour.

The influx of migrant labour imposes additional challenges to labour organization that the LRA does not address because increased employer access to foreign labour occurred after the last review of the LRA. Because migrant labourers are especially vulnerable to employer retaliation for unionizing activities, they are less likely to express the wish to unionize.

A work permit tied to a single employer combined with temporary residence status structures their vulnerability. Termination would require a migrant worker to find an employer willing to apply for another work permit.

The architects of Ontario's *Labour Relations Act* understood that employees needed protection from management coercion in the organization process, designing protections for unfair labour practices. But the increased vulnerability of migrant workers renders these measures practically ineffective for their purpose.

Additionally, temporary migrant workers by their nature have short-term interests in Canada. To the extent that short-term risks associated with unionizing activities tend toward long-term gains to the worker, the migrant worker's personal risk calculation differs from their permanent resident counterpart.

[18]Hon. Andrew Telegdi, a member of the Liberal Caucus for Kitchener-Waterloo for the 36-39th Parliaments remarked Maple Leaf's access to migrant workers in their Kitchener processing plaint in suppressed wages. See Canada, Legislative Assembly, Standing Committee on Citizenship and Immigration, in Official Report of Debates (Hansard), No 028 (9 April 2008) at 14.

Precarious employment: Legal reform to increase security

Unfortunately, precarious employment in Ontario is the new normal. Too often workers who want full-time work can only find part-time employment. Earning minimum wage is the only option for too many workers. Dental and medical benefits are absent from most employment contracts, and private pensions are rarer still.

In 2009, 33.1 per cent of all workers in Ontario had a precarious job.[19] Slightly more than 13 per cent of Ontario's workforce had all three symptoms of precariousness: a low income, no pension, and no union.[20] The absence of union coverage is the best predictor of precariousness in that employment relationship because unions increase employment security, wages, and benefits.[21]

The rise of precarious employment is symptomatic of a changed and changing workplace combined with a stagnant and outmoded labour law.

At the level of the individual, Ontario's trend toward precarious employment generates economic insecurity and social vulnerability. At the community level, it strains governmental social safety nets and weakens civil society. Thus, precarious employment is bad for workers, taxpayers, and our communities.

The effects of precarious employment are distributed unevenly in the economy, disproportionately affecting society's most vulnerable. Precarious work clusters in equity seeking groups: women, immigrants, and visible minorities.[22] Union coverage partly undoes this double disadvantage, but an outdated labour law hinders efforts for collective action. It leaves too many workers behind.

Reducing precarious employment and improving the lives of Ontarians depends on relevant labour legislation. Through collective action, workers can strike better deals. They are more likely to be fairly remunerated, secure medical and dental benefits and enjoy greater degrees of employment security.

[19] Andrea Noack & Leah Vosko, "Precarious Jobs in Ontario: Mapping Dimensions of Labour Market Insecurity by Workers' Social Location and Context" (2011) Law Commission of Ontario.
[20] Ibid.
[21] Ibid.
[22] See, for example: Cynthia J. Cranford and Leah F. Vosko, "Conceptualizing Precarious Employment: Mapping Wage Work across Social Location and Occupational Context" in Leah F. Vosko, ed., Precarious Employment: Understanding Labour Market Insecurity in Canada (Montreal and Kingston: McGill-Queen's University Press, 2006) 43.

STRENGTHENING ONTARIO'S FAMILIES: UNIONS SUPPORT WORKERS

Unions have a clear track record for their ability to distribute wealth, opportunities, and privileges in society more fairly, partially mending the growing income gap between society's best and worst off. Collective action increases the living standards of the lowest income earners and sustains middle class families. At the provincial level, collective action creates economic benefits.

Unions deliver $231.2 million dollars every week into Ontario's economy through the negotiation of fairer wages for workers and equal pay for women.[23] Women in Ontario are paid, on average, $7.83 more per hour because of union-enforced pay equity.[24] And young Ontarians earn $2.69 more per hour because unions negotiate a better wage.[25] The middle class benefits, too. Middle class workers who lost union membership between 1997 and 2011 were at an increased risk of becoming low-income earners.[26]

Statistics Canada has found that, on average, unionized workers earn $5 more per hour than their non-unionized counterparts.

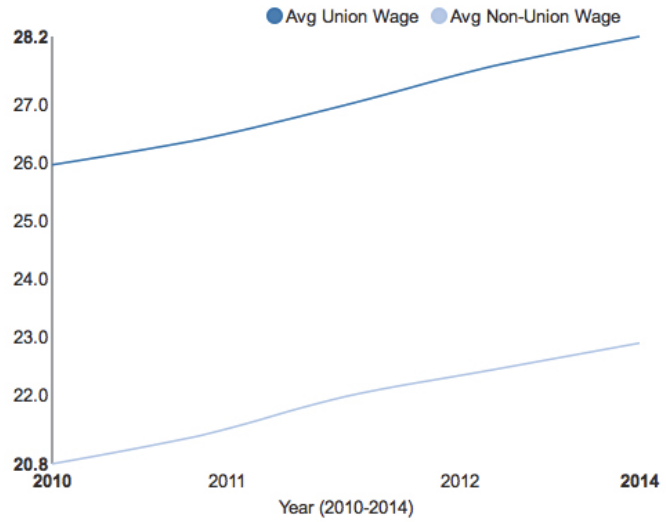
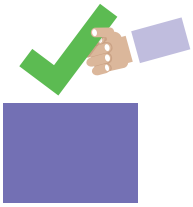


Figure 8. On average unionized workers earn $5 more per hour than their non-unionized counterparts.[27]

[23]Canada's Union Advantage, online: Canadian Labour Congress <http://canadianlabour.ca/why-unions/women/canadas-union-advantage>.
[24]Ibid.
[25]Ibid.
[26]Hugh Mackenzie & Richard Shillington, The Union Card: A Ticket Into Middle Class Stability (Ottawa: Canadian Centre for Policy Alternatives, 2015).
[27]Statistics Canada. Table 282-0225 Labour force survey estimates (LFS), average weekly earnings, average hourly wage rate and average usual weekly hours by union status and type of work, Canada and provinces (table). CANSIM (database). Last updated Jan 30, 2015. http://www5.statcan.gc.ca/cansim/a26 (accessed July 13, 2015).

