

By Whose Standards? Reregulating the Canadian Labour Market

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Taking the breakdown of the standard employment relationship (SER), which has been the lynchpin of labour market regulation in Canada since the Second World War, and the feminization of employment as its starting points, this article examines policy options for reregulating the Canadian labour market. It is divided into three parts. The first identifies the core challenge as developing a new norm of employment (based on a new gender contract) and new forms of labour regulation that reduce, rather than heighten, polarization and contribute to, instead of undermining, social solidarity and productivity. The second part proposes principles for reregulating the employment relationship that are attentive to this objective and addresses three key policy issues: the legal norm of employment, the basis for distributing entitlements and collective representation. The third part emphasizes the significance of the gender contract for understanding the role and limitations of labour law, legislation and policy and argues that gender equity must be a fundamental principle in policy design. The article concludes by acknowledging the political challenges that must be confronted before Canadian labour markets can be effectively regulated.

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Evidence of the decline of the standard employment relationship (SER), and its typical package of benefits, is mounting in Canada. Alongside this trend, non-standard employment relationships (NSERs) are spreading and contributing to the feminization of employment a phenomenon whereby a growing proportion of work arrangements carry wages, benefits, terms and conditions of employment resembling those conventionally identified with

women and other marginalized workers. These developments call for new approaches to labour law, legislation and policy, offering a critical opportunity to reregulate the employment relationship and rethink outmoded ideas and dichotomous categories underpinning Canada's current approach to labour market regulation.

This article takes the breakdown of the SER, the lynchpin of labour market regulation in Canada since the end of the Second World War, as its starting point. In doing so, it draws upon the analysis of labour market regulation and the understanding of the nature and direction of labour market trends provided in our earlier article (Fudge and Vosko, 2001) to examine policy options for reregulating the labour market. It is divided into three parts. The first part identifies the core challenge as developing a new norm of employment (based on a new gender contract) and new forms of labour regulation that reduce, rather than heighten, polarization and contribute to, instead of undermining, social solidarity and productivity. The next part proposes principles for reregulating the employment relationship that are attentive to this objective and addresses three key policy issues: the legal norm of employment, the basis for distributing entitlements and collective representation. The third part emphasizes the significance of the gender contract for understanding the role and limitations of labour law, legislation and policy and argues that gender equity must be a fundamental principle in policy design. The article concludes by acknowledging the political challenges that must be confronted before Canadian labour markets can be effectively regulated.

Reregulating the Employment Relationship: Principles and Policy Options

With the breakdown of the SER and the proliferation of NSERs, there is a lack of fit between the instruments of labour regulation and 'new' employment norms in the contemporary Canadian labour market (Fudge and Vosko, 2001). While dualism persists, its terms have changed, making a broad constellation of labour policies designed to secure the highly gendered standard/non-standard employment distinction outmoded (Vosko, forthcoming). As we demonstrated in our earlier article, from the post-Second World War era to the mid-1970s, the Canadian labour market was structured on the basis of two distinct, and highly gendered, categories

of workers: standard workers, 'primary' wage earners who benefited from labour regulation surrounding the regime of worksite-based collective bargaining first covering industrial workers and then extended to public sector workers, and non-standard workers, who engaged in a diversity of employment relationships, which, despite their dissimilarity, resulted in these workers' relegation to coverage under minimum standards legislation. We argued that with the decline of the SER since the mid-1970s, there is growing polarization between standard workers whose numbers are declining and non-standard workers as well as among workers engaged in NSERs. These developments, combined with the deregulation of labour policy, underscore the pressing need for new principles and policies designed to reregulate employment relationships and to revive the collective bargaining system. Since the early 1980s, the policy debate over labour law reform in Canada has been posed in stark 'either/or' terms contrasting equity with efficiency or opposing regulation and rigidity to deregulation and flexibility. But, equity and efficiency may not be as far apart as the current debate suggests. 'Efficiency' is a value-laden term that may or may not be attuned to measuring the subtle impacts of certain types of initiatives. Improving and extending labour standards may, for example, decrease employee turnover, increase morale and productivity and reduce occupational injuries. Moreover, the proliferation of low-compensation NSERs also raises the spectre of slower productivity growth and dynamic inefficiency the failure of firms to adapt and innovate (Herzenberg et al., 1998: 150; Tilly, 1996: 162).

As Tilly (1996: 162) recounts, although conventional neoclassical economic theory posits that low productivity leads to low compensation, there is a strong argument that the causality can run in the opposite direction. Paying employees poorly can trigger and perpetuate a vicious circle for firms in the service sector whereby they attract low-skilled workers lacking commitment, driving up turnover, which, in turn, erodes a firm's level of service. When consumers reduce their demand for the low-quality service, the firm responds by keeping compensation low. As well, access to low-cost labour may make productivity increases unnecessary for employers (Deakin et al., 1992: 9). Moreover, the neoclassical assumption that there is a transparent tradeoff between the quantity and quality of jobs has not been borne out by the most recent studies of increases in minimum wages in the USA. Card and Krueger (1995) found that the employment effects of increasing the minimum wage was zero to

positive. This may be due to its effect on aggregate demand (raising the compensation of the lowest paid workers does destroy their jobs but the greater purchasing power created by a higher wage floor generates roughly the same number of better paid jobs) or it may be that low-wage employers mistakenly set wages too low and enforced increases bring benefits in reduced turnover and heightened productivity that offset higher wage costs.

Furthermore, whether a particular initiative is efficient or not depends upon the level at which the outcomes are being measured; “‘efficiency” at the level of the firm (micro-efficiency) is not necessarily synonymous with efficiency of the overall outcome’ (Fredman, 1997: 409). Policies that promote equity in the labour market, in particular, may have an important impact at the macro-level in promoting productivity. What may be rational for one firm, given the existing gender division of labour, may not be rational for firms in general. Collectively, firms benefit from a highly productive workforce. Much of what is necessary for the development of a productive workforce (namely skilled, responsible and diligent workers) is provided by women in the form of unpaid domestic labour. Policies that do not stretch women’s labour, but, rather, seek to accommodate different demands for their labour without disadvantaging them may well be efficient for firms in general. For example, mandatory (and generous) parental leaves and mid-career breaks would allow for the retention of skilled employees by all firms without increasing the marginal costs of a ‘good’ firm relative to a ‘bad’ one. Not only is there the possibility that, in the absence of mandatory standards, the ‘prisoner’s dilemma’ effect will prevent ‘good’ employers from agreeing to improved employment benefits, there is also the possibility that there may be numerous divergent outcomes of a policy initiative, leading to equilibria at different levels. According to Fredman (1997: 409), ‘the level at which equilibrium is reached, far from being the mathematical outcome of objective forces, is heavily contingent on the inherited social pattern of advantage as against disadvantage’. Contrary to the canons of neoclassical economics, deregulated labour markets tend to be associated not with a convergence upon equilibrium but with a disturbing trend towards job and wage polarization (Peck, 1996: 129).

It is also useful to examine what is meant by ‘flexibility’ within the contemporary labour policy debate. From the supply side, workers need flexibility in order to combine paid employment with their lifestyle decisions, the most important of which, from a social

perspective, is the decision to raise children. What workers do not need, however, is the insecurity that goes with 'choosing' an NSER in order to balance the necessity of earning an income against the responsibility to care for others. From the demand side, firms increasingly rely on a range of non-standard forms of employment to respond effectively to prevailing market conditions or to changes in the production process. In the contemporary policy debate, flexibility in work arrangements is often falsely equated with flexibility in employment and labour markets (Stanford, 1996). The problem is that the shift to NSERs raises the spectre of increased inequality along a variety of dimensions including wages, job security and social benefits (Lipsig-Mummé, 1997: 116; Rosenberg, 1989: 397). These forms of flexible labour market policies tend to remove protection primarily from the weakest groups in an economy (Deakin and Wilkinson, 1991).

