



LAW COMMISSION OF ONTARIO
COMMISSION DU DROIT DE L'ONTARIO

**VULNERABLE WORKERS
AND
PRECARIOUS WORK**

CONSULTATION PAPER

**(Note: There is an optional companion Background
Paper in this Project)**

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ABOUT THE LAW COMMISSION OF ONTARIO

The Law Commission of Ontario (“LCO”) was created by an Agreement among the Law Foundation of Ontario, the Ontario Ministry of the Attorney General, Osgoode Hall Law School and the Law Society of Upper Canada, all of whom provide funding for the LCO, and the Ontario law deans. It is situated at York University, officially housed at Osgoode Hall Law School.

The mandate of the LCO is to recommend law reform measures to enhance the legal system’s relevance, effectiveness and accessibility; improve the administration of justice through the clarification and simplification of the law; consider the use of technology to enhance access to justice; stimulate critical legal debate; and study areas that are underserved by other research. The LCO is independent of government. It selects projects that are of interest to and reflective of the diverse communities in Ontario and is committed to engage in multi-disciplinary research and analysis and make holistic recommendations, as well as to collaborate with other bodies and consult with affected groups and the public more generally.

This Consultation Paper is accompanied by a Background Paper which explores the issues in the project in greater detail for those who wish to read it. Both documents are available on the LCO’s website at www.lco-cdo.org.

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SUMMARY

The Board of Governors of the Law Commission of Ontario (“LCO”) approved this project on Vulnerable Workers and Precarious Work in July 2008. The project reviews the nature of precarious work, the identity of vulnerable workers, the existing protections for employees engaged in these forms of paid work, the limitations of the protective legislation, the challenges and difficulties of enforcing rights under existing legislation, the impact of precarious work on the daily lives of vulnerable workers and some of the potential responses.

The decline of manufacturing, rapid technological advances, changes in immigration policy and global migration of people and corporations have all affected the nature and extent of precarious work. There will be more change in the future and those contributing to this project are invited to help the LCO understand what these changes might be and the impact on vulnerable workers, including the opportunities these changes may provide for improving the conditions of vulnerable workers.

This Consultation Paper sets out the issues that the LCO is considering, along with questions on which the LCO would particularly like feedback, although submissions and comments on any aspect of this topic are welcome.

Precarious work refers to work that is short-term and low paid with few benefits; it might be dangerous; workers are also unlikely to have a voice in determining their working conditions. We are calling workers who perform precarious work “vulnerable workers” because of the conditions of work, the difficulty many have in enforcing their rights under employment-related statutes or because they may be excluded from bargaining collectively about their working conditions.

Precarious work takes the form of part-time, temporary or self-employed work. “Self-employed” in this project refers to workers who are treated as (in)dependent contractors, but whose working conditions more resemble an employment relationship. Workers may obtain temporary work through temporary help agencies or directly with an employer. Foreign workers programs are an important source of temporary workers. Depending on the program, the workers may be limited to staying in Canada for only six months or they may stay for two years. In most cases, they cannot seek permanent residency while in Canada (live-in caregivers are an exception). There are also programs

addressed to highly skilled or well-educated workers or students in other countries who may be fast-tracked for permanent residence.

Racialized people, including recent (and increasingly long-term) immigrants, and white women make up a disproportionate number of vulnerable workers. For example, women are more likely to work part-time, live-in care-givers are primarily racialized women and migrant farm workers are predominantly racialized men. Non-status residents also often are forced into precarious work because they are not legally able to work.

The project considers legislation such as the *Employment Standards Act, 2000*, the *Occupational Health and Safety Act*, the *Workplace Health and Safety Act, 1997* and other legislation to see the extent they are applicable to precarious work or vulnerable workers. Sometimes legislation that is applicable on its face has a different impact on vulnerable workers employed for short periods for the same employer because rights are conditional on a specific period of service, for example.

Two other aspects of legislation are important for this project. One is the method and extent of enforcement and the other is provisions addressing employer reprisals if workers attempt to enforce their rights. Complaint-based mechanisms may not be effective for workers who are isolated, do not speak English or are afraid the employer will repatriate them to their home country. In some cases, the Ministry of Labour is increasing targeted inspections of workplaces in certain sectors or otherwise engaging in pro-active forms of enforcement that do not rely on individual complaints.

The project notes that there have been changes in employment-related legislation that seek to address some of the problems facing workers performing precarious work. This is the case, for example, with recent changes to the *Employment Standards Act, 2000* regarding workers assigned by temporary help agencies or legislation addressing some of the concerns of live-in-caregivers.

Collective bargaining has been an important tool for workers to have a voice in the workplace. Certain workers are excluded from the standard labour relations regime under the *Labour Relations Act, 1995*, including agricultural workers who are now subject to a separate statute that has been challenged under the equality provisions of the *Canadian Charter of Rights and Freedoms* and domestic workers.