But union membership has become a privilege. Nowhere is this fact clearer than in the private sector, where membership fell from 21 per cent to 14 per cent between 1997 and 2011.[28] Fewer workers receive the security, benefits, and wages associated with union membership and fewer workers have the dignity of secure employment.

The law is partly to blame. Ontario's labour law has not kept in step with the changing workplace. The failure to respond to the changing workplace realities has hurt workers across all income brackets. This governmental review of the employment and labour statutes is an opportunity to cure the mismatch between 20th century labour law and the 21st century workplace.



CARD-CHECK: ONTARIO'S MANDATORY REPRESENTATIONAL VOTE STRIKES THE WRONG BALANCE

Workers have a right to freely choose union representation and engage in lawful union activities. For that right to be meaningful it must be protected from interference. It is unlawful for management to engage in unfair labour practices that intimidate employees into expressing management interests for the purpose of trade union certification.[29]

A card-check certification system minimizes the opportunity for an employer to engage in unfair labour practices, enabling workers to express their true opinion on unionization. Labour can organize without employer knowledge, denying the employer the opportunity to engage in unfair labour practices – like illegally terminating employees or coercing employees to vote with management interests.[30]

The mandatory representational vote provides a five-day window of opportunity, not including weekends and holidays, for employers to pressure employees to vote with management interests.[31]

The modern workplace has given management a megaphone. Smaller workplaces and increased employee insecurity has amplified management's ability to interfere with worker choice for union representation. Management's voice is louder in smaller workplaces and precarious employees better hear it.

[28]Supra note 26.
[29]Ontario Labour Relations Act, RSO 1995, s 70.
[30]Ibid at s 72.
[31]Ibid at s 8(5).

The move away from heavy industry toward service sector employment has shrunk the workplace, and local and domestic outsourcing has shrunk the workplace further still. At the same time, the TFWP and the IMP have increased employee insecurity.

While the Ontario Labour Relations Board (OLRB) has the jurisdiction and statutory authority to punish unfair labour practice once committed, the relief is often too costly, arrives too late, and provides too little. Card-check certification is an *ex-ante* solution. It lessens the chance for employers to engage in unfair labour practices, interfering with the worker's right to freely choose union representation.

Ontario's history: The Progressive Conservative Government's break with the historical norm

From 1943 until 1995, the card-check system for certification had been in effect. In 1995, the Progressive Conservative government of Mike Harris, replaced the card-check system with a mandatory representational vote.

Prior to the 1995 amendments, if a trade union collected 55 per cent of the union membership cards in a proposed bargaining unit, then the OLRB would certify the trade union as the exclusive bargaining agent for the unit provided that all other requirements for certification were satisfied. However, if the trade union collected between 40 and 55 per cent of the outstanding cards, then a representational vote would be triggered. The 1995 amendments reformed the LRA to mandate a representational vote in all circumstances.

The Canadian experience: Ontarians shouldn't fall behind

Five provinces currently have a version of the card-check system: P.E.I., New Brunswick, Quebec, Manitoba, and British Columbia.[32] In 1976, all provincial labour relations statutes permitted some form of card-check for the purposes of certification; however, as of 1997, labour relations statutes that mandated a representational vote covered nearly 60 per cent of the Canadian labour force.

British Columbia mandated a representational voting procedure in 1984, but reverted to a card-check procedure in 1993. As described above, modern workplace trends have created additional obstacles for unionization, which has generated precarious employment and undermined the middle class. These trends have hurt most workers.

[32] Susan Johnson, "Card Check or Mandatory Vote? How the Type of Union Recognition Procedure Affects Union Certification Success" (2002) Economic Journal 344 at 345.

Empirical research: The mandatory representational vote increases the opportunity for unfair labour practices

The empirical evidence suggests that the certification of unions fell 21.3 per cent in Ontario following the switch to a mandatory representational vote procedure.[33] The decline of union coverage throughout the province is linked to the increase of precarious employment and negatively correlated to shrinkage in the middle class.[34] Trade unions also increase the amount of cash pumped into Ontario's economy, generating more economic activity.[35]

The smaller the workplace, the louder the management voice. Where management has direct oversight over a smaller group of workers, management's ability to influence those workers increases. Management, in other words, can better influence workers because the relationship between management and labour is more proximate.

The empirical research suggests that the effects of the mandatory representational on certification success are unevenly distributed across workplaces. Certification under the mandatory representational vote procedure is especially unlikely in smaller workplaces.[36]

At the same time, economic trends have shrunk and proliferated the workplace through the increase of service sector employment and the decrease in heavy manufacturing, as well as domestic and foreign outsourcing. In other words, the mandatory representational vote disproportionately impacts smaller workplaces when smaller workplaces are becoming the norm.

Additionally, the greater the worker's economic and social insecurity, the greater management's influence is on those workers. If a worker is especially economically and socially vulnerable, the cost associated with the risk of management retaliation for expressing contrary views on unionization is substantial. This cost impedes unionizing drives.

The empirical research indicates that the mandatory representational vote especially decreases the chance of certification of precarious workers—the very workers who stand to gain the most protection from labour organization. When the mandatory representational vote was introduced part-time employees comprised 38.5 per cent fewer certification applications than they did under the card-check system. Under the mandatory representational vote procedure, part-time employee certification applications represented 2.4 per cent of all applications. Yet under the card-check system, they represented 3.9 per cent of all applications.[37]

[33]Sara Slinn, "An Empirical Analysis of the Effects of the Change from Card-Check to Mandatory Vote Certification" (2004) 11 Canadian Lab. & Emp. LJ 259 at 282.
[34]Supra note 13.
[35]Supra note 23.
[36]Supra note 39 at 285.
[37]Ibid at 288.

