

# **Towards Enhancing the Employment Conditions of Vulnerable Workers: A Public Policy Perspective**

by

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**Executive Summary**

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## Executive Summary

Employment-related social protection in Canada consists of legislated benefits, including minimum standards of employment, access to unionization or income protection mechanisms during unemployment, occupational injury or retirement. It also consists of benefits set out in private group plans established by collective agreements or company policies regarding such things as retirement or supplemental health insurance. The goal of this report is to explore public policy scenarios, called platforms, that could enhance access to these rights and benefits for more vulnerable workers.

The first part of the report briefly reviews the complexity of vulnerable workers' situation. Their vulnerability is due to the fact that many of them are non-standard workers, i.e. people whose work situation does not match the standard of full-time, salaried employment for an indefinite duration with a single, readily identifiable employer on company premises. It is also due, for some of them, to their economic situation (low pay), personal characteristics (non-standard work or low pay being unequally distributed among the population by gender, age, ethnic origin, race, occupational skills or family situation) as well as organizational factors, namely the way their work is incorporated into the organisation of the production of a good or service. This multitude of factors needs to be taken into account when analyzing platforms for improving protection for vulnerable workers.

These platforms are explored in the second part of the report.

Universal programs providing access for all members of a given national community to a broad range of rights (retirement, illness, disability, drug insurance, occupational training, parental benefits) regardless of their participation in the labour market seem particularly suited to the multitude of factors contributing to the vulnerability of these workers. However, recent studies show that, in a context where the role of the State is changing, these programs tend to make the granting of benefits subject to resource conditions that reflect employment earnings or family income. The establishment of a universal drug insurance plan in Quebec in 1997 is an example: even though all residents have access to drug insurance coverage, the State does not provide this coverage when an individual's occupational situation gives him/her access to a private plan that includes equivalent coverage for that person and his/her family. In this context, even if we consider universal programs as the most suited to vulnerable workers, reflecting on work as a means for acquiring social rights is still appropriate. The question then becomes, how do we define this condition of acquisition when the ways of working have diversified and changed?

This report presents four platforms that base the granting of rights and benefits on the existence of work or an occupational activity.

In the first platform, the existence of a work relationship is the vehicle used for assigning rights and benefits, the goal being to redefine it to encompass the many forms of paid work. The studies presented under this platform all propose broader access to the labour laws. The labour laws currently apply only to certain categories of paid worker, the definition of which varies from one law to the next within the same jurisdiction. Workers not matching these definitions, including some vulnerable workers, are excluded. The concepts of "single employer" and "joint liability" could also facilitate identifying the entity or entities that must assume employer

responsibilities from an individual or collective labour relations perspective in complex companies using temporary employment agencies or subcontractors. Proposals promoting transferability of benefits a person acquires working for separate employers, elimination of differential treatment based on work situation and better enforcement of existing standards through appropriate information, inspection and complaint mechanisms are also explored under this first platform.

Recognition of the fundamentals human rights of workers may also lead to improved protection for vulnerable workers. In the second platform, the legislation protecting human rights is looked at from this perspective, notably the concepts of discrimination through adverse effects and discrimination based on social condition. Recognizing economic and social rights as human rights in their own right seems particularly suited to the protection of individuals whose vulnerability results from a combination of personal, occupational, economic and social characteristics.

A third platform, based on the Supiot Report prepared for the European Commission, proposes an intermediate test for granting social rights that does not reject the reference to work but views it in a different way. The work used as a test for acquiring social rights is not limited to paid work. It takes into account non-market forms of work, either as part of voluntary commitments (for example, volunteer work), or because of the social usefulness of certain duties (for example, the work of raising children or caring for parents). The result is the recognition of a true occupational status that includes periods of inactivity, training, paid work, self-employment or non-paid work that a person is likely to experience in his/her lifetime.

Finally, access for these workers to collective representation may also give them access to various benefit plans. This is the fourth platform explored in this report. Four collective representation models are looked at from this perspective: the general collective representation regime, the collective bargaining regime, juridical extension of collective agreements and programs in place or proposed in Quebec for certain categories of self-employed workers. One finding arises from this: the possibility that workers already have, under general legislation, for forming associations and professional syndicates can not be viewed as a true platform for improving the situation of the greatest number of workers. In most cases, the benefit plans arising from these forms of representation are supported entirely by workers who are members of the association. For an association to represent only its members limits its ability to negotiate plans at reasonable cost. It is also unfair to make vulnerable workers, who are often low paid, bear the entire cost of their social protection. Overall, collective representation is an attractive platform for improving the protection of vulnerable workers if it results from them engaging in true freedom of association, as it is meant in the international instruments. It is not enough to grant these associations the right to exist: they still need to be allowed to achieve their own goals – for example establishing benefit plans – through appropriate means such as collective bargaining, or the power to represent all workers in a given field following a recognition procedure. Therefore, this fourth platform cannot be contemplated independently of legislative initiatives giving effect, in Canada, to freedom of association as a fundamental right for all workers, unionized or not, and asserting a principle of equal treatment consistent with the international instruments.

The report concludes that none of the platforms explored can, on its own, be viewed as THE best way of protecting vulnerable workers. While it is true that recognizing economic and social rights as human rights in their own right would impact the standard of living and the conditions of these workers, it is also a complex course of action to implement given the constitutional and quasi-constitutional changes it would require. Also, if we were to select the first platform, which would make the labour law applicable to a wide range of paid work situations, we would have to be alert to the fact that its abilities for redistributing the collective wealth presuppose full employment. This platform would introduce improved equity among workers, but on its own it could not guarantee improved social equity.

Any analysis of the merits of these platforms must take into account the context in which they would be introduced. For example, collective representation regimes may appear to be a meaningful option, in light of the guarantees we have reviewed, for enhancing access to *supplemental* benefits for workers who are currently deprived of them. However, these same regimes may be unfavourable for workers if they are accompanied by the State withdrawing from universal protections. These private group plans would then become the instrument for privatization of social protection and transfer of the costs, rather than a way of extending supplemental plans that are not currently accessible to certain categories of workers.

Overall, the analysis suggests the need to further explore avenues under each of the platforms.. If we could enhance the scope of coverage of the laws currently governing employment protections, expand access to collective representation, and, at the same time, identify rights or benefits where there is a strong case for universal access, then we could help vulnerable workers improve their well-being.