

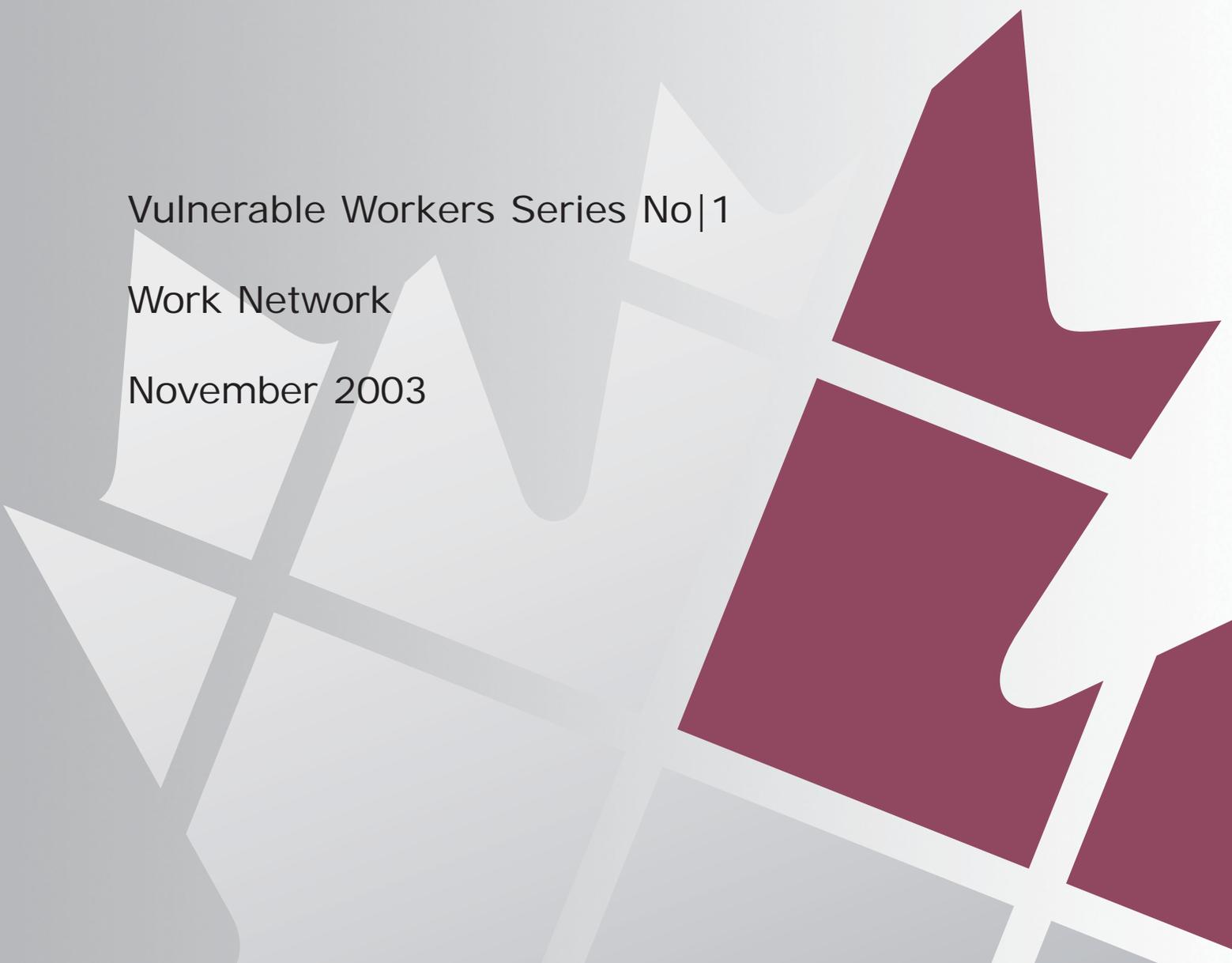
# Defining Vulnerability in the Labour Market

**Ron Saunders**

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# **Defining Vulnerability in the Labour Market**

By

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## Foreword

History tells us that societies are slow to recognize the point when economic change requires a rethinking of policies and institutions. When workers flocked to cities to work in the factories of the industrial revolution, for example, governments did not observe the deterioration in health and well-being until they needed to recruit armies for a military campaign. This happened first in Bismarck's Germany and later in the Britain, when the men who volunteered turned out to be undernourished and sickly. Suddenly, the cost to society of poor nutrition, bad housing, and inadequate public health services, such as clean water, air, and sanitation facilities became a national problem, and it brought about a revolutionary change in the way governments conceived their responsibilities.

Over the past 25 years, labour markets in North America and other industrial countries have been changing in response to important social and economic forces. The image of the family with one wage earner (typically male) working full-time in a permanent job with a single employer has been replaced by a mix of two-earner or single parent families, with many working part-time or in temporary employment, sometimes combining two jobs in order to make ends meet. Self-employment has become much more prevalent.

Over the same period, disparities in earnings from employment have widened. The well paid have experienced earnings gains, while market incomes at the low end of the spectrum have stagnated or even declined. Almost two million adult Canadians work for less than \$10 an hour – about one in six employed people.

This report points out that these trends leave many Canadian workers in a vulnerable position, meaning that their participation in the labour market leaves their well-being at risk. A large part of the labour force finds it difficult to access work that provides a decent income and working conditions that meet societal norms.

The report was prepared by Ron Saunders, Director of CPRN's Work Network, in order to launch a series of studies exploring different aspects of vulnerability in the labour market, and it sets out a number of questions for further research. CPRN intends to pursue a series of studies to address these questions. The objective is to better understand the circumstances of vulnerable workers and to find ways to improve the inclusion of more workers in work that provides decent pay and working conditions. In part, this is a matter of ensuring that people are treated fairly. However, evidence is emerging that providing people with quality jobs also furthers economic goals, because it improves productivity. Our goal is to provide Canadians and their leaders with the evidence base they need to think through the way in which we will respond to this increase in vulnerability.

I would like to thank The Atkinson Charitable Foundation and the Law Commission of Canada for their financial support to this project, and the participants in a June 2003 Roundtable who reviewed and critiqued an earlier draft. I would also like to thank Charles Pascal of the Atkinson Foundation and Karen Jensen of the Law Commission for their helpful advice on the study.

Judith Maxwell  
October 2003

## Executive Summary

While the Canadian economy has been fairly strong for several years, many workers are being left behind. Large numbers of employed adults are stuck in low paid jobs. Many have difficulty finding stable employment. Some self-employed people earn low incomes and are not covered by laws setting out basic employment standards such as minimum wages and overtime pay rules. Some people who are covered by such laws are unaware of their rights and/or unlikely to complain if those rights are violated.