The problem is that employment flexibility does not simply provide a broad menu of employment options for workers, it allows firms to shift the costs of adjusting to changes in the economy onto workers (Jenson, 1996; O'Grady, 1995: 178). What direction Canadian labour market policy will take in the future is a political question, albeit one that operates within certain economic constraints. Historically, unlike the USA, New Zealand and the UK, the Canadian government has not taken the path of explicit deregulation (Deakin, 1986). Nor has Canada sought to regulate NSERs like the European Union (Vosko, 1998) or to limit their spread, a strategy common to the Nordic countries, Germany and France until the 1980s. Our proposal is that, instead of shoring up the SER and continuing to countenance implicit deregulation of NSERs, the legal instruments of employment regulation be updated to redress the systemic inequalities in Canadian society mirrored in the labour market. The challenge is to develop a new employment contract which, we argue, requires the negotiation of a new gender contract (Rubery, 1998). This implies cultivating a regulatory regime in which the economic rationality of firms in a free market is constrained by the interests of democracy (Becker, 1996).

Distinct from scholars adopting broad concepts like the 'gender system' (Pfau-Effinger, 1999) and 'gender order' (Connell, 1988) to encompass cultural and social systems, we use the term 'gender contract' to refer to the normative basis upon which the gendered division of paid and unpaid labour operates at an institutional level (for example, in households, workplaces and the labour market).

In Canada, from the Second World War until the 1970s, the normative gender contract rested on a 'male breadwinner/female caregiver model', whereby the state played a mediating role in social reproduction. The male breadwinner/female caregiver contract was displaced in the 1970s, resulting in the emergence of a 'gender equality/parity contract'. We argue that this contract must now be replaced by a 'gender equity contract' built around the expectation of universal caregiving (Fraser, 1997), on the one hand, and flexibility in employment relationships, rather than insecurity, on the other. Under this new contract, the state would be required to abandon its mediating role and assume greater responsibility for social reproduction.

Goals, Principles and Issues

The first step in developing effective policy involves identifying goals. Labour regulation should seek to accommodate workers' need for income and economic security and firms' desire for flexibility in deploying labour within a public policy commitment to equity. Thus, one challenge is to promote flexible work for both firms and workers without simultaneously increasing economic insecurity for workers engaged in NSERs. Another is to stop recreating and exacerbating labour market segmentation through the various forms of legal regulation. Not only must the SER be displaced as the primary focus of regulation, but employment standards and collective bargaining must be regarded not as alternative, but as linked strategies of regulation.

Three principles in the design of labour law and policy are necessary for achieving these goals: cultivating parity in wages, benefits, conditions of work and labour and social protections between standard and non-standard workers; creating modes of representation accessible to the growing diversity of the Canadian labour force and the increasing plurality in employment relationships; and locating equity at the foundations of labour regulation. Each principle is integral to cultivating a new 'gender contract'. The gender contract changes over time: for example, our earlier article demonstrated that the modified gender contract of the postwar period was based on the male breadwinner family. Crafting a new contract involved revisiting and updating the gender contract of the post-1970 order which, as we have shown (Fudge and Vosko, 2001), entailed mounting equality policies such as employment and pay equality parallel

to collective bargaining and employment standards legislation. However, labour outside the market, especially the care of children, continued to be treated as the private responsibility of individual women, undermining the policies to promote equality in the labour market. Rubery (1998: 2), in the context of OECD debates on equality, advances the notion of gender contract and prescribes mainstreaming gender issues into policy-making. We take this sentiment forward by arguing that the emphasis of regulatory change should be on developing a framework for protecting women and men in the growing plurality of employment relationships and flexible labour markets.

Success at the policy level also depends upon the resolution of several key issues of institutional design. The first is to determine the scope of employment protection. The second is to determine the basis upon which employment-related entitlements should be distributed. The third is to devise democratic forms of collective representation for workers. The technical challenge is to resolve these issues in light of the three principles of labour policy identified.

The Legal Norm of Employment: Accommodating a Plurality of Social Forms

The identification of the individuals who should be entitled to work-related benefits and protections and the attribution of responsibility for their provision when a number of firms are involved raise important normative and technical questions. Employment is a legal relationship and it is distinguished from a range of other legal relations in terms of the rights and obligations recognized between, and imposed upon, the relevant parties. In Canada, some of these rights and obligations operate by virtue of the common law, such as reasonable notice, others via statutory regulation, most often minimum standards legislation. Most collective bargaining statutes only apply to situations in which an employment relationship exists. Moreover, the legal relationship of employment is often required for access to certain forms of income replacement schemes and is the basis for much of the state's taxation mechanisms. Much hinges on whether or not the legal concept of employment is sufficiently broad to capture the proliferating NSERs. The pressing challenge is to redefine the employment relationship to bring NSERs within the ambit of labour market regulation.

Although the existence of a contract of employment is commonly perceived as a unifying concept in Canadian employment and labour law, there are a variety of common law tests and statutory definitions that are used with the result that an individual may be classified as an employee for one purpose, but not for another (Fudge, 1999; Hickling, 1998: 24; Middleton, 1996: 576). In part, the problem with identifying employment relationships arises from the methodology of the common law; the doctrine of *stare decisis* (or precedent) and the placement of the burden of proof on the person seeking the protection of law inevitably entails both that the past exercises a profound constraint on how the law responds to present problems and that it is difficult to challenge the status quo.

Another problem is with the concept of employment. As a juridical concept its origin is very recent, dating to the late 19th century, and its forbear is master and servant law (Fudge, 1999). It is this legacy that helps to account for what was, until the 1960s, the dominant legal test of the existence of an employment relationship control, or the personal subordination of one person to another at the place of work (Hickling, 1998; Ocran, 1997). But, as Linder (1989: 173) remarks:

... the virtue of this test is its relative transparency and facilitation of bright lines. Its drawback lies in the absence of any demonstrated relevance to the way the control test is utilized. For example, there is no reason why protection against the insecurity of unemployment, or against the unilateral domination inherent in atomized individual bargaining vis a vis adhesion contracts, should be confined to workers who are closely supervised by their employers, as opposed to those with more work-place autonomy.

This simple test, while useful for identifying an SER, is of little use in categorizing the increasing number and forms of economic relationships in which a person performs work for another for remuneration. The control test has been supplemented by several tests which sought to identify economic, as opposed to personal, subordination as the key feature of an employment relationship. This approach has been adopted within several statutory regimes (Fudge, 1999). But the problem with focusing on economic dependence is that it does not provide a principled or coherent distinction between independent contractors, on the one hand, and employees, on the other (Fudge, 1999; Hunter, 1992: 166; Linder, 1989: 175). One solution is to abandon the distinction between employees and

independent contractors for determining entitlement to economic benefits and collective bargaining and to recognize that while there may be many contractual arrangements that differ factually from one another, there is only one category of contract 'contracts for the performance of work' (Brooks, 1988: 49; Hunter, 1992: 167). If it is necessary to define eligibility for work-related entitlements or benefits more narrowly in a specific piece of legislation, such definitions should explicitly describe who the legislation is designed to benefit. There are already examples of this inclusive approach in Canada, although they are the exception rather than the rule (Hickling, 1998: 26).

There are several advantages to adopting this solution. First, it creates an inhibition against arrangements that are solely designed to escape regulation. Second, it reduces the need for time-consuming and expensive adjudication over whether an individual is an employee or independent contractor. Third, it brings employment and labour legislation better in line with the new realities of the workplace. Fourth, it promotes desirable forms of flexibility in work arrangements. Fifth, it promotes horizontal equity because, in theory, it should treat individuals who are in substantially the same position equally in their entitlement to work-related benefits.