Although the project focuses on provincial legislation and the LCO's mandate relates to provincial law and policy, it is also necessary to consider federal law and policy. For

example, federal foreign worker programs may affect the extent to which provincial legislation is effective for migrant workers.

The project also recognizes that precarious work can have a negative effect on workers' daily lives and the lives of their families. They may be susceptible to ill health because of having to work multiple jobs or long hours; for the same reason, it may be hard to maintain a family life or participate in the community or obtain training that would enable them to find other more stable and better paid work. They may not take time off for illness for fear of losing their job. Without savings or a pension, they will enter old age facing poverty or a higher degree of poverty than they already experience.

The Consultation Paper identifies a number of suggested reforms to address the situation facing vulnerable workers. These are not LCO recommendations. Rather, we would like your opinion about the value of these reforms and your suggestions for other reforms.

For those who would like to read more about these issues, the LCO has also released a Background Paper in this project. We will also be releasing a short handout in languages other than English and French that summarizes the issues and explains how to participate in the project.

The LCO seeks the views and experiences of workers, employers, service agency workers and government officials in relation to precarious work and vulnerable workers. There are many ways to contribute to this project. These are described, with contact information, in the last section of this Consultation Paper.

Vulnerable Workers and Precarious Work

Consultation Paper

I. INTRODUCTION

In July 2008, the Board of Governors of the Law Commission of Ontario (“LCO”) approved a project on vulnerable workers and precarious work. Precarious work can be briefly described as short-term work with low pay and few benefits that may be dangerous; workers are also unlikely to have a voice in the workplace. Vulnerable workers are the workers who do precarious work; they include part-time, temporary and “self-employed” workers, for example. The workers’ “vulnerability” derives from their working conditions and to some extent from the social response to demographic characteristics

The Board of Governors selects projects in areas of the law that need review for many reasons. The vulnerable workers project addresses a situation on which much has been written and about which much has been spoken; nevertheless, the issues that have been identified for the most part appear to remain challenges. Accordingly, the LCO believes that the situation of vulnerable workers doing precarious work requires assessment by an independent and impartial body such as the LCO.

This LCO project reviews the nature of precarious work, the identity of vulnerable workers, the existing protections for workers engaged in these forms of paid work, the limitations of the protective legislation, the challenges and difficulties of enforcing rights under existing legislation, the impact of precarious work on the daily lives of vulnerable workers and some of the potential responses.

The decline of manufacturing, rapid technological advances, changes in immigration policy and global migration of people and corporations have all affected the nature and extent of precarious work. There will be more change in the future and those contributing to this project are invited to help the LCO understand what these changes might be and the impact on vulnerable workers, including the opportunities these changes may provide for improving the conditions of vulnerable workers.

This Consultation Paper sets out the issues that the LCO is considering, along with questions on which the LCO would particularly like feedback, although submissions and comments on any aspect of this topic are welcome.

Some readers may wish to read the companion Background Paper which explores the issues in greater detail. Feedback on the Background Paper is also welcome. It is not necessary to read the Background Paper, however, to contribute to the vulnerable workers and precarious work project.

The LCO seeks comments in writing, including by email or in the comment box on our website, by telephone, by web conferencing and in person. More information on how to make comments and be part of the consultation process in this project is included at the end of this Consultation Paper.

II. WHAT IS THIS PROJECT ABOUT?

A. Introduction

This project looks at the meaning of “precarious work” and the identity of those who perform precarious work, workers we are calling “vulnerable workers”. It explores the various dimensions and ramifications of “precarious” (or “contingent” or “atypical”) work, both with respect to working conditions and the degree of protection offered by legislation and processes for enforcement, and its effect on the daily and long-term lives of workers who are engaged in precarious work.

B. Precarious Work

1. *What is Precarious Work?*

“Precarious work” finds much of its meaning when it is compared to the “standard employment relationship”. The standard employment relationship is based on full-time,

continuous and life-long or permanent work with decent pay and benefits. The assumption of the standard employment relationship was supplemented by “the social safety net”, intended to cover breaks in employment and to some extent the end of a person’s working life. Although the standard employment relationship did not cover all working relationships by any means, over time, it has become even less common. Increasingly, workers move more often from one job to another. More and more workers are employed in short-term work with few, if any, benefits, or work in a relationship that is treated as if they are (in)dependent contractors, even though the conditions of work in other ways resemble employment. There is little job security or influence over working conditions.¹ The Supreme Court of Canada and the Ontario Ministry of Labour have both recognized the concept of “vulnerable worker” as associated with particular types of work.²

Precarious work can be identified through the structure of the work or the kind of work. Part-time employment, own account or self-employed work and temporary work of various kinds are common forms of precarious work.