These workers are vulnerable, in that their participation in the labour market leaves their well-being at risk.

A number of forces of change have shaped the context of labour market vulnerability.

- Globalization, by making the markets for goods and services more competitive, has heightened the need for economic and social policies to foster competitiveness. It has also put a higher premium on workplace practices that support flexibility and adaptability, such as multi-skilling, teamwork, and pay-for-performance mechanisms. However, while globalization constrains policy choice, it does not eliminate policy discretion. Well-designed labour market interventions can correct for market failure and enhance efficiency
- Technological change has increased the demand (and rewards) for highly skilled work relative to that for less skilled work.
- Changes in patterns of family and work life have increased employees' need for flexible (or, in some cases, part-time) hours. Most families have two earners, 80 percent of women with school-aged children are working, and about 14 percent of all families are led by a lone-parent, usually a woman.

Alongside these changes we have seen a decline in the percentage of employment that is 'standard': full-time, indefinite employment on the premises of a single employer. Non-standard work includes part-time work, employment on a short-term or time-limited contract basis, employment through temporary help agencies, and the self-employed who work but do not employ others (so-called own-account self-employed). The share of employment that is non-standard has been on an upward trend since the late 1970s, although it has stabilized in recent years.

The new labour market is, to some extent, characterized by highly educated 'knowledge workers' whose skills are in demand. Nevertheless, a large part of the labour force finds it difficult to access work that provides a decent income and working conditions that meet societal norms. These 'vulnerable' workers fall into one or more of the following groups:

- Workers, such as the own-account self-employed, who are outside the scope of coverage of employment standards legislation.

- Employees who are covered by employment standards laws, but who have difficulty accessing these rights, because they are unaware of them or reluctant to complain for fear of losing their jobs.
- Those who lack access to non-statutory benefits such as extended medical insurance, dental plans, disability coverage, and private pension plans.
- Workers who are unable to qualify for such programs as Employment Insurance or to fully benefit from public pension plans.
- Adult workers whose earnings are very low over long periods of time, because of low wages and/or lack of stable employment.

Many aspects of vulnerability are associated with the growth of non-standard work. However, not all non-standard workers are highly vulnerable to economic risks. High income professionals within the own-account self-employed category would be an example. Moreover, many workers in standard employment relationships – particularly those who are low paid and unrepresented – are vulnerable. Policies to assist the vulnerable need to consider these ‘standard’ workers as well.

There is a strong gender dimension to both non-standard work and to vulnerability in the labour market. While the male/female wage gap has closed in recent years, 69 percent of the adult workers in Canada earning less than \$8 per hour in 2000 were women.

More research is needed on the extent and nature of labour market vulnerability in Canada. For example, we need to understand to what extent low paid work is concentrated among recent immigrants, Aboriginals, and disabled people. How strongly is it associated with low educational attainment, or with long-term unemployment? To what extent do adult workers remain in low paid jobs for long periods?

Can we find ways to help vulnerable workers reduce the economic risks facing them, while also promoting productivity and competitiveness? This is a major challenge for labour market policy in the coming years.

More research is needed to identify what policy instruments are most likely to be successful in realizing this objective. Based on available information, candidates worthy of investigation include: extending the scope of coverage of statutory minimum standards; improving compliance with existing employment standards; encouraging employers to offer decent pay and better access to non-statutory benefits; increasing minimum wages; providing better access to training programs and to employer-sponsored training; tax relief for the working poor; and wage supplements.

It is CPRN’s plan to launch a series of studies to help fill these knowledge gaps and to identify an agenda for action to help vulnerable workers obtain work that provides a decent income and working conditions that meet societal norms.

## Résumé

L'économie canadienne connaît une croissance passablement forte depuis plusieurs années, mais de nombreux travailleurs tirent de l'arrière. Un nombre considérable de travailleurs adultes sont coincés dans des emplois faiblement rémunérés. Plusieurs ont de la difficulté à trouver des emplois stables. Certains travailleurs autonomes gagnent de faibles revenus et ils ne sont pas protégés par les lois qui établissent des normes minimales d'emploi comme le salaire minimum et les règles s'appliquant à la rémunération du surtemps. Certaines personnes qui sont protégées par ces lois ne sont pas au courant de leurs droits ou encore, il est peu probable qu'elles portent plainte si leurs droits sont violés.

Ce sont des travailleurs vulnérables, en ce sens que leur participation au marché du travail ne permet pas d'assurer leur bien-être.

Plusieurs forces du changement ont contribué à façonner le contexte de la vulnérabilité sur le marché du travail.

- La mondialisation, en rendant plus concurrentiels les marchés des biens et des services, a eu pour effet de renforcer la nécessité d'instaurer des politiques économiques et sociales visant à favoriser la compétitivité. Elle a aussi contribué à privilégier des pratiques en milieu de travail qui favorisent la flexibilité et l'adaptabilité, comme la polyvalence, le travail en équipe et les mécanismes de rémunération au rendement. Toutefois, même si la mondialisation tend à limiter les choix de politiques, elle n'élimine pas la marge discrétionnaire des politiques. Des mesures bien conçues d'intervention sur le marché du travail peuvent aider à corriger les inefficacités du marché et à stimuler l'efficacité.
- Le progrès technologique a eu pour effet d'augmenter la demande (et la rétribution) des travailleurs hautement qualifiés par rapport à celle des travailleurs moins qualifiés.
- Les changements dans les régimes de travail et la vie familiale ont contribué à augmenter la nécessité pour les employés d'avoir des horaires flexibles (ou, dans certains cas, de travailler à temps partiel). La plupart des familles se composent de deux salariés, 80 pour cent femmes ayant des enfants d'âge scolaire travaillent à l'extérieur du foyer et environ 14 pour cent de toutes les familles sont dirigées par un parent unique, habituellement une femme.

De concert avec ces changements, il s'est produit une baisse de la proportion des emplois qui comportent un travail « standard » : un emploi à plein temps pour une période indéfinie et dans les locaux d'un seul employeur. Le travail non standard ou atypique comprend l'emploi à temps partiel, l'emploi pour une courte période de temps ou les contrats de durée limitée, l'emploi par l'intermédiaire d'agences d'aide

temporaire et le travailleur autonome qui n'emploie aucune autre personne (le soi-disant travailleur à son propre compte). La part de l'emploi atypique a connu une tendance à la hausse depuis la fin des années 70, bien qu'elle se soit stabilisée pendant les dernières années.