The flip-side of the problem of identifying the parties to an employment relationship is identifying the employer (Fudge, 1999). This is simple when there are only two parties involved. However, new work arrangements do not fit easily within the binary employment model:

... contemporary labour law is marked by a disjunction between theories of rights and duties based on privity of contract between employer and employee and new forms of work relations that disrupt this model of employment by increasingly interposing intermediate employers between the entities of labour and capital. (Becker, 1996: 1527)

The current model and tests of employment are not only ineffective in regulating precarious NSERs, they may promote their deployment.

There are a wide range of situations, involving, for example, temporary help agencies, service contracting, franchising, subcontracting, labour contractors and integrated chains of production and distribution, in which the legal issue of attributing liability for employment obligations among two or more potential employers arises (Becker, 1996; Hickling, 1998). The typical resolution is to

invoke the legal tests of employment to determine which of the multiple entities should be considered the (sole) employer for the purposes of a specific legal obligation.¹ But the problem with this ad hoc approach is that it is both arbitrary and indeterminate.

It is useful to examine in greater detail the use of temporary workers, provided through temporary agencies, by client firms in order to identify the problems intermediaries pose to legislation based on the SER and to canvass some prevailing regulatory solutions. In the last two decades, employers have come to use temporary help workers as a means of addressing fluctuation in demand for their products or services and long-term 'staffing' needs rather than simply as a 'stop-gap' measure for maternity leaves, vacations and sick leaves (Vosko, 2000: Ch. 4). There are numerous benefits to using temporary help agencies as 'staffing services' for employers. They allow employers to shed employees and still maintain a consistent supply of workers to produce their products and/or deliver their services. In resorting to temporary help agencies, firms are no longer directly responsible for paying wages and benefits, workers' compensation, procedures related to hiring and firing and often even training. The temporary help agency takes care of the selection, testing and placement of workers, pays their wages and administers benefits. In cases where clients of the agency are concerned with protecting an arm's-length legal relationship with temporary help workers, agencies also often provide onsite supervisors – usually contract workers hired directly by the agency – to oversee the activities of the temporary help workers at the worksite. All of these matters are delineated in the contract for service (for the provision of workers) between the agency and its customer. At a regulatory level, a *de facto* triangular employment relationship between the worker, the agency and customer is the product of this set of relationships, one where the division of legal responsibility between firm and client is unclear because of the absence of labour laws, legislation and policies in this area (Vosko, 1997). In practice, the cumulative effects of firms' embrace of this employment relationship and the lack of legal instruments surrounding it are far-reaching. Indeed, temporary help workers earn lower wages and receive fewer extended benefits than their counterparts in SERs, in particular because of the mark-up that the agency charges its client to administer benefits and hire and fire workers, and enjoy relatively low levels of social and labour protection (Vosko, 2000: Ch. 6).

The complexities in this type of NSER pose a number of obstacles for labour policy-makers and adjudicators. A crucial dilemma involves how to allocate responsibility between the temporary help agency and client firm to ensure that minimum labour standards are maintained. In the Canadian context, the question of identifying the employer of a temporary help agency worker depends upon the context in which the question is put, the jurisdiction in which the question is posed, the legal test invoked and the factual circumstances involved, creating a high degree of uncertainty regarding legal liability for client firms for workers provided through temporary help agencies (Vosko, 2000).² However, various countries in Europe, as well as the EU as a whole, are adopting a regulatory framework surrounding temporary help work. Legislation designed to regulate temporary help work in Germany, France, Spain, Norway, Finland, Denmark, Sweden, Belgium and Luxembourg, for example, mandates worker protection and allocates responsibilities between the agency and the client firm (Vosko, 1997).³

These jurisdictions not only consistently view setting criteria for occupational health and safety, social security and the payment of wages as essential aspects of national legislation, they also allocate responsibility in a range of other areas. French legislation, for example, entitles temporary help workers to precarity pay (whereby they receive a lump sum of money from the temporary help agency at the end of an assignment), equal treatment with respect to wages and conditions of work, the provision of safety equipment and collective bargaining rights; many of these entitlements are the joint responsibility of the temporary help agency and the customer (France, 1996: Article 124-4-6). German legislation also deems the agency responsible for providing access to training for workers (Halbach et al., 1994: 213). Additional areas where countries allocate responsibility include complaints, disciplinary and dismissal procedures and special medical supervision.

There is also a growing recognition of the importance of secondary responsibility and issues surrounding the conversion of temporary help contracts into employment contracts of indefinite duration. Although the allocation of responsibility is not identical across these areas, national legislation provides a range of examples of where it is necessary and feasible. The existing system of regulation premised on a stable contract of employment between a single employer and its employees engaged in labour at a fixed location

is anachronistic (Becker, 1996: 1561). The need to identify the employer would disappear if policy-makers and legislators were prepared to impose shared liability on all the firms involved in the joint enterprise for the welfare of workers (Hunter, 1992: 169). In the garment industry in the USA and Canada there are a number of examples where joint and several liability has been imposed on firms, which, although they are not direct employers, exercise a great deal of indirect control over workers' (especially home-workers') conditions through their position in an integrated chain of production and distribution (Becker, 1996; Ontario District Council, 1993). In the context of proliferating work arrangements that use intermediaries, these models are instructive in redesigning the basis upon which liability for work-related obligations should be imposed.

Flexibility and Security: Cultivating Parity between Standard and Non-Standard Workers

If the goal is to reduce, rather than exacerbate, labour market dualism based upon an exclusive, rather than an inclusive, model of employment, the principle of parity is crucial in determining access to work-related benefits (Herzenberg et al., 1998). The following examples illustrate the direction that labour policy should take in order to ally employers' flexibility with workers' security.

The first challenge is to implement a broad notion of parity between standard and non-standard workers. Two examples of NSERs, for which regulation based upon the parity principle either has been implemented or is under consideration, are pertinent here: part-time employment and temporary work through an agency. In 1989, the ILO reported that in Australia, Austria, Belgium, Denmark, Finland, France, West Germany, Norway, Portugal, Spain and Sweden official labour standards and/or collective bargaining practices ensure equal hourly pay for work of equal value whether part-time or full-time. The EU has also been involved in the development of equal pay guidelines for part-time and temporary workers in the Social Charter established to govern labour standards in a united European economy (duRivage, 1992: 93). Many countries in Europe have made great strides in providing parity of treatment between temporary help agency workers and workers in an SER.

Quebec has made the greatest progress in North America in requiring parity of treatment for part-time and full-time workers. It is illegal for employers to discriminate against part-time workers with respect to remuneration (up to a certain limit) or annual vacation leave (England et al., 1998: 8.139-8.140). This provision attempts to discourage employers from resorting to part-time workers with the exclusive aim of lowering labour costs. Proposals to generate a parallel clause in the Quebec labour code for workers engaged in temporary help work and other triangular employment relationships and to create regulations akin to those evolving in Europe are also on the table (Vosko, 2000: Ch. 6). To ensure parity of treatment between NSERs and SERs, the legal obligation should extend to all aspects of the compensation package. While pro-rated benefits for part-time workers have long been advocated in Canada (Fudge, 1991: 36-8) and were legally mandated in Saskatchewan in the mid-1990s (Broad, 1997: 64-6; England et al., 1998: 8.136-8.139), there are some issues that must be addressed. It is important to eliminate the requirement that workers work a minimum number of hours per week to be entitled to benefits since such requirements function as incentives to firms to reduce weekly hours (Broad, 1997). The second problem with a pro-rated benefit scheme is that any employer contributions to the employee's benefit plan are virtually worthless if the employee does not complement the employer's contribution by a payment of her or his own to purchase the benefit. In situations where an employee is only working part-time, the employee has a smaller pay package from which to pay the costs of benefits and the cost to the employee for those benefits is far larger, both absolutely and proportionately, as a percentage of his or her pay package, than the cost of an identical benefit package to a similarly situated full-time employee. Thus, it is important to provide part-time workers with the option of selecting pro-rated benefits or compensation in lieu of benefits.