Part-time work usually takes the form of, for example, 20 or 24 hours a week, or it may overlap with temporary work such as when the same worker is regularly hired every Christmas. Workers may obtain temporary employment through temporary employment agencies, through direct contact with employers, on term limited contracts lasting from a few weeks to a year or so, or through federal migration schemes. While this work may be “temporary” for the worker, the work itself may be required by the employer on a permanent or regular basis. Protective legislation does not distinguish between full and part-time employees, but employers are not required to pay part-time workers the same rate or give them the same benefits as full-time workers. Women are disproportionately engaged in part-time work.³

Own-account self employment accounted for 16% of employment in Canada in 2000. Most workers in this category do not have control over how work is done or benefit from an increase in the profits of the company; they are not like small business owners (“entrepreneurs”), but more like employees. Nevertheless, they may not be covered by protective legislation that applies to “employees” because they are not considered employees. This type of precarious work has increased over the last two decades, particularly among women.⁴

Temporary employment constitutes 12.5% of all employment in Canada; many temporary employees receive about half the pay that full-time employees in the same

kind of job receive; fewer than 10% receive extended health care and only 2% dental benefits.⁵

Workers assigned by temporary employment agencies (or “temp agencies”) are temporary employees. (Temp agencies provide or assign employees to their “employer” clients for specific periods of time.) Since the 1990s, the number of temp agencies has increased from 1,300 to 4,200 in 2004, with revenues of \$6 billion, 60% of which was generated in Ontario.⁶ Many temp agency employees received new rights and benefits in November 2009 through Bill 139, the *Employment Standards Amendment Act (Temporary Help Agencies), 2009*, which amended the *Employment Standards Act, 2000*, although the new provisions do not apply to all temp agency employees, such as those who perform personal services under certain conditions. Bill 139 makes clear that the temp agency is the employer of the individual, rather than the entity to which the individual may be assigned. Temp agency employees now receive public holiday pay and termination and severance pay.

Workers on federal migration schemes are given visas to work in Canada for specified periods of time and therefore both their employment and their immigration status are temporary. There has been an increase in temporary foreign workers of 125% since the 1990s. Workers who come to Canada under federal temporary migration schemes are often destined for precarious work. Other immigration programs target highly skilled or economically well-off workers or entrepreneurs for whom the terms of relevant programs are not so limiting, however.

The federal Seasonal Agricultural Worker Program (SAWP) which began in 1966 permits workers (now mainly from Mexico) to work in Canada for up to eight months a year. These workers are not able to extend their stay or apply for permanent residence while in Canada.⁷

The Temporary Foreign Worker Program (TFWP) began in 2003 to recruit workers for a variety of sectors, including agricultural, construction, hospitality and meat packing. These workers work for two years, but as with workers under SAWP, are not allowed to remain after that period. New regulations coming into effect in April 2011 provide that these workers may not remain in Canada for more than four years and must wait an additional four years before applying under the program again.⁸

An important exception to the temporary immigrant status under the federal programs is the federal Live-in Caregiver Program (begun in an earlier form in 1910). It

permits caregivers to serve as domestic workers in Canada for two years initially; it also allows them to extend their stay and to apply for permanent resident status.⁹

The various forms of precarious work provide flexibility to the employer who may not require full-time workers all year or to perform certain tasks or they may have difficulty finding Canadian workers to perform certain kinds of work. They may also seek to avoid paying benefits they would pay to full-time workers, however.

Workers also may wish to maintain flexibility in their work situation, although often they do not and would prefer full time work. For some workers, flexibility may provide opportunities to gain Canadian work experience, allow individuals time to engage in other pursuits or provide “added cash” at particular times. Migrant workers earn more than in their home countries and are able to “send money home”. For other workers, however, precarious work may mean that they must work at more than one job in order to earn enough to live and support a family (not an option available to migrant workers).

There have always been workers who can be described as “vulnerable”, whose wages were low, who enjoyed few if any benefits and whose continued employment was constantly in doubt. In contrast, other workers have enjoyed a “standard employment relationship” with one employer for life or, at least, long periods of time. Increasingly, work that was structured as permanent providing a “standard employment relationship”, has become more insecure. For some employees, the increased insecurity may be compensated for by opportunities for training or other benefits.¹⁰ This is not the case for the workers who are the subject of this project.

Many protective statutes do not explicitly distinguish between part-time or temporary employees and full-time employees, yet their benefits may not be available to part-time or temporary employees for a variety of reasons. For example, these workers may not be able to meet the length of service requirements that sometimes apply to receipt of benefits.