Case Study: Suzy Shier & H&M

The mandatory representational vote has provided management the opportunity to pressure employees to vote against unionization.

When workers at Suzy Shier – a mall-based women's clothing store in Canada – decided to organize they were paid minimum wage and reported broken promises of wage increases. Workers also claimed management would terminate employees without good reason or reduce their scheduled work hours.[38]

Frustrated with the status quo, Deborah De Angelis, an employee, attempted to organize the workers at a number of Suzy Shier locations.

Deborah submitted cards for three locations triggering a representational vote. Once management learned of the organizing attempt, the company flew executives from its corporate head office to speak with the workers.[39]

It was reported that the executives spoke to each worker individually. Later, a number of workers claimed that they were worried that corporate executives could identify who voted for or against unionization given the small work environment, creating a chance of employer retaliation.[40]

H&M has been successfully organized in some American jurisdictions, but despite numerous efforts, that success has not been duplicated in Canada. The difference suggests the importance of card-check certification.

In the United States, the UFCW engaged H&M representatives in negotiations for a number of years to effect a private agreement that would regulate the organization of H&M stores.

Among other things, the UFCW was able to negotiate for a card-check certification procedure, displacing New York State's mandatory representational vote model.[41]

At the end of the day, the vote was lost in Long Island, but 11 stores in Manhattan voted to unionize with the Retail, Wholesale and Department Store Union (RWDSU), and 6 other stores voted to join the UFCW.[42]

However, the UFCW has not had similar success with H&M in Canada because no similar private agreement exists. Consequently, organization and certification must follow the rules as set out in the statute for certification—the mandatory representational vote.

[38]Kendra Coulter, Revolutionizing Retail (New York: Palgrave Macmillan, 2014) at 70.
[39]Ibid.
[40]Ibid at 72.
[41]Ibid at 73.
[42]Ibid at 73.

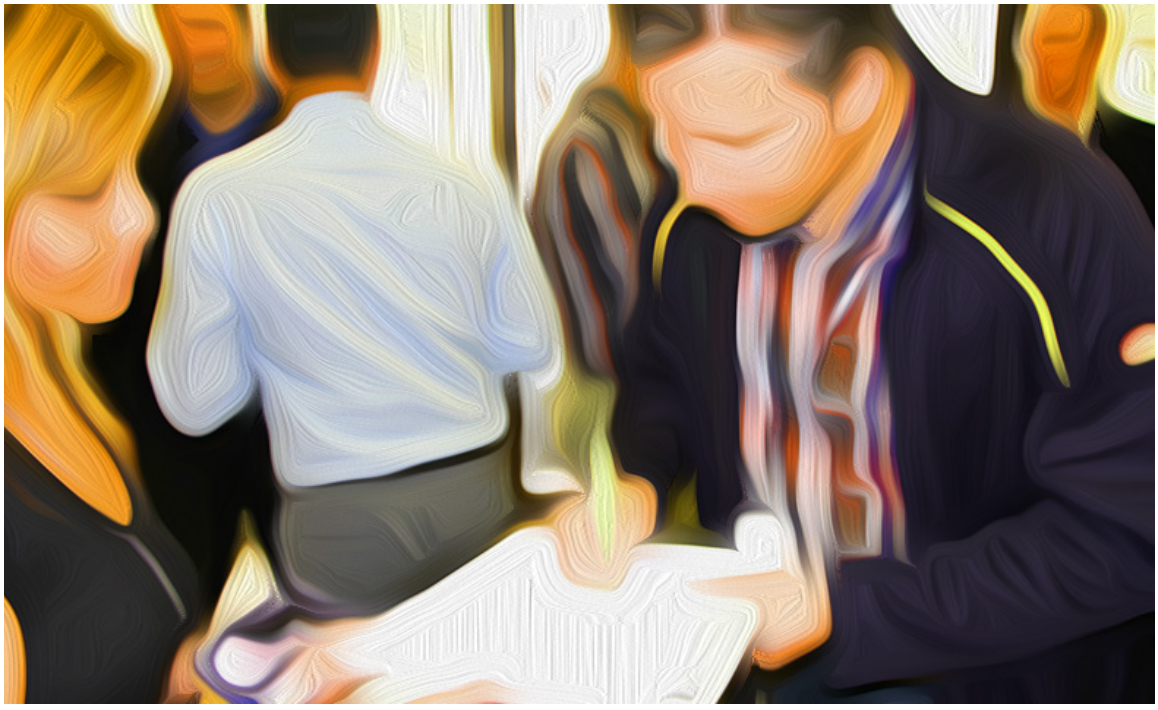
Only two H&M Canada locations have organized. The H&M location at the Square One Mall in Mississauga, Ontario organized in the fall of 2011, joining UFCW Local 175 & 633. And shortly after, another H&M location in Joliette, Quebec unionized under UFCW Local 500.[43]

Recommendation: Section 10 of Ontario's Labour Relations Act should be amended to reflect Quebec's card-check certification model

Economic and workplace trends mean smaller workplaces and more precarious workers. And while the mandatory representational vote hurts all workers, it disproportionately harms the modern worker. The changes in the modern workplace increase management's ability to interfere with employees' wishes, and the mandatory representational vote provides greater opportunity for management to interfere. To ameliorate the effect of the law, we submit that the Minister of Labour should amend the *Labour Relations Act* to permit certification of trade unions under a card-check regime similar to the one currently used in Quebec.

1. Recommendation

Ontario should amend the Labour Relations Act to align it with Quebec and Prince Edward Island, whereby a union is certified with a simple majority of signed membership cards (50% +1).



[43] Ibid at 288.