There is a more profound problem with the traditional basis for distributing employment-related benefits – the requirement for continuous service with a single employer. While requiring that part-time, temporary (whether provided through an agency or not) and own-account self-employed workers receive wages and employment benefits equivalent to those provided to workers in SERs is a step towards parity, it does not provide for economic security for non-standard workers. This is because tying employment-related benefits to a single employer has a negative impact on multiple-job holders,

temporary workers and the own-account self-employed who work for a number of different firms. The case of own-account self-employment highlights the extent of this problem. If the policy objectives are to promote both horizontal equity between workers and increase flexibility in work arrangements, it follows that the own-account self-employed be provided with the same statutory and bargained-for benefits as employees (Advisory Committee on the Changing Workplace, 1997: 44). However, this proposal does not address the situation of own-account employees who have an ongoing, albeit contractually limited, relationship with a number of firms in the same sector. The number of freelance workers who make their living bidding sequentially on various types of work ranging from graphics and design, editing, computer programming and input, driving, operating equipment and various forms of consulting is increasing. But, because these freelance workers lack a continuous employment relationship with a single employer, they are denied many statutory and other employment-related benefits.

One way around the problem of fixing an ongoing employment relationship with a single employer as the trigger for employment-related benefits is to designate a particular sector or subsector, defined either in terms of an industry or occupation. Firms that use freelance workers would be allocated to the appropriate sector and, collectively, the firms in a sector would be designated the employer for the purpose of statutory and other employment-related benefits. Continuity of service would accumulate through a variety of definite-term contracts with different businesses. Firms in a sector would pay a levy, calculated by reference to their expenditures on freelance workers, to cover their share of the benefits owed to freelance workers and they would be required to register with a central registry and workers would be encouraged to do so. Some form of central registry is essential if the standards are to be enforced. This registry could then be used as the basis either for tripartite regulation (which was the case in Ontario under the Industrial Standards Act) or workers' collective representation (Ontario District Council, 1993).

Another option is to introduce structures that facilitate the establishment of employee organizations that would administer a wide range of benefit plans, which from a firm's perspective is less intrusive. Several examples already exist in Canada, artists and performers and construction workers being the two most notable. What this would require is a recognition and acceptance by policy-makers,

firms and unions of a plurality of different forms of representation (Advisory Committee on the Changing Workplace, 1997: 49-50). The positive aspect of this type of scheme for providing work-related benefits is that it would reduce the number of problems associated with administering a system that focuses on the employer and not the worker. As Sims (Advisory Committee on the Changing Workplace, 1997: 121) notes, 'the question of how to pro-rate benefits would not arise for a person who, by working two different part-time jobs, in fact earns a full wage'. Moreover, employee organizations could craft their benefit packages to reflect the actual work performed by an employee and the needs and desires of the group of workers that they represent, and the benefits could be based on the employee's entire income. There are number of mechanisms that could be implemented to ensure that employees maintained coverage between jobs. Irrespective of the precise details of such schemes, what is crucial in the new work environment is that work-related benefits are portable between firms and employers. This step has already been taken in the Employment Insurance Act, under which work with a number of employers over the same time period can be accumulated for the purpose of qualifying for benefits, although it has not been perfected such that standard and non-standard workers are eligible to receive benefits as well as qualify for insurance (Vosko, forthcoming).

It is crucial to move beyond the level of the individual firm to design labour standards that meet the challenges presented by NSERs. Sectoral regulation as a means of providing some degree of economic security and equality of treatment for the own-account self-employed, for example, is perfectly compatible with forms of union representation that are not wedded to one identifiable employer with a defined group of employees. The federal government has moved beyond the traditional Canadian collective bargaining model with the Status of the Artist Act (Cliche, 1996; MacPherson, 1999). This Act supports efforts by artists and producers, who fall outside the traditional conception of an employee, to negotiate a form of standard contract through a professional association. There is no requirement for these workers to be at the same worksite. Nor is there a need to demonstrate a continuous employment relationship with a single employer. Such standards must be flexible enough to adapt to the specific features of different forms of work and to permit firms to respond to prevailing market conditions (Herzenberg et al., 1998). Sectoral regulation, on a

number of bases, such as industry or occupation, for example, could be an antidote to standards that are too rigid. But it is important not to regard minimum work-related standards imposed by law as either antithetical or alternative to collective bargaining. In Canada, the gap in wages, benefits and security between those workers who have to rely on minimum standards and those who enjoy the benefits of collective bargaining is large, encouraging employers strongly to resist collective bargaining. It is also often necessary for employees to be represented by a union in order to realize fully the benefits of minimum standards legislation (Fudge, 1991). The challenge is to cultivate interactive and mutually supportive labour standards and collective bargaining regimes that accommodate the range of NSERs.

Broader-Based Bargaining and Other Alternative Representational Structures

Just as the breakdown of the SER and the coincident spread of NSERs undermine the effectiveness of the prevailing dualistic labour law, legislation and policy in Canada, they also challenge already problematic collective bargaining norms. In Canada (and the USA), private sector collective bargaining legislation reinforces a specific model of worker representation. That legislation is based on two structural features: a bargaining unit determination process that presumes that collective bargaining will take place at the level of the worksite and a commitment to majority rule in determining collective representation (Advisory Committee on the Changing Workplace, 1997: 114; Vosko, 2000: Ch. 8). Under Canada's regime of collective bargaining, the policies and practices associated with defining the 'community of interest', the notion upon which bargaining unit determination hinges, are clearly based on a narrow conception of which factors and indices serve as the basis of workers' common interests (Forrest, 1986; Fudge, 1993; MacDonald, 1998; Vosko, 2000). This creates a disincentive against unions organizing small firms in the private sector and tends to exclude non-standard workers. Not only do Canadian collective bargaining laws require that employees take the initiative to bring collective bargaining into their workplaces (Adams, 1991: 147), they also require that a majority of employees in a designated bargaining unit support a particular union. These policies stand in marked contrast to collective

bargaining regimes in Europe, where employee councils are mandated by law in several countries and where unions that represent a minority of employees at a particular workplace have the right to collectively bargain on their members' behalf. Collective bargaining legislation and labour board policies and practices have also affected how unions draw jurisdictional lines; in many instances, they have led unions to conform to, rather than challenge, bargaining unit policies that disenfranchise a growing proportion of the Canadian workforce (Fudge, 1993). In this way, they have contributed to elevating one representational form, which fails to address fully the needs of a range of employment relationships, over a range of other possibilities (Vosko, 2000).⁴ The result of this model of trade union representation and collective bargaining is that a majority of workers in Canada have no right to participate in decisions that affect their working lives. Private sector collective bargaining legislation both exacerbates labour market dualism in Canada, and weakens the position of unorganized workers (Adams, 1995: 343).

Although the Wagner model of collective workplace representation is hegemonic in Canada, different models of employee representation and collective bargaining do exist. Employee representation at the worksite level with respect to issues related directly to occupational health and safety is already mandated in many jurisdictions in Canada. There is no requirement that a majority of employees register their support for health and safety councils. In fact, the opposite is true; employers are under a legal obligation to establish a joint health and safety council consisting of equal numbers of representatives of employees and management (Bernard, 1995). Neither the Industrial Standards Act in Ontario (which was repealed in 2001) nor Quebec's Collective Agreements Extension Act require majority support by employees for the extension of key employment-related standards throughout a specified industrial sector. These pieces of legislation, while they do not amount to multi-employer collective bargaining, recognize a form of collective representation and operate at a level beyond that of the individual worksite or enterprise (Ontario District Council, 1993; Schenk, 1995; MacDonald, 1998; Trudeau, 1998; Vosko, 2000). Moreover, with respect to certain crafts, especially those in the construction industry and the arts and entertainment sector, collective bargaining legislation facilitates multi-employer bargaining, extends beyond workers who enjoy an SER and facilitates portability with respect

to employment-related benefits (Ontario District Council, 1993; MacDonald, 1998; Sims, 1995).