2. Measures of Precarious Work

We are using four (often highly related) measures to determine whether work is “precarious”:

- Earnings: the relationship of earnings to the minimum wage or a specified level, such as a poverty line;
- Benefits or “social wage”: such as pensions, dental benefits, extended medical coverage that can have implications for the circumstances of the whole family;
- Regulatory protection: whether covered by employment statutes or whether able to unionize and how well protections that do exist can be enforced; and
- Control: whether unionized or whether there are other indications the workers have the ability to affect their working conditions.¹¹

In broad terms, using these factors, precarious work is work that is paid, but with low or unstable wages, with few if any benefits, weak or non-existent statutory protection that is difficult to enforce, that occurs in a non-unionized workplace and that offers little or no other opportunities to affect conditions within the workplace.

C. Vulnerable Workers

Workers engaged in precarious work who may be described as “vulnerable” are found among a full range of ethnic groups and other “cohorts” or populations, other than those of higher socio-economic classes. Workers whose employment relationships may still be considered “standard” may find themselves in more precarious work if they lose their current jobs, particularly if they are older. Nevertheless, vulnerable workers are found disproportionately among white women, among men and women of particular racialized groups and persons with a disability or disabilities. We are referring to these characteristics as workers’ “social location”, a term that includes gender, “race”, immigrant status, age, ability and other sources of marginalization.¹² Readers are also referred to the LCO’s projects on older adults¹³ and persons with disabilities¹⁴ which refer to these cohorts’ relationship to work for pay.

1. Gender

Women are more deeply concentrated in the most precarious forms of work and this inequality has continued to exist even while the rate of female participation in the workforce has increased. This is at least in part because of the connection made between women's role in the family and their role in the workplace and the continuing reality that, while men have become more involved in family life, women still assume a greater share of domestic responsibilities. Women are more likely to be engaged in part-time and temporary employment, whether from a "real" choice or otherwise, and to be concentrated in home care and child care and in service occupations.¹⁵

2. "Racialization" and Immigrant Status

The concept of "racialization" is complex and its meaning disputed. (Specifically, the issue is whether all persons should be considered "racialized" or whether the term should be restricted to those whose "race" attracts disadvantage. Thinking about racialization in the former sense recognizes that most of us can attribute our advantages and disadvantages at least in part to our ethnic or national origins and more specifically to our "colour", just as we can to our class from childhood forwards.) We are using the term in its most commonly recognized meaning, however, to refer to a process by which physical or observable characteristics are assigned social significance, including those based on stereotyping.¹⁶

Another issue raised by the concept of "racialization" is whether it is appropriate to include First Nations people as a "racialized" community, given their distinct status.¹⁷ For this reason and the complexity of Aboriginal (un)employment, this project does not currently address the vulnerability of First Nations workers. Rather we ask for feedback on the following question:

Are the experiences of Aboriginal and non-Aboriginal persons with regard to precarious work sufficiently different to warrant distinct treatment?

Because of the difficulty in finding jobs and the decline in certain employment sectors, lack of contacts, lack of ease with language and apparent preconceptions held

by some employers, significant numbers of members of racialized communities, and specifically recent immigrants, are found in precarious work. Not unrelatedly, empirical data show that immigrants, particularly those who are not white, are more likely to live in poverty in Ontario and elsewhere in Canada.¹⁸

The pattern of immigration has changed over the past forty years or so in two overlapping respects. The first is that the source countries for permanent residents have changed from countries primarily inhabited by white people to those primarily populated by persons of colour¹⁹ and the second is the increase in the number of temporary workers entering Canada every year, most of whom arrive from the latter countries. Many workers under TFWP come from Guatemala and Thailand, for example; many women entering Canada under the Caregiver Program are from the Philippines; and workers under SAWP, mostly men, come primarily from the Caribbean Commonwealth countries and Mexico.²⁰ A third aspect of immigrant status is that it includes persons who lack official status and thus are unable to work legally.²¹

A not uncommon pattern for immigrants has been that they find short-term, low paid jobs when they arrive in Canada, but that within five years or even less, they have moved to more stable work that is better paid with benefits. At the macro level, this pattern has changed. A Statistics Canada study found that 54% of people in non-standard jobs in 1999 (five million workers) continued in this kind of work for the next two years.²²

These categories of social identity intersect. There is, therefore, a growing appreciation of the relationship between “women of colour” and precarious work.²³

III. RELEVANT LAW AND AGREEMENTS

A. Constitutional Law

Most employment and labour law is within the authority of the province. There are, however, some federal laws and policies that affect the status of workers and which have an impact on the province’s capacity to affect these vulnerable workers through provincial legislation and policy.

The LCO's mandate applies only to provincial law. Immigration is an area of concurrent jurisdiction under section 95 of the *Constitution Act, 1867*; however, the federal government is generally responsible for immigration into Canada, as least as far as it affects Ontario, although increasingly in partnership with the province. As indicated, many vulnerable workers are in Canada, including Ontario, because of federal worker programs. These programs have some rules that affect how the province may address vulnerable workers' concerns. This project will look at the relationship between federal laws and policies and provincial laws and policies in order to understand the province's capacity to act.