FIRST CONTRACT ARBITRATION: ONTARIO SHOULD ADOPT MANITOBA'S AUTOMATIC ACCESS MODEL FOR FIRST CONTRACT ARBITRATION

Ontario's *Labour Relations Act* designates the workplace as the site of labour organization, which made sense when heavy and light manufacturing, characterized by oligopolies and high workforce concentration, figured prominently in Ontario's economy.[44]

As the service industry became Ontario's dominant employer, and the preferred business model served to encourage employers to divest non-core employment, there has been increased competitiveness in some segments of Ontario's economy and increased workforce dispersion.

The workplace as the site of organization combined with Ontario's modern workplace created new difficulties for collective bargaining.

Historically, the threat of collective action created sufficient leverage to effect the first collective agreement between labour and management for a newly organized workplace. However, the credibility and consequences of that threat have diminished because of the growing structural mismatch between Ontario's modern workplace and Ontario's labour relations regime.

This diminished leverage has increased employer resistance to collective bargaining, increasing the need for an effective first contract arbitration mechanism in Ontario.

Downstream workplaces: The hyper-competitive downstream environment creates resistance to collective bargaining

In the downstream marketplace, firms are typically resistant to collective bargaining because these firms typically operate on thin profit margins caused by increased competition. The worry is that increased labour costs could price the firm out of the market.[45]

Labour organization on a sectorial level in the downstream marketplace would avoid this concern because wages would be taken out of competition; however, a sectoral bargaining structure is only economical where the product or service is not subject to foreign competition. In that case, the additional labour cost will be transferred upstream.

Where the product or service is subject to foreign competition, it is necessary to rely on an effective first contract arbitration mechanism to maintain the appropriate balance of workplace interests.

[44] Interview of Professor Eric Tucker by Chris Grisdale (3 July 2015) [Eric Tucker]. Professor Eric Tucker is a professor at Osgoode Hall Law School and an expert in labour law.
[45] There is evidence in the literature that increased competitive pressures decrease the bargaining power of workers see OECD (2012), OECD Employment Outlook 2012, OECD Publishing, Paris.

Remember, wage rate increases are not the only benefits of unionization. Organization also creates job security. The employer's unfettered right to terminate at common law is typically replaced by a fairer procedure found in the collective agreement.

Upstream workplaces: High profit margins, workforce dispersion, and high turn over require a better first contract arbitration mechanism

Upstream firms, particularly in the service sector, are also resistant to the collective bargaining process, but for different reasons.

Where downstream firms resist the collective bargaining process for fear that increased costs carry the risk of uncompetitive pricing, upstream firms have large workforces dispersed over many workplaces combined with large profit margins. These conditions allow upstream firms to withstand collective action, absorbing the associated near-term costs for mid-term lower labour costs and greater labour flexibility.[46]

An effective first contract arbitration mechanism would be a remedy for employer resistance to collective bargaining created by the structural mismatch between Ontario's labour law regime and the modern workplace. Where the upstream firm is not subject to trade competition, such as in retail, a sectoral bargaining model can also ameliorate these changes, structurally re-aligning Ontario's Labour Relations Act with the province's modern workforce.

Migrant labour: Increasing the cost of the organizing drive and diminishing the return

The increased use of migrant labour has amplified worker insecurity and populated workplaces with workers that tend toward near-term rather than short-term interests.

This change in the workplace creates obstacles for organization because the potential costs associated with an organization drive are born in the near-term for mid-term gain. Those risks are more likely to be born if the employee has long-term interests in the company.

The confluence of these trends has both reduced the threat of collective action and minimized its consequences.

[46] Wal-Mart Inc., the world's largest retailer, closed it stores in Jonquiere, Quebec and Gatineau following unionization. See "Taking on the Wal-Mart giant; Union are fighting an uphill in trying to organize the store's employees", The Gazette (04 Feb 2009). A similar pattern happened in Saskatchewan. See "Wal-Mart to appeal ruling on unionization", Star – Phoenix (11 Dec 2008).

Bargaining unit: First contract arbitration is needed for small units

The empirical research makes clear that the relationship between the size of the bargaining unit and the frequency of first contract arbitration applications is inversely related: as the size of the unit shrinks, the likelihood that the unit will seek first contract arbitration to effect the first collective agreement increases.

In Manitoba, Quebec, and British Columbia, where data was available, the average size of the bargaining unit seeking first contract arbitration is 50, 48, and 26 employees respectively.[47] One explanation is that workers in smaller bargaining units have less leverage to exert, and the employer responds to the diminished bargaining position with an increased resistance to the collective bargaining process.

The increased number of small bargaining units is a function of the changing workplace, and the Supreme Court of Canada recently held that freedom of association under section 2(d) of the Canadian Charter of Rights and Freedoms is, among many things, designed to maintain an equilibrium of power between the employer and the employee.[48]

To the extent that the changed workplace and an outmoded labour law has tilted bargaining power toward the employer, an effective first contract arbitration mechanism is necessary to recalibrate the balance.

Industry: The increased dispersion of the workforce over smaller workplaces

Where the data is available, it is clear that first contract arbitration is more frequently sought in the service sector. In Manitoba, 51.72% of all applications for first contract arbitration came from the service sector. In British Columbia, the service sector most frequently used first contract arbitration of any industry, proportionally representing 23.30% of all first contract arbitration applications.[49]

As the service sector has reached over three-quarters of Ontario's overall labour market, workplaces are becoming increasingly numerous and smaller. An effective first contract arbitration mechanism responds to that change.

[47] Sara Slinn & Richard W. Hurd, "First Contract Arbitration and the Employee Free Choice Act: Multi Jurisdictional Evidence From Canada" in David Lewin, Bruce Kaufman, & Paul Gollan eds, Advances in Industrial and Labor Relations (UK: Emerald 2011) 41.
[48] Mounted Police Assn. of Ontario / Assoc. de la Police Montée de l'Ontario v Canada (Attorney General), 2015 SCC 1, 380 DLR (4th) 1 [MPAO]. The Supreme Court of Canada clarified that section 2(d) of the Charter guarantee promises to restore or maintain the power equilibrium between employers and employees, and to achieve that equilibrium a collective bargaining statute must provide a meaningful right to collectively bargain.
[49] Supra at note 33.