Le nouveau marché du travail se caractérise, dans une certaine mesure, par des « travailleurs du savoir » hautement scolarisés dont les compétences sont en demande. Néanmoins, un large segment de la population active a de la difficulté à se trouver du travail qui leur procure un revenu décent et leur offre des conditions de travail qui respectent des normes sociales de base. Les travailleurs « vulnérables » font partie de l'un des groupes suivants :

- Des travailleurs, comme les personnes à leur propre compte, qui ne sont pas protégés par la législation sur les normes d'emploi.
- Les employés qui sont protégés par les lois sur les normes d'emploi, mais qui ont de la difficulté à se prévaloir de ces droits, soit parce qu'ils ne connaissent pas leur existence ou qu'ils sont réticents à porter plainte par crainte de perdre leur emploi.
- Les travailleurs qui n'ont pas accès à des avantages non exigés par la loi comme une assurance-maladie complémentaire, des régimes de soins dentaires, des régimes de protection en cas d'invalidité et des régimes de retraite privés.
- Les travailleurs qui ne sont pas admissibles à des programmes comme l'assurance-emploi ou à tirer pleinement avantage des régimes de retraite publics.
- Des travailleurs adultes dont les revenus sont très faibles pendant de longues périodes de temps, parce que leur salaire est peu élevé ou qu'ils n'ont pas d'emploi stable.

Plusieurs aspects de la vulnérabilité sont associés à la croissance du travail non standard ou atypique. Toutefois, ce ne sont pas tous les travailleurs atypiques qui sont fortement vulnérables aux risques économiques. Des professionnels à hauts revenus au sein de la catégorie des travailleurs autonomes à leur propre compte en seraient un exemple. De plus, de nombreux travailleurs qui occupent des emplois traditionnels – notamment ceux à faibles salaires et sans représentation professionnelle – sont vulnérables. Des politiques visant à aider les travailleurs vulnérables devraient englober aussi ces travailleurs « traditionnels ».

Il y a aussi un important aspect de la spécificité des sexes qui se rattache tant au travail non standard qu'à la vulnérabilité sur le marché du travail. L'écart salarial entre les hommes et les femmes s'est rétréci ces dernières années, mais 69 pour cent des travailleurs adultes au Canada qui gagnaient moins de 8 \$ l'heure en 2000 étaient des femmes.

Des recherches plus poussées s'imposent sur la portée et la nature de la vulnérabilité sur le marché du travail au Canada. Par exemple, il nous faut établir dans quelle mesure le travail faiblement rémunéré se concentre parmi les nouveaux immigrants, les Autochtones et les personnes handicapées. Dans quelle mesure est-il étroitement associé à de faibles niveaux de scolarité ou à du chômage de longue durée ? Dans quelle mesure des travailleurs adultes demeurent-ils dans des emplois faiblement rémunérés pour de longues de temps ?

Pouvons-nous trouver des moyens d'aider les travailleurs vulnérables à réduire les risques économiques auxquels ils font face, tout en faisant aussi la promotion de la productivité et de la compétitivité ? Il s'agit à ce titre d'un défi majeur pour la politique du marché du travail dans les années à venir.

Des recherches plus poussées s'imposent pour déterminer les instruments de politiques qui sont les plus susceptibles de contribuer efficacement à l'atteinte de cet objectif ? En s'appuyant sur les données disponibles, voici donc des outils d'intervention possibles qui méritent des recherches plus avancées : étendre la portée de la couverture des normes minimales précisées dans la législation; améliorer le respect des normes d'emploi existantes; encourager les employeurs à offrir des salaires décents et améliorer l'accès à des avantages non exigés par la législation; augmenter le salaire minimum; améliorer l'accès aux programmes de formation et à la formation offerte par l'employeur; accorder des allégements fiscaux aux travailleurs à faibles salaires; et verser des suppléments de salaire.

Les RCRPP prévoient entreprendre une série d'études afin de contribuer à combler ces lacunes au niveau de nos connaissances et à établir un programme d'action pour aider les travailleurs vulnérables à se trouver du travail qui offre un revenu décent et des conditions de travail qui respectent les normes sociales de base.

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## 1. Introduction

The Canadian economy has been strong for several years. The standard measure of national output, Gross Domestic Product (adjusted for inflation), grew by an annual average of 4.0 percent between 1998 and 2002<sup>1</sup>. The participation rate of Canadians in post-secondary education is among the highest in the world. Canada currently ranks eighth in the United Nations ranking of the best countries in which to live<sup>2</sup>.

Labour market performance has also been generally good. The unemployment rate fell from 8.3 percent in 1998 to a low of 6.6 percent in May 2000 (the lowest rate since March 1976), then edging up again to 8.0 percent in September 2003<sup>3</sup>. Labour productivity has grown by an average of 2.3 percent per year between 1996 and 2001, although it still lags slightly behind productivity growth in the United States<sup>4</sup>. Average annual earnings for full-time, full year persons grew significantly between 1996 and 2001 in real terms (9.9 percent for men and 8.1 percent for women)<sup>5</sup>.

However, not everyone in the labour market is experiencing the benefits of this strong aggregate performance. Large numbers of adult workers are stuck in low paid jobs. Many have difficulty finding stable employment. Some self-employed people earn low incomes and are not covered by laws setting out basic employment standards such as minimum wages and overtime pay rules. Some people who are covered by such laws are unaware of their rights and/or unlikely to complain if those rights are violated.

The purpose of this paper is to explore different aspects of vulnerability in the labour market as a foundation for further research and a change agenda designed to improve the inclusion of more workers in work that provides decent pay and working conditions. This is, in part, a matter of ensuring that people are treated fairly. However, this is an area where it should be possible to advance both social and economic objectives. Evidence is emerging that providing people with quality jobs can improve the bottom line for employers by reducing absenteeism and turnover, and increasing productivity.<sup>6</sup>

Section 2 examines the context of labour market vulnerability: forces of change in the labour market, the growth of non-standard work, evidence of wage polarization, and the challenge of finding paths that promote both competitiveness and inclusion. Section 3 identifies a number of different types of vulnerability and the importance of distinguishing such concepts as non-standard work, contingent work, and vulnerable workers. In section 4, we look at some data on vulnerable workers and examine what we know of their demographic characteristics. Section 5 outlines some of the instruments that might be used to assist vulnerable workers. It is followed by a brief concluding section that identifies questions for further research.

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<sup>1</sup> Calculated from Statistics Canada, *National Income and Expenditure Accounts*.

<sup>2</sup> United Nations, *Human Development Report 2003*.