The *Canadian Charter of Rights and Freedoms* may also have relevance for addressing the situation of vulnerable workers: between freedom of association and exclusions from collective bargaining and equality and the impact of employment standards on the experience of (white) women and racialized men and women in precarious work.

B. Provincial Law

1. Statutes

The most significant Ontario statutes for this project are the *Employment Standards Act, 2000*, the *Employment Standards Amendment Act (Temporary Help Agencies)*, the *Occupational Health and Safety Act*, the *Workplace Safety and Insurance Act, 1997*, the *Pay Equity Act*, the *Labour Relations Act, 1995* and the *Ontario Human Rights Code*. We are also looking at enforcement of these statutes.

- *Employment Standards Act, 2000*, S.O. 2000, c.41 (ESA, 2000): it establishes minimum standards applying to most employees in relation to most working conditions.
- *Employment Standards Amendment Act (Temporary Help Agencies)*, (Bill 139): among other provisions extending protections to this group of workers, this statute, enacted in May 2009 and now part of the ESA, 2000, clarifies that the temp agency is the employer of the worker, regardless of whether the worker is temporarily working for a temp agency client to which he or she has been assigned

or is merely on the agency's books. A summary of the provisions of this Act can be found at <http://www.labour.gov.on.ca/english/es/pubs/guide/tempagencies.php>.

- *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1 (OHS Act): it establishes employee involvement in health and safety in most workplaces.
- *Workplace Safety and Insurance Act, 1997*, S.O. 1997, c.16, Sched. A (WSIA, 1997): it establishes a no-fault insurance scheme paid for by employers for accidents suffered by employees in the workplace.
- *Labour Relations Act, 1995*, S.O. 1995, c. 1, Sched. A (LRA, 1995): it establishes the scheme of collective bargaining for most employees, along with related provisions designed to maintain the integrity of the scheme.
- *Pay Equity Act*, R.S.O. 1990, c. P.7 (PEA): it requires public sector and private employers to pay equal pay for work of equal value as a remedy for sex discrimination in pay.
- *Human Rights Code*, R.S.O. 1990, c. H.19 (HRC): it prohibits discrimination in employment on the basis of 15 grounds, including race, place of origin, ethnic origin, citizenship, disability and sex and requires accommodation of employees with a disability to the point of undue hardship. Information about accommodation can be found on the Ontario Human Rights Commission's website at <http://www.ohrc.on.ca/en>.

Other provincial and federal laws affect vulnerable workers, sometimes by omission. For example, section 5(b) of the Ontario *Residential Tenancies Act, 2006*, S.O. 2006, c.17, exempts "living accommodation whose occupancy is conditional upon the occupant continuing to be employed on a farm, whether or not the accommodation is located on that farm", an exception which would mean that migrant workers have no recourse under the Act if their accommodation is below expected standards. Other forms of support for workers are social assistance benefits available through the provincial welfare system and employment insurance benefits available federally.

2. Enforcement Mechanisms

Enforcement processes are important to whether an Act can be effective. Under many statutes, the primary form of enforcement is an individual complaint system, although sometimes this is reinforced by pro-active monitoring by government agencies. The ESA, 2000, the PEA, the OHSA and the HRC all have complaint-based systems. In addition, there are pro-active obligations under the PEA for employers and bargaining agents to develop and implement pay equity plans and under the OHSA for employers, unions and bargaining agents to provide a safe workplace. Workers can refuse to work under the OHSA if they believe the work is unsafe.

In some cases, the government monitors the implementation of legislation. For example, under the ESA, 2000, the Ministry of Labour targets employers in high-risk sectors and repeat violators. Between 2003 and 2007, individual complaints averaged over 15,000 a year and rose to 21,304 in 2009. Investigations by the Ministry of Labour of targeted employers ranged from 151 in 2003 to 2,713 in 2006. In the 15,000 investigations of individual complaints in 2006, the Ministry of Labour found violations in 11,358 complaints, resulting in four prosecutions of companies and two directors.²⁴

3. Protections for Workers Who Complain

Workers may not complain because they are afraid of reprisals. Although statutes may contain anti-reprisal provisions, they may not be effective.

Migrant workers face difficulties in making a complaint, stemming from lack of language skills or knowledge of the system. Furthermore, employers are able to repatriate migrant workers – terminate their employment and send them back to their originating country – without reason and this may serve to discourage workers from filing complaints.

Domestic workers may find it difficult to complain about their conditions because of their isolation, immigration status, language and sex. Homeworkers, who work out of their own homes for a business or agency, are also protected under the ESA, 2000, but they may find making a complaint difficult because of their isolation.