Each of these regimes encourages a form of broader-based representation and/or bargaining that enables unions and workers' organizations to represent workers who fall outside the SER, by offering ways to overcome the impasse at the level of worksite representation in Canada. While these models have been subjected to critical evaluation in light of their capacity both to meet the needs of non-standard workers and to foster democracy at the workplace (Schenk, 1995; Vosko, 2000), it is possible to draw on them in developing representational and collective bargaining regimes that extend to non-standard workers.

In addition to examples of broader-based representation and collective bargaining regimes that already exist in Canada, scholars have developed models to address the situation of non-standard workers and workers employed in small firms. Scholarly literature advancing 'new' models for organizing workers begins with the following premise: the worksite-based model of collective bargaining is outmoded because it cannot accommodate workers that move from employer to employer and from industry to industry. This job-mobility path,⁵ that has always been common among women, is increasingly prevalent among low-wage service sector workers, as well as other types of workers (including professionals), due to the growth of involuntary self-employment, contract work and other atypical employment relationships (Cobble, 1994: 286; Heckscher, 1988: 177; Wial, 1993: 670). However, after identifying the fundamental problem with the Wagner regime, scholars follow several different paths, examining and evaluating different models to suit distinct segments of the working population; the dominant scholarly trajectories borrow elements from craft/occupational, associational and geographical unionism.

One body of literature focuses on creating a new union organizational structure that would enable women, minorities and low-wage service workers, such as waitresses and janitors, to organize and achieve effective representation at work (Armstrong, 1993; Cameron, 1995; Cobble, 1991, 1994, 1996; MacDonald, 1998; Middleton, 1996; Wial, 1993). Another trajectory advances a variant of 'unionism', which is more reminiscent of a professional association than a union per se, geared to workers ranging from professionals confronting corporate restructuring to recently displaced

workers seeking the type of representation that they once enjoyed from a worksite-based union. This model is frequently referred to as 'associational unionism'. There is a significant split among advocates of associational unionism, between those endorsing this pre-union form on its own terms (Heckscher, 1988) and those drawing on the strengths of this type of organizing workers as a transitional model with a view to developing sounder legal and institutional structures (see, for example, Ontario District Council, 1993; Middleton, 1996). Geographical unionism, while in its purest form never able to institutionalize collective bargaining practices, provided a powerful means of organizing workers across occupation and worksite (Wial, 1993: 690-1). However, hybrid forms of geographical unionism, especially geographical associationalism, that draw upon campaigns by janitors and hotel and restaurant employees, such as the 'Justice For Janitors Campaign' launched by the Service Employees International Union, are being developed (Wial, 1993). Beyond sharing the same underlying premise, each of these distinct trajectories borrows elements from associational, craft/occupational and geographical unionism (Middleton, 1996; Wial, 1993).

Although its recommendations were never implemented, the Baigent Ready Report (Baigent et al., 1992), which made recommendations for labour law reform in British Columbia, also included proposals for broader-based bargaining certification and collective bargaining. This report took the limits of the Wagner Act model of industrial relations as its point of departure and called for a form of sectoral certification. It recommended that 'unions at small enterprises which have been historically under represented by trade unions be allowed to amalgamate their bargaining units for the purpose of bargaining jointly with their employers' and that sectoral agreements be extended to new workplaces mid-way through the collective agreement if the union could determine sufficient support.⁶ Thus, it encouraged sectors composed of low-waged, precariously employed workers to bargain collectively through the introduction of one bargaining unit certification to cover all workers in a given sector or geographic area.

Employee councils either at the level of the worksite or enterprise have also been advocated as a way of overcoming the limitations of the Wagner regime. These proposals build upon the joint health and safety councils required by law in most Canadian jurisdictions and the mandatory elected statutory works councils required in

Germany, Italy and France. Some scholars (Weiler, 1990) would establish employee participation committees by statutory mandate, while others would move in the same direction via a system of tax breaks and other government incentives and allow less than a majority of employees to trigger their formation (Adams, 1995; Beatty, 1987; Freeman and Rogers, 1993).

Each of the models proposed have shortcomings in that they fail to address adequately the situation of the range of NSERs (Middleton, 1996; Vosko, 2000). Some are also more democratic than others (Vosko, 2000). Most do not fit well with existing structures of trade union organization (Fudge, 1993; Wial, 1993). But it would be utopian to think that there is one model of worker representation and broader-based bargaining that can accommodate the proliferating and varied forms of non-standard employment. Pluralism in representational and bargaining forms is what is required. However, whatever 'new' models of unionism workers and organized labour choose to adopt, they must be attentive to the hierarchies generated by differentiating the labour supply and they must avoid reproducing unnecessary divisions.

There are several compelling reasons to revise existing legislation and laws to accommodate a plurality of representational and broader-based bargaining models (Herzenberg et al., 1998). Freedom of association and equality are recognized as important, even core, values in most liberal democracies (Rogers, 1994). In Canada, the freedom of individuals to associate with respect to their working lives is seriously compromised by collective bargaining legislation that excludes a growing proportion of the working population. Income polarization in Canada is increasing, fuelled partly by the decline in collective bargaining coverage. Inclusive forms of collective bargaining would contribute to diminishing inequality in the labour market. Commentators also argue that enhancing worker representation and promoting greater equality in the workplace could contribute to firm and government efficiency (Rogers, 1994: 115-17).

Labour law and policy reform should be, in part, about building the institutional supports for a high-road economy:

... we know that modernization and industrial upgrading efforts, as well as workplace regulation, require institutional supports within and across firms to facilitate communication, organize key players, reward cooperation, punish free-riders, monitor performance, diffuse best practice, use 'local knowledge' to devise efficient compliance strategies with social mandates, and more. (Rogers, 1994: 117)

Revised labour laws, legislation and policies that recognize a plurality of representational forms would help to meet this challenge.

Making Equity Integral to All Labour Laws, Legislation and Policies

It is crucial to evaluate labour law, legislation and policy from the perspective of equity, not only for the normative value of promoting equality, but also for analytic purposes. As we argued previously (Fudge and Vosko, 2001), the dualistic regime of labour law, legislation and policy in Canada was obscured, to a large extent, because it was gendered. Women were considered secondary and subordinate wage earners to men, who were assumed to be entitled to better employment opportunities and wages. Despite the fact that most jurisdictions in Canada enacted legislation prohibiting sex discrimination in employment by the early 1970s, women remained confined to low-paying jobs with little career advancement and they constituted the majority of workers in NSERs. The problem was that sex discrimination, and later gender equity, legislation was forced to adapt to existing institutions of labour regulation, rather than vice versa (Fredman, 1997; Fudge, 1996; Hunter 1995). Making gender a crucial component of all policy analysis would not only foster equity in policy design, it would help to account for what would otherwise be unanticipated policy outcomes. Indeed, the 1995 federal government adopted a policy requiring federal departments to conduct gender-based analysis of future policies in order for Canada to make good its international commitment to gender equality and to promote informed policy-making and good governance (Status of Women Canada, 1996: 5). This is particularly important in the context regulating flexible work. As Owens (1993: 422) notes, 'the flexibility of atypical work is not . . . a flexibility of paid work to suit the needs of women. . . . Rather, it is the assumed flexibility of women to meet the demands of the whole system of work.'