<sup>3</sup> Statistics Canada, *Labour Force Survey*.

<sup>4</sup> Statistics Canada, *The Daily, September 12, 2003*.

<sup>5</sup> Statistics Canada, *Survey of Labour and Income Dynamics, CANSIM table 202-0102*.

<sup>6</sup> See, for example, Lowe and Schellenberg (2001) and Gunderson (2002).

## 2. Context: Changing Labour Markets, Changing Workplaces

### Forces of Change

Labour markets in Canada continue to be affected by three principal forces of change: globalization of competition; technological advances; and changes in the demographic structure of the workforce.

### *Globalization*

The globalization of the economy has been characterized by:

- more mobile capital (resulting in part from greater protections for foreign investors in trade agreements such as NAFTA or through the WTO);
- freer trade in goods and services;
- enhanced mobility of highly-skilled workers;
- enhanced mobility of highly-skilled jobs (e.g., information technology work for North American companies being located in Asia);
- the growth of multinational corporations with head offices in one country, components produced in others, assembly in yet others; and
- enhanced flows of new ideas and technology across borders.

Globalization, by making the markets for goods and services more competitive, has heightened the need for economic and social policies to foster competitiveness. It has also put a higher premium on workplace practices that support flexibility and adaptability, such as multi-skilling, teamwork, and pay-for-performance schemes. This, in turn, has led to a debate about government regulation of labour markets, with some arguing that the need for flexibility translates into a need for less regulation (e.g., fewer restrictions on hours of work and overtime).<sup>7</sup> There is also evidence that globalization has contributed to a reduction in wage differentials across countries for labour of similar skill, but has (along with technological change) led to an increase in wage inequality between lower and higher skill levels within high-wage countries (Chaykowski and Gunderson, 2001, pp.33-34).

Globalization has important implications for workplaces. “Labour issues pertaining to productivity, employee and workplace flexibility, employee adaptability, quality of work, commitment and effort of employees, and skills development become central to global competitiveness and the maintenance of high living standards for workers” (Chaykowski and Gunderson, 2001, pp. 30-31). Many have argued that this search for greater flexibility has contributed to the decline of the ‘standard’ job.

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<sup>7</sup> See, for example, OECD (1994).

## *Technological Change*

Changes in technology have had a number of impacts on the labour market. They have contributed to the shift in Canada's industrial structure away from primary and manufacturing industries and towards services. Mass-production systems (large scale, standardized methods, highly delineated jobs) have been transformed into production systems characterized by smaller scale, greater flexibility in the organization of work, greater emphasis on skill, and flatter hierarchies.

Technological change has also increased the demand for highly skilled work relative to that for less skilled work, a phenomenon referred to in the economics literature as 'skill-biased' technological change. Studies by Kuhn (see, for example, Kuhn (1996)) and others point to this as the main reason for the rise in the 1980s and early 90s in earnings inequality in Canada for both men and women. Kuhn notes, in particular, an increase in earnings differentials between more- and less-educated workers and between older and younger workers; greater dispersion in weekly hours worked; and an increase in the concentration of unemployment and non-working time among the least skilled.

## *Demographics*

The ageing of the baby-boom cohorts is a familiar aspect of labour market change. As Foot (1998) has noted, this has contributed to a flattening of corporate structures, and a greater prevalence of 'spiral' (lateral moves on the way up) and 'transitory' (different occupations, often short-term jobs, some self-employment) career paths. Workforce ageing has also raised concerns about skill shortages associated with a retirement bulge, and about whether our labour market institutions are able to accommodate changing needs and preferences in relation to learning, work, and retirement for older Canadians.

Changes in family structure are also pertinent to a discussion of labour market change. Maxwell (2003, p.6) points out that "Breadwinner families, where one spouse stays at home to provide care and support for family members, are no longer the norm. (They declined from 60 percent of all families in 1951 to 21 percent in 1999.)" Most families have two earners, 80 percent of women with school-aged children are working, and about 14 percent of all families are led by a lone-parent, usually a woman. These changes increase employees' need for flexible (or, in some cases, part-time) hours.

## **Growth of Non-standard Work**

A paper on non-standard work in the federal public service provides a useful definition of the standard employment relationship: "employment of individuals for wages and salaries by a single firm, where individuals work full-time on the employer's premises, and expect (and are expected) to be employed for an indefinite period of time" (Canada, Public Service Commission, 1999, p.2). Non-standard work encompasses everything else, and therefore includes part-time work, employment on a short-term or time-limited contract basis, and employment through temporary help agencies. It also includes 'own

account' self-employment: the self-employed who work on their own and do not themselves employ others.

Vosko et al. (2003), using Statistics Canada data, provide a snapshot of the decomposition of total employment in Canada in 2002 into standard employment and the various forms of non-standard employment. Total employment that year was 15,412,000. Full-time, permanent, paid employees constituted 63 percent of that total.<sup>8</sup> Of the remainder, the breakdown is as follows:

- permanent part-time, 11 percent of total employment;
- full-time temporary workers, 7 percent;
- part-time temporary, 4 percent;
- own-account self-employed, 10 percent;
- self-employed employers, 5 percent.

There seems to be general agreement that the share of employment that is non-standard has been on an upward trend since the late 1970s, although it has stabilized in recent years, possibly due to the more favourable macroeconomic environment. Betcherman and Lowe (1997) cite estimates from Human Resources Development Canada that non-standard jobs accounted for about 25 percent of total employment in 1976, rising to 31 percent by 1994. Vosko et al. (2003) provide historical data back to 1989, showing total non-standard employment at 33 percent that year, 38 percent by 1997, and 37 percent in 2002. The increase between 1989 and 1997 is largely accounted for by the growth in own-account self-employment, which rose over that period from 7 percent to 11 percent. Growth of own-account self-employment has been high for both women and men. However, Hughes (1999) notes that, although women once accounted for only one-quarter of the own-account self-employed, by 1997 they represented 40 percent of this group.

This is not just a private sector phenomenon. In the federal public service, non-standard employment increased from 12.4 percent in 1981, to 19 percent in 1997, not including contracted work or temporary help agency staff, for which data are lacking (Public Service Commission, 1999).

The recent report to the Government of Quebec on non-standard work (Bernier et al., 2003) identifies the following reasons for its growth: new technologies, global competition, the perceived need of businesses to be more flexible, new forms of organizing work, the needs of some workers seeking ways to balance work and family responsibilities, and the desire of some for greater independence

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<sup>8</sup> Lowe and Schellenberg (2001) argue that standard employment should include only jobs that have lasted for more than six months. Using 1998 data, they find that full-time, permanent employees with job tenure of six months or less constituted 5.5 percent of total employment. Of the remaining workers with full-time, permanent jobs, 277,500, or 1.9 percent of the total, were multiple job holders. As a result, while 61.7 percent of employment in 1998 was paid, permanent, and full-time, they estimated that only 54.2 percent was in 'standard' work, leaving 46.8 percent in some form of non-standard employment.