The new provisions affecting temp agency workers under the ESA, 2000 mean that both the temp agency and the agency's client are both subject to anti-reprisal provisions.

4. Collective Bargaining

Collective bargaining and the grievance procedure are intended to give employees a voice in the workplace. Employers may also file grievances against the union and to a limited extent individual employees may file a complaint under the LRA, 1995 that the union has acted in an arbitrary or discriminatory way.

The public sector is highly organized; however, the overall rate of unionization is lower than 30% of employees in Ontario. Rates for men, particularly younger men, have decreased (almost 20% between 1981 and 2004), while rates for women between 45 and 64 have increased 8%, primarily because of an increase of women in the public service. The work we have called "precarious work" has low rates of unionization and workers in some forms of precarious work, such as domestic work, do not have the right to form a union or bargain collectively. Agricultural workers are excluded from the LRA, 1995 and are subject to the *Agricultural Employees Protection Act, 2002*, S.O. 2000, c. 16. This statute has been challenged under the *Canadian Charter of Rights and Freedoms* and the issue is now before the Supreme Court of Canada.²⁵

C. Federal-Provincial Agreements

As have some other provinces, Ontario has entered into agreements with Canada with respect to temporary foreign workers. It signed the first Canada-provincial immigration agreement in November 2005 with the goal of a transfer of federal monies to the province to assist with the integration of newcomers. A subsequent agreement specifically covered temporary foreign workers "whose presence will promote economic development priorities in Ontario".²⁶ Ontario participates in the Provincial Nominee Program which allows the province to identify immigrants for a fast-track to permanent resident status. The program is employer driven and focused on skilled or highly educated individuals.²⁷

Ontario, Toronto and the federal government have also entered into a Memorandum of Understanding relating to immigrants that has the purpose of

“improving outcomes for immigrants through several areas of interest to all governments, including citizenship and civic engagement, and facilitating access to employment, services, and educational and training opportunities”.²⁸

D. International Law

While Canada is not a signatory to all international conventions that address the situation of workers, these conventions do provide a standard against which the treatment of vulnerable workers may be considered. One example is the *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, to which Canada is not a signatory. The International Labour Organization has enacted eight fundamental conventions that address the rights of workers, of which Canada has ratified five. The 1998 ILO Declaration on Fundamental Principles and Rights at Work provides that all ILO members have an obligation “to respect, to promote and to realize...the principles concerning the fundamental rights which are the subject of those Conventions”, even if they have not ratified them. Among the categories of rights are freedom of association and the effective recognition of the right to collective bargaining and the elimination of discrimination in respect of employment and occupation.²⁹

IV. THE IMPACT OF PRECARIOUS WORK ON WORKERS

The impact of precarious work not only has short-term implications, but also may have long-term implications for many areas of a person’s life.

A. The Impact of Legislation on Working Conditions

Workers who work the required hours to receive certain benefits may not be eligible for them because the hours are acquired through working for different employers. They may also not have access to leaves under the ESA, 2000 because they may be available only to employees working for employers with 50 or more employees, for example.

Workers who work temporarily for different employers may not accumulate sufficient hours with any one employer to benefit from protections based on length of

service, even though the statutes do not explicitly distinguish between full-time or permanent employees and temporary employees. Examples are that employees employed for fewer than three months are not entitled to notice of termination or if employed for fewer than five years, are not eligible for severance pay. A worker who has recovered from a workplace injury has no right to be reinstated in employment under WSIA, 1997 if she or he had not been continuously employed for at least one year at the time of the injury.³⁰ Temporary employees who are now employees of a temporary employment agency are more likely to be able to benefit from these rights than those who find their own work, although their actual access is established separately in the ESA, 2000.³¹

Domestic workers are not excluded from the protections of the ESA, 2000; however, it is difficult for them to enforce their rights, given their employment in their employers' homes, as well as in many cases because of their immigration status, language and gender. They are excluded from the OHSA and from taking collective action under the LRA, 1995, however. Homeworkers (people who conduct paid work in their own homes for a business) may also find enforcing their rights difficult because of their isolation.³²

Because many statutes relate to the employment relationship, some vulnerable workers, considered to be "(in)dependent contractors" or otherwise self-employed, do not benefit from them, even though they may be subject to a large degree to the control of someone else. For example, they do not receive protection under WSIA, 1997 unless they pay their own premiums.