Case study: Wal-Mart's resistance to collective bargaining

The organization of Wal-Mart in Saskatchewan is an illuminating example of employer resistance to collective bargaining and the impact of the conditions of the modern workplace.

In 2004, the UFCW organized Wal-Mart in Weyburn, Saskatchewan, but lengthy legal disputes ensued. UFCW Canada Local 1400 was ultimately recognized as the bargaining agent by the Saskatchewan Labour Relations Board four years later, but negotiations dragged on and no collective agreement could be secured.

Workers were frustrated by the delays, and significant turn over occurred in that period. In 2010 (6 years later), still without a collective agreement, a de-certification vote was successfully held.

Wal-Mart operates on high profit margins, has a widely dispersed workforce, and high turn over rates. And since organization happens at the workplace level, Wal-Mart can engage in tactics to resist collective bargaining.

Had an effective first contract arbitration mechanism been available, it is more likely that a collective agreement would have been reached, ameliorating the issues associated with workforce dispersion and a workplace centered organization regime.

Ontario's first contract arbitration mechanism does not work

Ontario's first contract arbitration provision underwent amendments in 1993, 1995, and 2000; however, Ontario has maintained the basic no fault approach to first contract arbitration. To access the first contract arbitration provisions in Ontario, the applicant, the employer, or the union must establish that the parties are unable to effect a collective agreement, and the Minister of Labour must issue a notice that it is not advisable to pursue further conciliation.

Once it is established that the parties are unable to effect a collective agreement, the OLRB engages in a two-step analysis to determine whether first contract arbitration is appropriate in the circumstances. First, the OLRB must determine whether the process of collective bargaining has been "unsuccessful," taking into account all of the circumstances, including the applicant's conduct. Generally, this element is met in a bargaining scenario that does not conclude a collective agreement or in the event of a work stoppage. Second, assuming step one is satisfied, the OLRB determines whether the failure to reach a collective agreement is attributable to one of the statutory reasons.[50]

[50] Labour Relations Act, SO 1995, c 1 s 43.

Ontario's first contract arbitration mechanism has proven ineffective. Only 11.43% of all applications are granted.[51] The frequency of first contract arbitration in Ontario is small compared to other provinces.[52]

In Manitoba, all applications for first contract arbitration are granted; however, once the process is initiated, approximately half result in voluntary agreement. In Quebec, 70.6% of applications are granted approval for access to the first contract arbitration mechanism in that province.

Recommendation: Adopt Manitoba's automatic access model

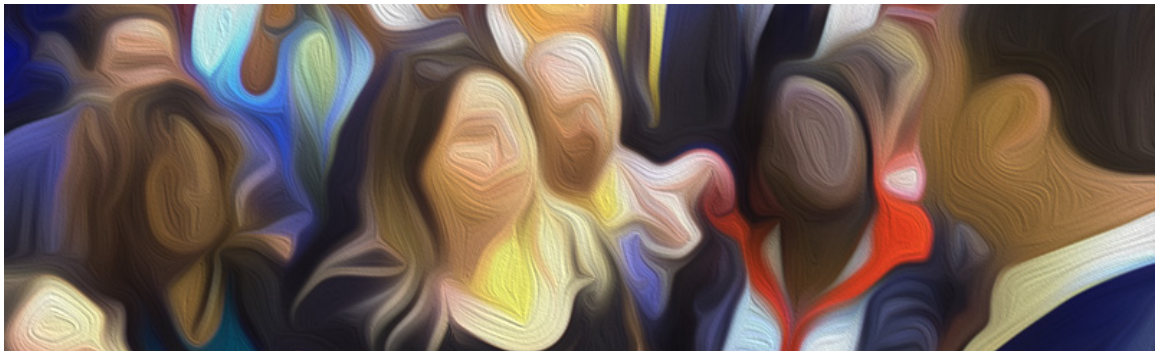
Manitoba's *Labour Relations Act* was amended in 1982, adopting an automatic access model for first contract arbitration. There are only two conditions to access the first contract arbitration provision under this regime: first, that sufficient time has elapsed since certification; and second, that the conciliation mechanism has been exhausted.

Unlike Ontario's model, the Minister of Labour is not required to issue a notice of negotiation breakdown.

Under the automatic access model, either a conciliation officer gives an opinion that parties have made a reasonable effort but are unable to effect an agreement, or 120 days have passed since the conciliator's appointment, 90 days have passed since certification, and no collective agreement has been effected. In other words, an application for first contract arbitration can be made at the earlier of a conciliation officer's opinion or when sufficient time has elapsed.[53]

2. Recommendation

Amend Section 43 of Ontario's LRA to replace Ontario's no fault first contract arbitration model with Manitoba's automatic access model as drafted in Sections 67-68 of Manitoba's Labour Relations Act.



[51] Supra at note 33.
[52] Supra at note 33.
[53] The Labour Relations Act, SM 2014, c L10 ss 67-68.

SECTORAL BARGAINING AND MAINTAINING THE BALANCE OF WORKPLACE INTERESTS

The bargaining structure in Ontario's *Labour Relations Act* begins and ends at the workplace.

Should a union acquire the exclusive bargaining rights at a single workplace of a firm with many locations, the other locations remain unorganized. Should other locations later organize, each location will reach separate collective agreements.

Under Ontario's labour law regime, a collective agreement does not migrate from one workplace to another even if the workplaces are identical and owned by the same company. However, an existing collective agreement in a similar or identical workplace may impact the negotiations.

Structural re-alignment: Rethinking workplace centered bargaining

This workplace specific bargaining structure keeps wages in competition within sectors. Sectoral bargaining agreements create a level-playing field to prevent low-wage competition. Sectoral bargaining structures coupled with high union density can take wages out of competition.