It is important to keep in mind that not all non-standard workers are necessarily more vulnerable to economic risks than others. Moreover, some workers in standard employment relationships are vulnerable. This is explored in section 3, below.

### **The Need to Pursue both Social and Economic Objectives**

As noted above, globalization presents real challenges for employers, in that competitive pressures are intensified. The International Labour Organization (ILO) has pointed out that employers legitimately seek viable solutions to these pressures among the range of options offered by different forms of employment (ILO, 2003a). Employers are understandably concerned about the prospect of new regulations, or extending the scope of existing ones. The ILO's Conference Committee on Contract Labour, meeting in 1998, was unable to agree upon a Convention or Recommendation to guide policy in this area. There was agreement to continue discussions, which resumed at the ILO in June 2003 under the auspices of a Committee on the Employment Relationship. The key outcome is a proposal that the ILO develop a Recommendation (essentially, a non-binding set of guidelines) focused on cases where there is in fact a regular employment relationship that is 'disguised' in some fashion to deprive employees of their entitlements. The Committee also noted the need for measures to improve compliance with national laws in this area, "to ensure that persons with an employment relationship have access to the protection they are due..." (ILO, 2003b, p. 57).

By enhancing the mobility of capital, globalization has arguably constrained government policy such that policies that are seen as weakening economic efficiency are avoided as they could lead to capital flight. However, at the same time, there is some evidence that globalization and technological change are creating polarized outcomes in the labour market that add to social tensions and enhance the need for policies that assist the vulnerable<sup>9</sup>. The challenge is to find responses that serve both social and economic objectives.

Osberg (2002) points out that marked differences in social policy have persisted within the European Union and even within the USA (comparing across states). Osberg's claim (p.15) that, "Evidently, heavy dependence on merchandise trade and unique national social policies can coexist," seems compelling. However, Osberg also notes that the specific institutional features of the World Trade Organization are likely to create long term pressures toward the harmonization of social policy frameworks.

While globalization constrains policy choice, it does not eliminate policy discretion. Chaykowski and Gunderson (2001) describe how well-designed labour market interventions can correct for market failure and enhance efficiency. For example, occupational health and safety regulation can be seen as addressing what would be a lack

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<sup>9</sup> Sharpe (2003) cites Statistics Canada data showing that market income for families became more unequal in Canada between 1989 and 2000, with most of the increase in inequality occurring between 1989 and 1993. Inequality in after-tax family income was fairly stable in the early 90s, but grew in the period after 1994, likely reflecting reductions in spending on government transfer programs, such as social assistance and employment insurance.

of information about hazards in the workplace, leading to better outcomes for both the firm and its employees. Similarly, the ILO (2003a) argues that the lack of basic employment protections can hurt employers by reducing workers' commitment, increasing turnover, and undermining productivity. Moreover, Betcherman (2000) concludes that there is little evidence that high levels of unemployment in Canada in the period 1986-1998 were the result of over-regulation of the labour market. He notes that some countries with lower unemployment rates (e.g., Sweden and Austria) over that period had more regulated labour markets than Canada's.

In summary, because labour market vulnerability is a challenge in most industrialized countries, many countries are, each in their own way, striving to determine what mix of policies could meet both the social goal of reducing vulnerability and the economic goal of enhancing competitiveness. As their societies are ageing, many are also concerned that so many working-age adults are occupying jobs with very low productivity. While there is no universal answer to this problem it is clear that individual countries have considerable discretion to choose their own strategy.

### **3. Concepts of Vulnerability in the Labour Market**

#### **Introduction**

The new labour market is, to some extent, characterized by highly educated ‘knowledge workers’ whose skills are in demand. But not all workers are in a position to capture the benefits of a strong economy. A large part of the labour force works for low pay, without representation, and with poor prospects of improving their conditions of work. These workers are vulnerable, in that their participation in the labour market leaves their well-being at risk. More specifically, vulnerable workers find it difficult to access work that provides a decent income and working conditions that meet societal norms.

Within the broad concept of labour market vulnerability, one can identify various components, not all of which are mutually exclusive. These include:

- Workers, such as the own-account self-employed, who fall outside the scope of coverage of employment standards legislation. Arguably, not all such workers are vulnerable. For example, some high income professionals and consultants would be classified as own-account self-employed. Also, some self-employed consciously make a trade-off between employment with full benefits and protections, and self-employment because it offers them flexibility, independence, and, in some cases, tax advantages. However, many own-account workers have low earnings, may be dependent on one or a few clients for most of their income, and have no entitlement to such basic employment standards as minimum wage, overtime pay or paid public holidays.
- Employees who are legally entitled to the protections of employment standards laws, but who may in practice have difficulty in accessing these rights, because they are unaware of them or are reluctant to complain for fear of losing their jobs.
- Those who lack access to non-statutory benefits such as extended medical insurance, dental plans, disability coverage, and private pension plans. Some workers, such as part-time employees, who are covered by statutory employment standards, lack access to such benefits.
- Workers who are unable to qualify for such programs as Employment Insurance or to fully benefit from public pension plans.
- Adult workers whose earnings are very low over long periods of time, because of low wages and/or lack of stable employment.

In the remainder of this section, we explore each of these aspects of labour market vulnerability in more detail.

#### **Workers Lacking Statutory Rights**

Employment rights refer to statutory minimum standards of employment such as minimum wage, overtime pay, hours of work limits, public holidays, paid vacations,

notice of termination, and job protection for maternity or parental leave. Such employment protections typically apply only to those in traditional employment relationships. They do not apply, for example, to those who operate as independent contractors. Moreover, some of these standards only become operative after the worker has been employed for some minimum period of time, which means that those who work in a series of short-term employment relationships with different employers may lack access to the full scheme of statutory minimum standards.

The line between workers who are seen by the law as employees and those who are seen as self-employed is not always a clear one. Fudge et al. (2002) note that employment standards statutes in Canada typically do not provide a clear definition of employee, so adjudicators have relied on common law tests to determine employee status. However, “the common law did not have a unified conception of employment nor a coherent method for distinguishing between employees and independent contractors” (Fudge et al., 2002, p. 50). Typical tests used include: control of how the work is done, ownership of tools, chance of profit, risk of loss, and the extent to which the work is an integral part of the employer’s business. The Supreme Court has concluded that no single test is conclusive.