Given the current (and long-enduring) sexual division of labour, the profound increase in women's labour market participation since the 1950s has not been matched by an equal diminution in women's domestic, especially childcare, responsibilities. While some policies have been devised to accommodate better women's dual role as income earners and mothers, there is a lack of consistency

across Canada in the standards that have been set (England et al., 1998: 8.215–8.243). Quebec provides both the easiest access to and the most generous amount of maternity and parental leave; it (along with two other provinces) does not impose a minimum service requirement for eligibility and it recently increased parental leave from 34 to 52 weeks. Moving to this standard would provide greater access to maternity and parental leave for women (and men) in the rest of Canada. However, it would do nothing to revise the current system of maternity and parental benefits, which creates an immense barrier for women, especially women with low income or who are sole parents, to take the leave they are legally entitled to. This is because the employment insurance system, which as of 21 December 2000 provides one year of benefits, only replaces a proportion of wages (55 percent up to a maximum amount). Moreover, the eligibility requirements mean that many women in NSERs simply do not qualify for the benefits (Iyer, 1997).⁷ So long as childrearing is considered an individual choice, the cost of which is to be borne by women, women will never be able to obtain equality in the labour market.

It is crucial to examine and to revise existing statutory labour standards in light not only of the changes in the nature of employment, but also with regard to the changed demographics of the workforce. Multiple-earner families have replaced the male breadwinner who earns a family wage as the norm, and non-standard employment among families has risen (Fudge, 1997). The question is whether these developments should generate a change in the unit for which labour standards are designed, from individual- to family-based. We believe that there are compelling arguments, most of them equity-based, against moving to family-based standards. First, there is no common understanding of what 'the family' is. For legal purposes a range of different definitions are used, politically the meaning of 'the family' is contested and even for official statistical purposes there is no common definition (Fudge, 1997). Second, labour standards policy that takes the family rather than the individual as the key unit assumes that families are static and that resource sharing and intra-household transfers between family members are equal. Neither of these assumptions is true (Eichler, 1997; M. MacDonald, 1999). Third, using the family to design standards would continue to condemn many women either to poverty or to dependency in their retirement (Townson, 1995).⁸ Revising the gender content of labour law,

legislation and policy is a crucial challenge in the current period. However, gender equity is only one, albeit a central element in the challenge to attain equity; intergenerational inequality is deepening. Young men and women are losing ground in the labour market evidenced by their concentration in service sector employment, certain forms of non-standard employment and age-based wage trends. Between 1976 and 1994, the proportion of workers employed part-time climbed from 11 to 17 percent, with 15- to 24-year-olds experiencing the brunt of this trend (Krahn, 1995). Even more tellingly, income polarization on the basis of age grew among women and among men in the 1980s and 1990s (Morissette, 1997; Scott and Lochhead, 1997).

The rules of the labour market are changing and the employment contract is deteriorating. Workers who enjoyed the benefits of the postwar accord faced much less labour market competition than do workers today. The problem is that the deterioration in labour standards for young workers has much longer-term implications. Young workers soon become workers with children, then middle-aged workers and, finally, retired workers. One way of fostering intergenerational equity is to develop new norms of employment based on a new gender contract, rooted in principles of equity, inside and outside the labour market.

Conclusion

Women's employment shows that it is impossible to separate the institutions of the labour market from the family and the social distribution of caring responsibilities. Only by exclusively focusing on the SER at the level of labour law, legislation and policy is it possible to reify this separation. Once attention is paid to the existing plurality of employment relationships, the linkages between the institutions of the labour market and the institutions that regulate and constitute the 'family' become visible. The sexual division of labour is crucial not only to the family but to the labour market. The existing gender contract (and those that preceded it) assumed that this sexual division of labour was natural and immutable. Elsewhere we have shown that this division of labour both inside and outside the labour market is actively constructed through labour law, legislation and policy (Fudge and Vosko, 2001). Therefore, the new gender contract must rethink women's role not only in the

labour market, but women's role within the family (Rubery, 1998). Of course, this necessitates profound changes in men's roles within the labour market and the family. As our earlier discussion of the erosion of the SER, the rise of NSERs and the feminization of employment has revealed, this process is already underway. The male breadwinner model, the lynchpin of the SER, has always been fragile and is no longer sustainable. The challenge is to devise a new gender contract in which the responsibility for caring for others is not subordinated to the dictates of the labour market. A gender contract based upon what Nancy Fraser (1997: 59-62) has called the 'universal care giver model', is not only compatible with but is complementary to the reregulation of the employment relationship along the lines we suggest.

Developing a wish list of employment standards, labour rights and the elements of a revised gender contract is, however, a relatively easy task; the more difficult challenge is to identify the political agents and the political strategies needed to reregulate the labour market. A detailed discussion of these crucial issues is beyond the scope of this article. But, as Sengenberger (1994: 11) reminds us, 'there is no labour market without rules . . . the critical issue is not whether to have rules but what kinds of rules and who creates them'. Labour markets and the wage relationship are institutionalized in a complex regulatory matrix. The challenge for working people is to institutionalize forms of regulation (through state and union policy) that resist the segmentation of labour markets and link production to social reproduction. Nothing we have written should be read as gainsaying the need for political struggle. Yet, we believe that there is a value to subjecting existing forms of labour regulation to critical examination and to engaging in a debate about the norms and principles that should inform new forms of labour regulation.

Notes

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1. At common law, courts have recognized that affiliated corporations, although separate legal persons, can share the functions and responsibilities of an employer and have imposed joint and several liability, which is a legal obligation on each person to indemnify the employee for all the harm caused or damage suffered irrespective of which person is actually at fault (England et al., 1998: 3.4 3.6; Hickling, 1998: 32). More commonly, it takes special legislation to trump privity and impose joint liability. Under most employment standards and labour relations legislation in Canada, there is authority for the imposition of joint and several liability upon two or more separate legal entities where the entities are carried under common control or direction (Adams, 1993; England et al., 1998: 3.6 3.7; Hickling, 1998: 33).

2. In a recent decision, the Supreme Court of Canada stressed the need for legislation providing a coherent framework that would cover these situations (Trudeau, 1998). A recent study of the challenges posed by contingent work to employers also found that a major legal concern is 'who is the "employer" in a contingent work arrangement' (Booth, 1997: 8).

3. In all of these countries, the client is responsible for the health and safety of the worker while she or he is at the worksite as well as normal labour standards such as those pertaining to night work, child labour, maximum hours of work and days of rest. However, in several countries, such as Norway and members of the EU, the temporary help agency has the duty to inform its workers of the normal conditions of work and conditions pertaining to occupational health and safety on site. Additionally, in France, the client must provide special medical supervision for temporary workers and, in Spain, the client is responsible for covering increases in social security contributions, 'in the event of an accident at work or an occupational illness occurring in its workplace during the validity of the hiring-out contract and attributable to a lack of safety measures' (France, 1996: Article 124-4-6; Spain, 1994, 3: Article 16.3). As the principal employer of workers, the agency is responsible for the payment of wages and social security contributions in all jurisdictions where legislation exists. However, significant national variations exist regarding the role of the customer if a temporary work agency defaults on the payment of wages. For example, in Spain and France, the customer is responsible for contractual obligations, pertaining to wages and social security, in a secondary capacity (France, 1996: Article 124-4-6; Spain, 1994, 3: Article 15.3). More general clauses also exist in other national legislation making reference to the joint obligations of both the temporary help agency and the client to the worker. For example, Belgian legislation suggests that the temporary help agency is responsible 'together with the user, for the payment of wages, and indemnifications to which the temporary employee is entitled, as well as the payment for social security contributions' (Blanpain, 1993: 61).

4. It is not unlawful in any jurisdiction in Canada for workers to join unions or to establish forms of collective representation outside the mechanisms put in place by collective bargaining statutes. But workers do so only at great risk. This is because the law only provides protection to workers from employer retaliation (including dismissal) if the workers are covered by and adhere to the collective bargaining statute. Firms, by contrast, are legally free to organize their property however they see fit, even if this interferes with employees' freedoms to associate and bargain collectively. The only legal constraints on employers' rights are those specifically prohibited under collective bargaining legislation. A firm's freedom to organize its productive assets is recognized as a legal right but workers do not enjoy an equivalent right to associate.