A bargaining structure that takes wages out of competition reduces the chance that increased labour costs will price organized firms out of the market. If labour costs are taken out of competition, employers are less resistant to collective bargaining. And if a sectoral agreement automatically applies to a unionized environment, then resistance to collective bargaining becomes moot.

At the same time, a sectoral bargaining structure is more likely to be organized, lowering the workplace barriers created by the structural mismatch between the Act and the modern workplace.

Returning Ontario to the balance promised when the *Labour Relations Act* was enacted would rebalance workplace interests in the province.

Empirical research: Countries with sectoral bargaining have increased union coverage

Overall, union coverage has declined in the Organization for Economic Co-operation and Development (OECD), an organization comprised of 34 countries, including Canada.[54]

However, that decline is uneven across OECD member countries. The OECD identified bargaining structures as one reason for the difference. In countries that have bargaining structures with multi-employer bargaining or a role for the state in extending existing collective agreements to newly organized employers, union coverage tends to be higher.[55]

[54] OECD (2012), OECD Employment Outlook 2012, OECD Publishing, Paris.
[55] Ibid at 135. Countries such as Austria, Belgium, France, Finland, Germany, Italy and Spain all have relatively higher union density rates compared to other OECD countries, and common among these countries are sectorial bargaining structures.

The OECD report identifies Austria, Belgium, France, Finland, Germany, Italy, and Spain as countries with increased union coverage and strong sectoral bargaining regimes.[56]

At the same time, we know that when Australia reformed its labour relations regime, moving from a system dominated by sectoral agreements to one dominated by workplace level bargaining, there was a dramatic drop in union coverage.[57]

Case study: Ontario's construction sector

Ontario is familiar with sectoral bargaining, as the province's construction sector is regulated by a sectoral bargaining structure.

The collective bargaining structure within the construction industry is craft based. Each craft, whether it is painters, welders, or plumbers, are subject to the terms of an existing collective agreement in the event that a new construction firm becomes organized.

The sectoral bargaining structure in Ontario's labour relations regime has been successful in the construction industry. Union coverage in construction has remained steady despite changes in the workplace. As well, construction workers tend to be more fairly remunerated.

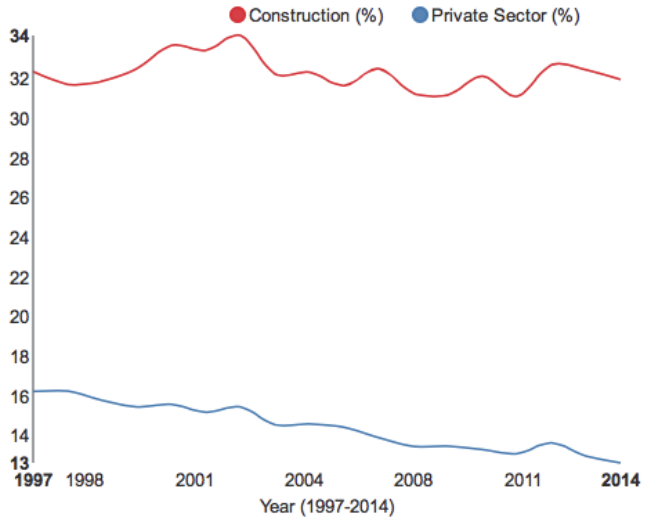


Figure 9. In 1997, union coverage in the construction industry was 32.39%, and was 31.98% in 2014. During the intervening period, union coverage peaked at 34.20% in 2004, and fell as low as 31.13 in 2011.[58] General private sector union coverage, however, fell 3.6% and has not reversed a downward trajectory.

[56] Ibid at 130.
[57] Ibid at 136.
[58] Statistics Canada. Table 282-0078 Labour force survey estimates (LFS), employees by union coverage, North American Industry Classification System (NAICS), sex and age group, unadjusted for seasonality (table). CANSIM (database). Last updated Jan 29, 2015. http://www5.statcan.gc.ca/cansim/a47 (accessed July 13, 2015).

The sectoral bargaining regime works in construction because construction is not subject to trade competition. The UFCW believes that retail work is similarly positioned to benefit from a sectoral bargaining regime, as retail work is not subject to trade competition.

Recommendation: Extend sectoral bargaining to other amenable sectors

All workers have the right to associate with the goal of improving their working terms and conditions, and all workers should have access to an equally effective collective bargaining structure in their circumstances.

Ontario has experience with a sectoral bargaining regime in the construction industry. Employment in construction for many Ontarians provides secure positions and good remuneration. We believe that all workers deserve good jobs, and extending sectoral bargaining to other amenable sectors of the economy is a step in that direction.

A sectoral bargaining regime will partly restore the promised balance between workplace interests. It will partly restore diminished bargaining power, and reduce the barriers to successful collective bargaining, which have risen following workplace changes.

Many sectors in the service sector are amenable to sectoral bargaining because there is no foreign trade competition. Retail work is one example where sectoral bargaining would make sense without affecting competitiveness.

To be sure, retail employers vary substantially in terms of their profitability. That said, many of the largest retailers, such as Wal-Mart, can easily provide workers with better wages, conditions, and treatment. They have the means to do so.

3. Recommendation

An amendment to Ontario's LRA that replicates Ontario's sectoral bargaining regime in the construction sector in the service sector.

A LIVING WAGE

While recalibrating Ontario's *Labour Relations Act* to fit Ontario's modern workplaces is important, it remains a priority for the UFCW to better the material circumstances of the working poor. For this reason, we continue to advocate for a living wage.

Some municipalities have passed by-laws requiring that they pay their employees a living wage and that all of their suppliers pay their workers a living wage.

The minimum wage is a legal threshold—not a needs-based threshold. It sets the legal wage floor, below which any other renumeration is prohibited. Across Canada, the minimum wage is set provincially.