The ESA, 2000 is amended on a regular basis. Of particular note are recent improvements to the situation for workers who obtain work through temp agencies (referred to above), as well as for live-in caregivers.³³ In June 2006, the Ontario government extended the OHSA to include coverage for paid farm workers in specified types of provincial farming operations.³⁴

In December 2009, four migrant workers were killed and one seriously injured when they fell from scaffolding as they were working on the balcony of an apartment building. In May 2010, the Ontario government announced an increased review of construction sites and enforcement of the health and safety requirements on construction sites. In August 2010, the Ministry of Labour pressed charges under the OHSA against two companies and against individuals; criminal charges were laid in October 2010. Ontario has also decided to appoint a single person to oversee all workplace health and safety training, now the responsibility of several agencies.³⁵

The ESA, 2000 contains provisions relating to reprisals against workers who complain about their working conditions. Vulnerable workers are often reluctant to make a complaint because they are reliant on the job, fear greater retribution or lack the knowledge or skills to complain, despite information available in several languages on the Ministry of Labour website. Migrant worker may be repatriated at the behest of the employer or may not be invited to return.

The above discussion identifies some of the problems with protective legislation for workers performing various kinds of precarious work. Part IV of the Background Paper explores the impact of the legislation in greater detail for those who wish more information.

Are there other ways in which the protective legislative regime is less effective for workers engaged in precarious work than it might be for other workers?

Are you able to provide specific experiences with the protective legislative regime that would assist us with understanding this issue more fully?

B. The Impact on Daily Life

“Vulnerable” workers are not only vulnerable in their workplace(s), often including facing greater physical risks, but may also face challenges in their daily lives as a result of performing precarious work, with respect to their family and social/community lives, their and their families’ health, opportunities to improve their lives and their old age, for example.

The conditions of precarious work often mean that vulnerable workers live in poverty or close to it. Addressing the conditions of precarious work is therefore relevant to the Ontario government’s Ontario Poverty Reduction Strategy, launched in December 2008. Section 2(2) of the *Poverty Reduction Act, 2009*, S.O. 2009, c.10, acknowledged “the heightened risk [of poverty] among groups such as immigrants, women, single mothers, people with disabilities, aboriginal peoples and racialized groups”, groups who disproportionately engage in precarious work.

Because of the low pay, workers often need to work at more than one job or must work long hours, making them susceptible to illness. The health of vulnerable workers is affected, not only perhaps by the work itself, but also because lack of access to extended benefits may mean they are reluctant to seek medical care. They may resist taking time off for illness because of fear of losing their jobs. For migrant workers, admitting illness may raise fears of repatriation or of not being invited back the next year. Employers are responsible for arranging the OHIP cards for migrant agricultural workers; they do not always do so. Mental health may be affected by stress and heightened insecurity. Some workers may change jobs often, requiring on-going adjustment to employers and conditions. Yet others, specifically migrant workers, cannot change employers and can hold only one job, regardless of their working conditions.³⁶

Given the demands of multiple jobs or the time needed to seek new or additional employment, there may be little time to spend time with family or developing friendships. When both members of a couple are engaged in precarious work, conflicting schedules may make it more difficult to maintain their own relationship or to spend the time they want to with their children, if they have a family.

There may be little time for workers in this kind of work to acquire training to enable them to find more stable, better-paying work. They may be excluded from employer training programs. They may have little time to improve their English or French language skills or have access to settlement programs.³⁷

Vulnerable workers who have done this kind of work for most of their working life enter old age with few assets and without financial supports such as a pension.

Are there other costs to vulnerable workers in their daily lives that have not been identified here?

V. REMEDIAL OPTIONS THAT HAVE BEEN PROPOSED

The Law Commission of Ontario has not yet considered all these issues or what, if any recommendations, it will make to address them. This Consultation Paper is intended

to invite you to contribute your views and experiences. It may be useful, however, to hear what others have proposed as solutions or options for addressing the issues. The LCO does not have a position on any of these options at this stage in the project. It does note, however, that one premise that underlies these options is that flexibility may be good for both employers and workers under certain circumstances; this does not mean, however, that workers should be disadvantaged by flexibility or that flexibility should be abused.

Suggestions for reform by others include the following:

- Enhancing existing legislative protections, such as those under the ESA, 2000;
- Developing new legislative protections directed at vulnerable workers or precarious work;
 - Developing a broader definition of “employee” in all employment-related statutes;
 - Reforming non-employment related statutes that affect the lives of vulnerable workers;
 - Developing more effective enforcement mechanisms, particularly for migrant farm workers or live-in caregivers;
 - Including an unfair dismissal provision in the ESA, 2000 for non-unionized workers to address disguised reprisals;
 - Considering alternative forms of collective representation, such as minority unionism so that a certification of a union would not require a majority of employees to support it;
 - Developing a list of and communicating employer “best practices” that reduce the negative impact of precarious work or that provide better opportunities for immigrants and women;
 - Increasing social assistance protections in order to permit flexibility in hiring without disadvantaging workers.

Do you have comments on any of these proposals from your perspective as a worker, someone advocating for workers, an employer or as someone responsible for enforcing employment-related standards?