5. We follow Howard Wial (1993) in adopting the term 'job-mobility' path. Wial defines a job-mobility path as, 'a sequence of jobs through which workers move, with some regularity, according to associate defined transitional structure' (Wial, 1993: 673-4). He uses the term to demonstrate that job mobility is channelled through social relations among workers and employers and between workers and employers whether or not it occurs within a single firm or between firms. Preferable to the notion of a 'career-line', the concept job-mobility path is a useful term for describing the work histories of workers without well-defined occupational affiliations.

6. In the proposal, small workplaces included those with fewer than 50 full-time workers or the equivalent number of part-time workers.

7. For example, a woman had to work for 20 weeks to access maternity benefits under the old unemployment insurance system; this qualifying requirement equalled 300 hours (that is, 20 weeks with a 15-hour weekly minimum). Under the new employment insurance system, at 15 hours per week, she must work for 47 weeks (Vosko, forthcoming).

8. Married women, on average, have lower earnings than other women, even when they are employed full-time, and family responsibilities reduce their long-term earning potential. Not only are married women likely to experience serious financial hardship if their marriage ends, as Townson (1995: 2) notes, 'the need to depend on a spouse for support in retirement raises issues of women's financial autonomy'.

References

- Adams, G. (1991) 'Towards a New Vitality: Reflections on 20 Years of Collective Bargaining Regulation', *Ottawa Law Review* 23(1): 139-75.
- Adams, G. (1993) *Canadian Labour Law*, 2nd edn. Aurora: Canada Law Books.
- Adams, R. (1995) 'A Pernicious Euphoria: 50 Years of Wagnerism in Canada', *Canadian Labour and Employment Law Journal* 3(3/4): 321-55.
- Advisory Committee on the Changing Workplace (1997) *Collective Reflection on the Changing Workplace* [available at www.reflection.gc.ca/report/report_e.txt].
- Armstrong, Pat (1993) 'Professions, Unions or What?: Learning from Nurses', pp. 304-24 in Linda Briskin and Patricia McDermott (eds) *Women Challenging Unions: Feminism, Democracy and Militancy*. Toronto: University of Toronto Press.
- Baigent, J., V. Ready and T. Roper (1992) *A Report to the Honourable Moe Shihota Minister of Labour: Recommendations for Labour Law Reform*. Victoria, BC: Ministry of Labour and Consumer Services.
- Beatty, D. (1987) *Putting the Charter to Work*. Kingston and Montreal: McGill-Queen's Press.
- Becker, C. (1996) 'Labor Law Outside the Employment Relation', *Texas Law Review* 74: 1527-62.
- Bernard, E. (1995) 'Canada: Joint Committees on Occupational Health and Safety', pp. 351-74 in J. Rogers and W. Streek (eds) *Work Councils: Consultation, Representation, Cooperation in Industrial Relations*. Chicago, IL: University of Chicago Press.
- Blanpain, R. (1993) 'Belgium', pp. 45-75 in R. Blanpain (ed.) *Temporary Work and Labour Law of the European Community and Member States*. Dordrecht: Kluwer.

- Booth, P. (1997) *Contingent Work: Trends, Issues and Challenges for Employers*. Ottawa: Conference Board of Canada.
- Broad, D. (1997) 'The Casualization of the Labour Force', pp. 53-73 in A. Duffy, D. Glenday and N. Pupo (eds) *Good Jobs, Bad Jobs, No Jobs: The Transformation of Work in the 21st Century*. Toronto: Harcourt Brace.
- Brooks, A. (1988) 'Myth and Muddle: An Examination of Contracts for the Performance of Work', *University of New South Wales Law Journal* 11(2): 48-101.
- Cameron, B. (1995) 'From Segmentation to Solidarity: A New Framework for Labour Market Regulation', pp. 193-212 in D. Drache and A. Ranachan (eds) *Warm Heart, Cold Country: Fiscal and Social Policy Reform in Canada*. Ottawa: Caledon Institute/Roberts Centre for Canadian Studies.
- Card, D. and A. Krueger (1995) *Myth and Measurement: The New Economics of the Minimum Wage*. Princeton, NJ: Princeton University Press.
- Cliche, D. (1996) 'Status of the Artist or of Arts Organizations: A Brief Discussion of the Canadian Status of the Artist Act', *Canadian Journal of Communication* 21(2): 197-210.
- Cobble, D. (1991) 'Organizing the Post-Industrial Work Force: Lessons from the History of Waitress Unionism', *Industrial and Labor Relations Review* 44(3): 419-36.
- Cobble, D. (1994) 'Making Postindustrial Unionism Possible', pp. 285-301 in S. Friedman, R. Hurd, A. Oswald and R. Seeber (eds) *Restoring the Promise of American Labor Law*. Ithaca, NY: ILR Press.
- Cobble, D. (1996) 'The Prospects for Unionism in a Service Society', pp. 333-58 in C. Macdonald and C. Sirianni (eds) *Working in the Service Society*. Philadelphia, PA: Temple University Press.
- Connell, R.W. (1988) *Gender and Power*. Cambridge: Polity Press.
- Deakin, S. (1986) 'Labour Law and the Developing Employment Relationship in the UK', *Cambridge Journal of Economics* 10: 125-46.
- Deakin, S. and F. Wilkinson (1991) 'Labour Law, Social Security, and Economic Inequality', *Cambridge Journal of Economics* 15: 125.
- Deakin, S., J. Michie and F. Wilkinson (1992) *Inflation, Employment, Wage-Bargaining and the Law*. London: Institute of Employment Rights.
- DuRivage, V. (ed.) (1992) *New Policies for the Part-Time and Contingent Workforce*. Armonk, NY: M.E. Sharpe.
- Eichler, M. (1997) *Family Shifts*. Toronto: Oxford University Press.
- England, G., I. Christie and M. Christie (1998) *Employment Law in Canada*. Toronto: Butterworths.
- Forrest, A. (1986) 'Bargaining Units and Bargaining Power', *Relations Industrielles/Industrial Relations* 41(4): 840-50.
- France (1996) *Code du travail*. Strasbourg: Dalloz.
- Fraser, N. (1997) *Justice Interruptus: Critical Reflections on the 'Postsocialist' Condition*. New York: Routledge.
- Fredman, S. (1997) *Women and the Law*. Oxford: Clarendon Press.
- Freeman, R. and J. Rogers (1993) 'Who Speaks for Us? Employee Representation in a Nonunion Labor Market', pp. 13-79 in B. Kaufman and M. Kleiner (eds) *Employee Representation: Alternatives and Future Directions*. Madison, WI: Industrial Relations Research Association.
- Fudge, J. (1991) *Labour Law's Little Sister: The Employment Standard Act and the Feminization of Labour*. Ottawa: Canadian Centre for Policy Alternatives.