Some jurisdictions have developed the concept of ‘dependent contractor,’ particularly within their laws governing collective bargaining rights. This extends such rights to self-employed workers who are dependent economically on particular clients or operators.<sup>10</sup> Taxicab drivers and self-employed truck drivers would be examples, although the demarcations are again sometimes unclear and have varied in application across jurisdictions.

Labour standards legislation in Canada was arguably designed for a male-dominated industrial workforce in regular, ‘9 to 5’ jobs (Gunderson and Riddell, 2000). The growth in non-standard forms of employment, particularly in own-account self-employment, leaves a sizeable percentage of the workforce outside the coverage of employment standards laws. This phenomenon is an international one. The ILO has recently conducted studies of this issue in 36 member nations (not including Canada) and concluded (ILO, 2003a) that a lack of access of dependent workers to statutory protections has become increasingly widespread. Reasons include the following.

- The scope of the law is too narrow or too narrowly interpreted.
- The law is ambiguous, so its scope is unclear.
- The employment relationship is disguised, so that on the surface it appears that the worker is not an employee.
- The relationship is objectively ambiguous.

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<sup>10</sup> Lowe and Schellenberg (2001) note that 50 percent of own-account self-employed workers serve fewer than five clients in a typical month and 35 percent received at least half of their revenue in the previous fiscal year from one client.

- The relationship is ‘triangular’: the employee of a firm or agency works for an extended period of time on the premises and under the direction of a third party, so that it is not clear who is responsible for the worker’s rights.
- Measures to secure compliance with the law are lacking.

This last reason takes us to our next category of vulnerable workers.

### **Workers Unable to Access Their Statutory Rights**

Even workers with regular, full-time jobs and traditional employment relationships may still lack meaningful access to employment rights. In some cases, this may be because they are unaware of these rights. Recent immigrants may be particularly vulnerable in this regard. In other cases, the relationship with the employer may be structured so that, on the surface, it appears that the worker is an independent contractor, whereas if the conventional legal tests were applied, it would be found that there is an employment relationship. (This is the phenomenon of ‘disguised employment’ referred to above.)<sup>11</sup>

Some workers who have statutory rights and are aware of them may be reluctant to complain if these rights are not adhered to by the employer for fear of losing their jobs. (In the case of people employed by a temporary help agency, they may be concerned about losing future assignments.) Workers who feel they have little power in the labour market, such as those who are low paid and lack representation, could be vulnerable in this regard. This can relate not only to employment standards such as minimum wage and hours of work, but also to occupational health and safety protections.<sup>12</sup>

For such workers, real access to minimum employment standards requires active measures by regulatory authorities to obtain compliance with the law. This may involve such measures as proactive audits of employers in high risk sectors, awareness campaigns, user-friendly information on workplace rights and responsibilities, and using transparency as a policy instrument by publicly identifying serious or repeat offenders. The conclusions of the tripartite ILO Committee on the Employment Relationship (ILO 2003b, p.55) speak to this issue:

National labour administrations and their associated services should regularly monitor their enforcement programmes and processes. This should include identifying those sectors and occupational groups with high levels of disguised employment and adopting a strategic approach to enforcement. Special attention should be paid to those occupations and sectors with a high proportion of women workers. Innovative programmes of information and

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<sup>11</sup> For a discussion of disguised employment in the Toronto area, see de Wolff (2000), pp. 27-28.

<sup>12</sup> Health and safety laws often do apply to non-standard workers, as many of the employer’s obligations extend to all work done on the premises, regardless of whether the worker is an employee. However, if workers fear that complaining will mean loss of work, they may not fully access these protections.

education and outreach strategies and services should be developed. The social partners should be involved in developing and implementing these initiatives.

While there is much discussion in the academic literature of issues related to the scope of coverage of employment standards statutes<sup>13</sup>, there seems to be much less discussion of issues related to compliance with the law where it does apply. This is an area that needs more attention, as the opportunity is there to assist vulnerable workers without waiting for legislative change. Action in this area would also help responsible employers by making it more difficult for the minority who now evade the law to continue to do so.

### **Workers Lacking Access to Non-statutory Benefits**

Non-wage perquisites that are not required by statute are provided by employers on a voluntary basis or as the result of a collective agreement with representatives of the employees. This includes such benefits as extended health plans (including pharmaceuticals), dental care, paid sick leave, long term disability benefits, group life insurance, and pension plans. Non-standard workers – those not in paid, permanent, full-time employment with a single employer – are typically excluded from some or all of such benefit plans, although employees of temporary help agencies may have access to some of these benefits.

A recent Statistics Canada study (Marshall, 2003) provides data on employees' access to non-statutory benefits in 2000. While 58 percent of full-time workers and 57 percent of permanent workers were covered by extended medical, dental, life, and disability insurance plans, only 17 percent of part-time workers and 14 percent of temporary workers benefited from this cluster. Similar gaps arise for access to employer-sponsored retirement pension plans. Access to such benefits is also strongly associated with firm size and with job tenure.

### **Workers Lacking Access to Social Protection/Social Security Programs**

The design of key elements of Canada's social security framework, such as Employment Insurance (EI) and the Canada Pension Plan (CPP), disadvantages some non-standard workers. The EI changes of 1997 that allowed people with fewer than 15 hours of work per week to qualify for benefits might seem a step to correct this. However, as Townson (2003) points out, this was accompanied by a sharp increase in the number of cumulative hours of work required to access EI, especially for new entrants and re-entrants to the workforce. Fudge et al. (2002) note that, with some exceptions, self-employed workers are excluded from coverage under EI. Townson describes how, under the CPP, multiple job holders may have difficulty in obtaining full-credit for their work, because of the way in which the 'year's basic exemption' is applied.

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<sup>13</sup> See, for example, Fudge et al. (2002) and Langille (2002).

## **Workers with Sustained Low Earnings**

Judith Maxwell (2002) points out that almost 2 million adult (aged 20 or over) Canadians work for less than \$10 an hour. About one-third of these workers are the only wage earner in their family. Almost two-thirds of them are women, and one third have attended college or university. The barriers they face to improving their pay may include such factors as lack of educational or professional credentials (including lack of recognition of credentials acquired by immigrants in their home country), poor literacy or numeracy skills, skills that are outdated, disability, lack of access to affordable child care, and discrimination on the basis of age, gender, or race. Moreover, for those workers who are able to find employment for only part of the year, the problem of low wage rates is compounded.