In Ontario, Section 23 of Ontario's *Employment Standards Act*, requires employers to pay employees the minimum wage as set out in the regulations. For most workers, the current minimum wage in Ontario is $11.00 per hour.[59]

Based on a 35-hour workweek, a minimum wage employee earns $20,020 annually before taxes and $18,203 after taxes based on combined Ontario and federal rates as of June 30, 2015. This wage falls below Canada's low-income cut-off of $19,774 before taxes and $23,861 after taxes, calculated for a single person.[60]

The legal minimum wage falls below the poverty line and is not a living wage. A full-time minimum wage job makes the maintenance of the worker and the worker's family difficult if not impossible.

Wage stagnation, inflation of the cost of necessary goods, and the increased number of minimum wage workers amplify the problem

Three labour market trends magnify the problem of working poverty in Canada: the stagnation of real minimum wages across the country; the inflationary trend in necessary goods; and the increase in minimum wage earners as a proportion of the overall workforce.

[59] O Reg 285/01 s 5.

[60] Statistics Canada. Table 1 Low income cut-offs (1992 base) after tax (table). Last updated December 10, 2014. http://www.statcan.gc.ca/pub/75f0002m/2014003/tbl/tbl01-eng.htm (accessed August 14, 2015); Table 2 Low income cut-offs (1992 base) before tax (table). Last updated December 10, 2014. http://www.statcan.gc.ca/pub/75f0002m/2014003/tbl/tbl02-eng.htm (accessed August 14, 2015). To calculate the low income cut-off Statistics Canada calculates the percentage of income that the average family allocates to food, shelter and clothing as a proportion of their overall income, and adds 20 percentage points. Statistics Canada calculated in 2013 that the average family spends 43% of their income on necessities; therefore, the low-income cut off is a family that spends 63% of their income on necessities.

In 2013, the nominal minimum wage across all provinces averaged $10 per hour. When adjusted for inflation using the consumer price index (CPI), the real minimum wage is equivalent to the minimum wage paid in the late 1970s. In 1975 and 1976, the minimum wage peaked at $11 an hour in real terms, and fell below $8 in the mid-1980s. In 2005, there was a general up-tick, and currently the average minimum wage hovers around $10.[61]

Minimum wage workers earned more in 1975 and 1976 in real terms than they do today.

The adjustment of wages for inflation provides a distorted economic picture of minimum wage workers. The CPI is the average of a basket goods and services. Some of those items are necessities and others are discretionary. The inflationary trend for necessary items outpaces the overall average, disproportionately hurting minimum wage workers.

Minimum wage workers are especially sensitive to price increases to necessary items because a disproportionate percentage of their income is allocated to necessities. Assuming that minimum wage workers are not dependents, this means one of two things: they are unable to make all of their necessary purchases or they have fewer resources to allocate to discretionary purchases.

The cost of food and shelter, in particular, has increased at a faster rate than the average for all items since 2007, and the spread has increased all years but one between 2007 and 2014. That said, the average cost of clothing has declined over the same period.[62]

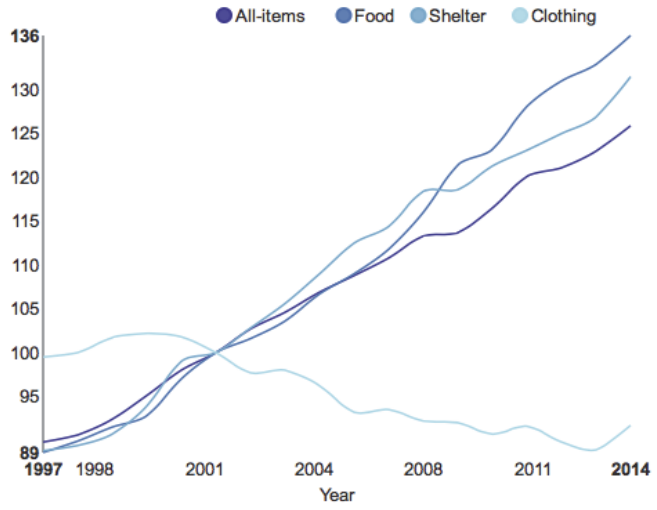


Figure 10. This chart graphs the consumer price index of food, shelter, and clothing from 1997 to 2014. Notice that from 2007 onward the average cost of food and shelter has increased faster than the consumer price index as a whole.[63]

[61]Diane Gararneau & Eric Fecteau, Insights on Canadian Society: The ups and downs of minimum wage (Statistics Canada: July 2014)[62]The average price of clothing has remained relatively constant between 2007 and 2014. No doubt trade liberalization and the offshoring of textile work has contributed to this trend.
[63]Statistics Canada. Table 326-0021 Consumer Price Index (table). CANSIM (database). Last updated January 23, 2015. http://www5.statcan.gc.ca/cansim/a47 (accessed August 15, 2015).

As the circumstance of low-wage workers continues to deteriorate, more Canadians are becoming low-wage workers. In 1997, 5% of the Canadian workforce earned the minimum wage. This percentage increased to 6.7% in 2013. That is more than a 30% increase in the number of minimum wage workers.

Calculating the living wage

Unlike the minimum wage, the living wage is the amount of remuneration necessary to decently maintain the worker. It is a response to the growing problem of low wage poverty.

The living wage aims to enable workers to meet reasonable living costs. The living wage in Canada is calculated based on the basic needs of a family consisting of two working parents and two children. It is set locally, rather than provincially, taking into account the cost of living differences across the province.

Living Wage Canada and its partners have calculated the living wages across 12 cities and counties in Ontario.