- Fudge, J. (1993) 'The Gendered Dimension of Labour Law: Why Women Need Inclusive Unionism and Broader-Based Bargaining', pp. 231 48 in L. Briskin and P. McDermott (eds) *Women Challenging Unions: Feminism, Militancy and Democracy*. Toronto: University of Toronto Press.
- Fudge, J. (1996) 'Rungs on the Labour Law Ladder: Using Gender to Challenge Hierarchy', *Saskatchewan Law Review* 60(1): 237 63.
- Fudge, J. (1997) 'Precarious Work and Families', Working Paper, Centre for Research on Work and Society, York University.
- Fudge, J. (1999) 'New Wine into Old Bottles? Updating Legal Forms to Reflect Changing Employment Norms', *University of British Columbia Law Review* 33(1): 129 52.
- Fudge, J. and L. Vosko (2001) 'Gender and Segmentation: The Standard Employment Relationship in Canadian Labour Law, Legislation and Policy', *Economic and Industrial Democracy* 22(2): 271 310.
- Halbach, G., N. Paland, R. Schwedes and O. Wlotzke (1994) *Labour Law in Germany: An Overview*. Deventer: Kluwer.
- Heckscher, C. (1988) *The New Unionism: Employee Involvement in the Changing Corporation*. New York: Basic Books.
- Herzenberg, S., J. Alic and H. Wial (1998) *New Rules for a New Economy*. Ithaca, NY: Cornell University Press.
- Hickling, M. (1998) 'Flexibilization of the Workplace: Observations on Aspects of the Canadian Position', paper presented at the XVth International Congress on Comparative Labour, Bristol.
- Hunter, R. (1992) 'The Regulation of Independent Contractors: A Feminist Perspective', *Corporate and Business Law Journal* 5: 165 88.
- Hunter, R. (1995) 'Women Workers and the Liberal State: Legal Regulation of the Workplace, 1880s 1980s', pp. 219 36 in D. Kirby (ed.) *Sex, Power and Justice: Historical Perspectives on Law in Australia*. Melbourne: Oxford.
- Iyer, N. (1997) 'Some Mothers are Better than Others: A Re-Examination of Maternity Benefits', pp. 168 94 in S. Boyd (ed.) *Challenging the Public/Private Divide: Feminism, Law and Public Policy*. Toronto: University of Toronto.
- Jenson, J. (1996) 'Part-Time Employment and Women: A Range of Strategies', pp. 92 110 in I. Bakker (ed.) *Rethinking Restructuring: Gender and Change in Canada*. Toronto: University of Toronto Press.
- Krahn, H. (1995) 'Non-Standard Work on the Rise', *Perspectives on Labour and Income* Winter: 35.
- Linder, M. (1989). 'What is an Employee? Why it Does, But Should Not, Matter', *Law and Inequality* 7(2): 155 87.
- Lipsig-Mummé, C. (1997) 'The Politics of the New Service Economy', pp. 109 25 in P. James, W. Veit and S. Wright (eds) *Work of the Future: Global Perspectives*. St Leonards, New South Wales: Allen and Unwin.
- MacDonald, D. (1998) 'The New Deal Model of Collective Bargaining and the Secondary Labour Market', PhD dissertation, Department of Law, Policy and Society, Northeastern University.
- MacDonald, M. (1999) 'Gender and Recent Social Security Reform in Canada', *Journal of Canadian Studies* 34(2): 57 88.
- MacPherson, E. (1999) 'Collective Bargaining for Independent Contractors: Is the Status of the Artist Act a Model for Other Industrial Sectors', *Canadian Journal of Labour and Employment Law* 7(3): 355 89.

- Middleton, J. (1996) 'Contingent Workers in a Changing Economy: Endure, Adapt, or Organize?', *New York University Review of Law and Social Change* 22: 557-621.
- Moody, K. (1997) *Workers in a Lean World*. London: Verso.
- Morissette, D. (1997) 'Declining Earnings of Young Men', *Canadian Social Trends* Fall: 8-15.
- Ocran, A. (1997) 'Across the Home/Work Divide: Homework in Garment Manufacture and the Future of Employment Regulation', pp. 144-67 in S. Boyd (ed.) *Challenging the Public/Private Divide: Feminism, Law and Public Policy*. Toronto: University of Toronto Press.
- O'Grady, J. (1995) 'A Comment: Labour Markets and Deficits', pp. 166-89 in R. Adams, G. Betcherman and B. Bilson (eds) *Good Jobs, Bad Jobs, No Jobs: Tough Choices for Canadian Labour Law*. Toronto: C.D. Howe Institute.
- Ontario District Council of the International Ladies' Garment Workers Union and INTERCEDE (1993) 'Meeting the Needs of Vulnerable Workers: Proposals for Improved Employment Legislation and Access to Collective Bargaining for Domestic Workers and Industrial Homeworkers', unpublished report, Toronto.
- Owens, R. (1993) 'Women, "Atypical" Work Relationships and the Law', *Melbourne University Law Review* 19: 399-430.
- Peck, J. (1996) *Work Place: The Social Regulation of Labor Markets*. London: Guilford Press.
- Pfau-Effinger, B. (1999) 'The Modernization of Family and Motherhood in Western Europe', pp. 60-79 in R. Crompton (ed.) *Restructuring Gender Relations and Employment: The Decline of the Male Breadwinner*. London: Oxford University Press.
- Rogers, J. (1994) 'Reforming U.S. Labor Relations', pp. 95-125 in M. Finkin (ed.) *The Legal Future of Employee Representation*. Ithaca, NY: ILR Press.
- Rosenberg, S. (1989) 'From Segmentation to Flexibility', *Labour and Society* 14(4): 363-407.
- Rubery, J. (1998) 'Women in the Labour Market: A Gender Equality Perspective', OECD Directorate for Education, Employment, Labour and Social Affairs.
- Schenk, C. (1995) 'Fifty Years after PC 1003: The Need For New Directions', pp. 193-214 in C. Gonick, P. Phillips and J. Vorst (eds) *Labour Gains, Labour Pains: 50 Years of PC 1003*. Winnipeg: Society for Socialist Studies/Fernwood Publishing.
- Scott, K. and C. Lochhead (1997) 'Are Women Catching Up in the Earning Race?', Paper No. 3, Canadian Council on Social Development, Ottawa.
- Sengenberger, W. (1994) 'International Labour Standards in a Globalized Economy: The Issues', pp. 3-26 in W. Sengenberger and D. Campbell (eds) *International Labour Standards and Economic Interdependence*. Geneva: International Labour Office.
- Sims, A. (1995) *Seeking a Balance: Canada Labour Code Part I, Review*. Ottawa: Minister of Public Works and Government Services.
- Spain (1994) 'Temporary Work Agency Act, 1944', *Boletín Oficial del Estado* 131: 17408-12.
- Stanford, J. (1996) 'Discipline, Insecurity and Productivity: The Economics Behind Labour Market "Flexibility"', pp. 130-50 in J. Pulkington and G. Ternowetsky (eds) *Remaking Canadian Social Policy*. Halifax: Fernwood.
- Status of Women Canada (1996) *Gender-Based Analysis: A Guide for Policy-Making*. Ottawa: Public Works Canada.

- Tilly, C. (1996) *Half a Job: Bad and Good Part-Time Jobs in a Changing Labor Market*. Philadelphia, PA: Temple University Press.
- Townson, M. (1995) *Women's Financial Futures: Mid-Life Prospects for a Secure Retirement*. Ottawa: Advisory Council on the Status of Women.
- Trudeau, G. (1998) 'Temporary Employees Hired Through a Personnel Agency: Who is the Real Employer?', *Canadian Labour and Employment Law Journal* 5: 359-75.
- Vosko, Leah F. (1997) 'Legitimizing the Triangular Employment Relationship: Emerging International Labour Standards from a Comparative Perspective', *Comparative Labor Law and Policy Journal* Fall: 43-77.
- Vosko, Leah F. (1998) 'Regulating Precariousness?: The Temporary Employment Relationship Under the NAFTA and the EC Treaty', *Relations industrielles/Industrial Relations* 53(1): 123-53.
- Vosko, Leah F. (2000) *Temporary Work: The Gendered Rise of a Precarious Employment Relationship*. Toronto: University of Toronto Press.
- Vosko, Leah F. (forthcoming) 'Gender Differentiation and the Standard/Non-Standard Employment Distinction in Canada, 1945 to the Present', in D. Juteau (ed.) *Social Differentiation in Canada*. Toronto and Montreal: University of Toronto Press/University of Montreal Press (in French and English).
- Weiler, P. (1990) *Governing the Workplace: The Future of Labor and Employment Law*. Cambridge, MA: Harvard University Press.
- Wial, H. (1993) 'The Emerging Organizational Structure of Unionism in Low-Wage Services', *Rutgers Law Review* 45: 671-738.

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