The study by Lightman, Mitchell, and Herd (2003) of welfare leavers in the Toronto area illustrates that low quality jobs (low wages, few benefits, temporary work) are associated with employment instability and personal and family hardship.

## **Vulnerability in Multiple Aspects**

Workers can, of course, be part of more than one of the above categories of vulnerability. As we have seen, own-account self-employed workers are typically excluded from statutory employment standards. They also have difficulty accessing non-statutory benefits, although many obtain this through their spouses. Hughes (1999) and Fudge et al. (2002) point out that the average income of own-account self-employed people is well below that for paid employees. Cranford et al. (2002) note that part-time workers have lower pay than full-time workers, and are less likely to have union representation.

## **Distinguishing Vulnerability from Non-standard Work**

Many aspects of vulnerability are associated with the growth of non-standard work. However, as noted above, not all non-standard workers are necessarily more vulnerable to economic risks than others.<sup>14</sup> High income professionals within the own-account self-employed category would be an example. Moreover, there are differences in degree of vulnerability across workers. For example, permanent part-time workers may have lower pay and less access to non-statutory benefits than full-time workers, but they are covered by most statutory employment standards, and they have greater employment security than temporary workers.

It is equally important to recognize that workers in standard employment relationships may be vulnerable. For example, they may have sustained low pay (and/or unstable employment), and those who are unrepresented and fear job loss may be reluctant to

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<sup>14</sup> There is a distinction made by some between non-standard work and 'contingent' work. The latter term is used to refer to work that is conditional or transitory. Thus, for example, permanent part-time work would be non-standard, but not contingent.

assert their statutory rights. Policies to assist the vulnerable need to consider these 'standard' workers as well.

In assessing vulnerability, one might also consider whether or not the form of employment was voluntarily chosen by the worker. For example, those who choose self-employment or choose part-time employment are less likely to be vulnerable than those who are in such forms of work involuntarily. However, the degree of choice involved may not be easy to tell. For example, a parent who has difficulties accessing child care services may 'choose' to work part-time (and perhaps thereby forego certain employment benefits) rather than full-time, and would be recorded as a voluntary part-time employee. However, this choice has been constrained by their family circumstances and the lack of supports outside of the labour market. Such workers may be vulnerable despite the 'voluntary' nature of their choice.

## 4. Demographic Characteristics of Vulnerable Workers

Who are the vulnerable workers? Our information on this is somewhat sketchy. For example, we lack data on workers who do not benefit from statutory rights out of fear of complaining, although we may expect this to be associated with the combination of low pay and lack of representation. Longitudinal information on the extent to which workers remain in vulnerable categories over their lifetime is limited.

We do know that there is a strong gender dimension to both non-standard work and to vulnerability in the labour market. Vosko et al. (2003) report that, in 2002, 66 percent of men and 59 percent of women were in full-time, permanent jobs, although the gap between men and women had narrowed by one percentage point since 1989. Cranford et al. (2002) note that women have for a long time been (and continue to be) over-represented in part-time and temporary work as well as own-account self-employment. They identified workers who were both part-time and temporary as having the most ‘precarious’ employment – using firm size, union status, and hourly wage as indicators of precariousness – and found that women constituted 63 percent of this category in 2001, whereas women accounted for only 46 percent of the labour force overall that year.<sup>15</sup>

We also know that there is a gender dimension to low pay. While the male/female wage gap has closed in recent years, 65 percent of adult workers in Canada earning less than \$10 per hour in 2000 were women, and the figure rises to 69 percent for those earning less than \$8 per hour.<sup>16</sup> Not surprisingly, there is also a strong age dimension to low pay, with about a quarter of adult low-paid workers in the 20-24 age category in 2000, which represents 10 percent of total adult employment.<sup>17</sup> Picot and Heisz (2000) note that the earnings gap between younger and older workers increased during the 1980s and 90s, particularly for males.

A recent paper by Cranford et al. (2003) looks at the relationship of non-standard work and precarious work to visible minority status, using data from the *Survey of Labour and Income Dynamics* for 2000. The share of visible minority men in non-standard work is about the same as for white males (28 percent compared with 27 percent), and the share found in the most precarious form of work, part-time temporary, is also only slightly higher (8 percent and 7 percent, respectively). The share of visible minority women in non-standard work is 37 percent, higher than that for visible minority (and white) men, but lower than the 44 percent share for white women. However, it is important to recall that many ‘standard’ workers can be vulnerable, especially if they are low paid and lack representation. Moreover, Zeytinoglu and Muteshi (2000) cite Census data showing that, in the 1990s, recent immigrants, three-quarters of whom are racial minorities, were disproportionately represented in non-standard work categories, and stayed longer, on

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<sup>15</sup> Cranford et al. also note that among males, it is disproportionately young men (aged 15-24) who are concentrated in part-time and temporary work. (There is less such age concentration among women.)

<sup>16</sup> See Hughes et. al (2003) for a discussion of the closing of traditional gaps between men and women in the labour market, but the emergence of job quality gaps between well-educated women and men.

<sup>17</sup> Source: Statistics Canada 2000 Labour Force Survey micro datafile.

average, in such jobs than other workers. More research is needed to look at how visible minority status relates to the various aspects of vulnerability.

## **5. Instruments to Assist Vulnerable Workers**

Can we find ways to help vulnerable workers reduce the economic risks facing them, while also promoting productivity and competitiveness? This is a major challenge for labour market policy in the coming years.

More research is needed to identify what policy instruments are most likely to be successful in realizing this objective. Based on available information, some candidates worthy of investigation are as follows.

### **Extending the Scope of Coverage of Statutory Minimum Standards**

In their report to the Quebec Ministry of Labour, Bernier et al. (2003) identified as the top priority the extension of the definition of employee in labour statutes to include contractors who are economically dependent on the contracting person (or company). Fudge et al. (2002) make a similar recommendation: they propose the extension of labour protections to all who are economically dependant upon the sale of their capacity to work.

### **Improving Compliance with Existing Employment Standards**

All regulatory bodies that deal with employment standards have an interest in securing compliance with those standards. We know that complaint-based mechanisms are inadequate, as some workers are afraid to assert their rights out of fear of losing their jobs. Some jurisdictions have begun to undertake active audits of high-risk workplaces, and to promote better awareness of employment rights and responsibilities. There is a need for more effort in this regard.

### **Encouraging Employers to Offer Decent Pay and Better Access to Non-statutory Benefits**

Evidence is emerging<sup>18</sup> that there are opportunities for ‘win-win’ changes to employment practices that benefit employees, but also improve commitment, productivity, and competitiveness.