City/County	Living Wage
Brantford	$14.85
Grey-Bruce	$16.76
Guelph-Wellington	$15.95
Halton	$17.05
Hamilton	$14.95
Huron-Perth	$16.47
Kingston	$16.29
Peterborough	$16.47
St. Thomas	$16.47
Toronto	$18.52
Waterloo	$16.00
Windsor	$14.15

Figure 11. These amounts were calculated using the costs of a 4-person family with both parents working after taxes.[64]

[64]Vibrant Communities Canada, online: Living Wage Canada <http://livingwagecanada.ca/index.php/living-wage-communities/ontario/>.

Reasons for a living wage

Neoclassical economists sometimes argue that a living wage would distort the market's incentive structure and that wage rates should track productivity. The idea is that wage rates are the market's estimation of a worker's value added to the production of goods and services that a society wants. And if higher wages were paid, those wages would be transferred from someone else.

But the market depends on faulty assumptions. In particular, the neoclassical model relies on assumptions of perfect competition that places workers and employers in equal bargaining positions. But for individual employees, that is almost never the case.

To be sure, the empirical evidence contradicts the notion that the market sets wages in line with productivity. The International Productivity Monitor released a report this that shows the divergence of productivity and wage rates, relying on Statistics Canada data.

According to the report, since the early 1980s productivity growth has outpaced wage growth. In 2011, average labour income per hour, expressed in 2011 dollars, was $32.20, but would have been $36.97 had it tracked productivity growth. Workers would have earned 14.8 percent more per hour.[65]

Poverty directly and indirectly translates into legal and political inequality. Economic resources directly fuel interest representation in our judicial and legislative systems. And can results in vastly different outcomes for different groups. Poverty also indirectly diminishes participation in political life because vastly different outcomes disconnect and marginalize poor Canadians.

The living wage, by contrast, enables autonomy. Every Canadian should have a range of opportunities. Poverty narrows opportunities while the living wage ensures a basic level of options.

The individual and community benefits of the living wage include:

1. *Greater community inclusion;*
2. *Fairer legal, social and economic outcomes;*
3. *Better child rearing; and*
4. *Lower social assistance costs*

4. Recommendation

The provincial government should take steps to ensure that all Ontarians are paid a living wage.

[65]Mathieu Dufour, "Why Isn't Productivity More Popular? A Bargaining Power Approach to Pay Productivity Linkage in Canada" (2015) 28 International Productivity Monitor 47 at 55.

WORKPLACE SCHEDULING

For many low-wage workers, the workplace schedule can be a site of concern. In the low-wage workplace, two types of scheduling issues are typical.

The first scheduling issue is related to business needs. Demand for a business's goods or services changes over time. In an attempt to maximize profitability, some employer's change their employees' scheduled hours almost weekly.

The UFCW has long advocated that employers and workers better share the risk associated with the demand for the businesses goods and services. And when we bargain on behalf of our members, we make every effort to reach a collective agreement that gives workers security while maintaining a measure of labour flexibility.

The second issue that we see is employers engaging in strategic scheduling behaviour to avoid notice entitlements. Some employers engage in systematic hour reduction to entice the worker to quit or find other employment. This strategy is used to avoid notice requirements under the *Employment Standards Act*. The employee is always given some hours, but the number is so few that the worker is required to look for other work.

The notice entitlement is designed to minimize the risk associated with the loss of employment. It provides a financial bridge for the worker to search the labour market. Without that bridge, the worker may not have the resources to engage in a job search or even meet their basic needs.

This strategic scheduling behaviour creates an effective loophole for notice entitlements; we believe that legislation should be drafted to close it. One suggestion is to allow the worker to elect to be terminated for the purpose of notice if the worker has experienced a substantial reduction in hours over a substantial period of time.

If the worker has the right to elect to be terminated for the purpose of the notice requirement, then the worker will have a financial bridge to other work.

5. Recommendation

Better regulate workplace scheduling so that reduced scheduling is not used to deny notice entitlements.

CONCLUSIONS

Ontario's *Labour Relations Act* was a compromise and a promise. When it was enacted, the LRA was an acceptable framework to regulate industrial relations. Ontario's *Employment Standards Act* was a protective measure. It legislated a wage floor to protect society's most vulnerable workers.

The LRA continued to strike an acceptable balance between workplace interests until the 1990s when Ontario's workplaces began to change. At the same time, Ontario's changed workplaces amplify the need for strong protections.

Three major trends have dramatically reshaped Ontario's workplaces and labour market:

Trade liberalization has dramatically changed the nature of Ontario's workplaces. Employment in manufacturing continues to decline while service sector employment is on the rise. The character of service sector work tends to be small workplaces and large workforce dispersion.

At the same time, large employers have divested employment that was once typically done in house, creating downstream marketplaces characterized by hyper competitiveness and thin profit margins.

And finally, greater access to temporary foreign workers has created slack in the labour market, distorting the market wage adjustment mechanism causing wage stagnation.

Now the LRA is ill suited to regulate the relationship between worker associations and employers. The old law applied to Ontario's new workplaces makes a different compromise—a compromise that disproportionately favours employer interests.

And the number of minimum wage workers is on the rise, while the cost of necessary goods is increasing faster than the rate of inflation. These workers need greater protection; they need a living wage.

The Changing Workplaces Review was established to examine the relationship between workplace legislation and Ontario's modern workplace. The UFCW calls on the Minister of Labour to act. Again, we have consulted with our members and we recommend four changes that we reiterate here:

i. *Amend Section 10 of Ontario's LRA to replace Ontario's mandatory representational vote for certification with Quebec's card-check certification procedure found in Section 21 of Quebec's LRA;*

ii. *Amend Section 43 of Ontario's LRA to replace Ontario's no fault first contract arbitration model with Manitoba's automatic access model as drafted in Sections 67-68 of Manitoba's Labour Relations Act;*

iii. *An amendment to Ontario's LRA that extends sectoral bargaining structures to amenable sectors of the economy, such as retail;*

iv. *The provincial government should take steps to ensure that all Ontarians are paid a living wage; and*

v. *Better regulate workplace scheduling so that reduced scheduling is not used to deny notice entitlements.*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