### **Increasing Minimum Wages**

Battle (2003, p.16) notes that “minimum wages fail to lift single workers, most single-parent families with one child and all one-earner families with two children above the after-tax poverty line for the largest cities throughout Canada.” While some studies suggest that raising the minimum wage will reduce employment, Freeman (1998) notes that many careful empirical studies in the U.S. and elsewhere show very small employment effects. Minimum wage increases may well be a useful instrument to assist low paid workers.<sup>19</sup>

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<sup>18</sup> See, for example, Lowe (2002) and Lowe and Schellenberg (2001).

<sup>19</sup> In addition, increases in the minimum wage enhance incentives for people to move from social assistance to employment. For some empirical evidence of this, see Turner and Bicakova (2003).

## **Providing Better Access to Training**

Government-funded training programs for the disadvantaged tend to focus on those seeking work. People who are in low-paid jobs have difficulty accessing programs (or employer-sponsored training) that would allow them to improve their literacy/numeracy and upgrade their skills.

## **Tax Relief for the Working Poor**

The National Child Tax Benefit has helped raise after-tax incomes of low-income families with children. The Earned Income Tax Credit in the United States supports low-income workers regardless of whether they have children. It effectively increases the rewards of work, and as such was significantly enhanced as part of the Clinton welfare reforms in 1996.<sup>20</sup> It may be worth considering a similar measure for Canadian low-wage workers.

## **Wage Supplements**

Temporary wage subsidies, especially if accompanied by a skills development plan, can be another vehicle for helping people move from social assistance to work. Maxwell (2002) notes that there has been some success with such programs in Canada, such as the Self-Sufficiency Project (targeted to single parents) undertaken between 1994 and 2000 by Human Resources Development Canada working with the governments of British Columbia and New Brunswick.

These are just examples of the kinds of instruments that may be effective in assisting vulnerable workers. Others have been discussed in the literature, and new ones may be identified in future research.

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<sup>20</sup> See Maxwell (2002) for an elaboration of the design and effects of the Earned Income Tax Credit.

## **6. Conclusions**

We have defined vulnerable workers as those whose participation in the labour market leaves their well-being at risk, because they have difficulty accessing work that is decently paid and/or offers conditions of work that meet basic social norms. Vulnerability is closely associated with, but not synonymous to, non-standard work. The decline of the traditional employment relationship (permanent, full-time wage work for a single employer), has brought with it increased risk and greater vulnerability for many workers.

Deakin (2002), focussing on the situation in the U.K., argues that the emphasis on the concept of employee was a post World War II phenomenon associated with the spread of social insurance and employment protection legislation. Employee status was adopted as the platform for the delivery of these rights and benefits, on the assumption that every family would have one worker who could earn those rights and benefits on behalf of all family members. However, with the rise of non-standard forms of work, we must ask ourselves whether employee status remains the right platform for providing citizens with social protections such as pensions, life and health insurance, holiday pay, etc. For example, in Canada, we provide every citizen with health and medical services based on their individual citizenship, but coverage for the costs of drugs, eyeglasses and dental care are provided privately – through employment based insurance plans or through individual payment. Changes in labour markets and workplaces mean that the reach of this platform is not providing the degree of security imagined by the original architects of these programs.

The lack of access of many workers to employment rights and benefits, and the scope of low wage employment raises a number of questions for which we need answers.

### **Questions about Access to Employment Rights and Benefits**

1. Are there platforms other than the contract of employment for delivering such rights and benefits (Langille, 2002)? Are there measures that ought to be rights of citizenship rather than benefits flowing from employment relationships?
2. What are the pros and cons of increased regulation? What non-regulatory measures may assist?
3. How can we secure better compliance with existing standards?
4. To what extent could associations based on occupation, profession, or ‘craft’ serve as a vehicle for providing benefits to non-standard workers?

### **Questions about Low-paid Work**

1. To what extent is low paid work concentrated among recent immigrants, Aboriginals, and disabled people?

2. How strongly is it associated with low educational attainment, or with long-term unemployment?
3. To what extent do adult workers remain in low paid jobs for long periods? What are the consequences of long duration low paid work for health, human capital development (including effects on children), and productivity growth?
4. Are there ways to build a social consensus on how to support the inclusion of more workers in decently-paid work?
5. What are the appropriate roles and responsibilities of the individual, the community, employers, and government in this regard?
6. Does government need to provide more support for programs, including employer-sponsored training, to improve the skills of employed workers?
7. Is there scope for increases to minimum wages across the country without significant adverse employment effects? What are the costs of setting the minimum wage at a level where even people who are working full-time cannot earn enough to rise above the poverty line?

#### **Questions about the Overall Incidence of Vulnerability in the Labour Market**

1. Taking account of the various aspects of vulnerability in the labour market discussed above, what is the overall extent of vulnerability among Canadian workers?
2. How could we define these aspects of vulnerability more precisely in order to obtain a quantitative measure of the incidence of vulnerability?

The answers to these and other questions would assist in identifying the specific policy instruments that are likely to be effective in helping vulnerable workers obtain work that provides a decent income and working conditions that meet societal norms. It is CPRN's plan to launch a series of studies to help fill the knowledge gap and to identify an agenda for action.

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##### **Ontario**

- Ministry of Community and Social  
Services

##### **Newfoundland and Labrador**

- Royal Commission on Renewing and  
Strengthening Our Place in Canada  
- Newfoundland and Labrador Statistics  
Agency

##### **Nova Scotia**

- Department of Health

## **Saskatchewan**

- Saskatchewan Social Services

### ***Municipal Governments:***

City of Toronto

Regional Municipality of York

### ***Foundations:***

Aga Khan Foundation Canada

The Atkinson Charitable Foundation

The Bertelsmann Foundation

Canada Millennium Scholarship Foundation

Canadian Health Services Research  
Foundation

The Change Foundation

Frosst Health Care Foundation

The Hospital for Sick Children Foundation

The Laidlaw Foundation

J. W. McConnell Family Foundation

The Muttart Foundation

The Neptis Foundation

### ***Associations and Other Organizations:***

AFP Foundation for Philanthropy – Canada

AFP Calgary Chapter

AFP International

AFP Toronto Chapter

Association of Fundraising Professionals  
(AFP)

Canadian Cancer Society

Canadian Institute for Health Information

Canadian Labour Congress

Canadian Population Health Initiative

Coalition of National Voluntary  
Organizations

College of Physicians and Surgeons of  
Ontario

Conference Board of Canada

Federation of Canadian Municipalities

The Learning Partnership

United Way of Greater Toronto

University of Toronto (Faculty of Law)



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