Do you have any suggestions for specific reforms that would help reduce the extent of or negative aspects of work that we have called “precarious”?

VI. CONTRIBUTING TO THE PROJECT

Many people from different sectors have something of value to contribute to the LCO's work in this project. We want to hear from you.

- You may be a vulnerable worker and the best person to describe your own experiences.
- You may be someone who advocates for or provides services to vulnerable workers and may be willing to help us meet with workers themselves.
- You may be someone who has studied the issue and is prepared to share your studies with us.
- You may be an employer who has developed “best practices” in these areas or an employee of such an employer. The development of a list of best practices is consistent with the approach of the LCO to look beyond the law to recommend other solutions that help make law effective.

There are many ways to express your views or help us hear from those affected by this project:

- Send us your comments in writing, by fax, in an email or in our online comment box.
- Whether employer, worker, advocate or service provider, give us a call and arrange a time to talk about your experiences in person or on the telephone.
- Help us arrange a focus group of workers engaged in precarious work.
- We can arrange to travel to different parts of the province or to set up web consultations.
- You may have other suggestions for how you can best express your views or help others tell us their experiences.

We will make every effort to have consultations in appropriate languages; however, the LCO's resources are not extensive and we would appreciate suggestions about how to address this issue.

If you want to read the Background Paper that is a companion to this Consultation Paper, you can find it at <http://www.lco-cdo.org>.

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Explain that you are interested in talking about the vulnerable workers project and someone will discuss with you how you can participate in a way that works for you.

ENDNOTES

(Additional sources are identified in the Background Paper)

¹ Sources for the issue of the changing nature of work include the following: Economic Council of Canada, *Good Jobs, Bad Jobs: Employment in the Service Economy* (Ottawa: 1990); Ron Saunders, *Making Work Pay: Findings and Recommendations from CPRN's Vulnerable Workers Series, Research Highlights*, Number 6 (May 2006); Law Commission of Canada, *Is Work Working?: Work Laws That Do A Better Job: Discussion Paper* (Ottawa: Law Commission of Canada, 2004); Kerry Rittich, *Vulnerable Workers: Legal and Policy Issues in the New Economy* (Ottawa: Law Commission of Canada, 2004); Judy Fudge, Eric Tucker & Leah Vosko, *The Legal Concept of Employment: Marginalizing Workers* (Ottawa: Law Commission of Canada, 2002); J. Bernier, G. Vallée & C. Jobin, *Social Protection Needs of Individuals in Non-Standard Work Situations*, Synopsis of Final Report (Quebec, Ministry of Labour, 2003); Leah Vosko ed., *Precarious Employment: Understanding Labour Market Insecurity in Canada* (Montreal & Kingston: McGill-Queen's, 2006); Judy Fudge, "Beyond Vulnerable Workers: Towards a New Standard Employment Relationship" (2005) 12:2 Canadian Labour & Employment Law Journal 151, 159.

² *Dunmore v. Ontario (Attorney General)*, 2001 SCC 94, [2001] 3 S.C.R. 1016 [*Dunmore*]; the Ministry of Labour uses the term to refer to young workers entering the employment market for the first time, particularly in the context of training, and workers who have greater health and safety risks.

³ For a statistical breakdown, see Vosko, note 1, 23, table 1.2. Also see Marcia Almey, *Women in Canada: Work Chapter Updates* (Statistics Canada, 2006), online: <http://www.statcan.gc.ca/pub/89f0133x/89f0133x2006000-eng.htm#8>. According to Almey, "[W]omen have accounted for about seven in 10 of all part-time employees since the late 1970s."

⁴ On this issue, see Cynthia Cranford, Judy Fudge, Eric Tucker and Leah Vosko, *Self-Employed Workers Organize: Law, Policy, and Unions* (Montreal & Kingston: McGill-Queen's, 2005); OECD, *Partial Renaissance of Self-Employment*, *OECD Employment Outlook*, 2000, online: <http://www.oecd.org/dataoecd/10/44/2079593.pdf>; Immigrant Women's Center, "Women and Self Employment", online: <http://www.stjosephwomen.on.ca/index.php?page=self>. Almey, note 3.

⁵ See Sylvia Fuller and Leah F. Vosko, "Temporary Employment and Social Inequality in Canada: Exploring Intersections of Gender, Race and Immigration Status" (2008) 88:1 Social Indicators Research 31; Laurie Monsebraaten, "Fighting for dignity on the job" *The Toronto Star* (11 July 2009), online: <http://www.thestar.com/article/664487>.

⁶ Workers' Action Centre, *Working on the Edge* (Toronto: Workers Action Centre, 2007) 18.

⁷ See, for example, Vic Satzewich, *Racism and the Incorporation of Foreign Labour: Farm Labour Migration to Canada Since 1945* (New York: Routledge, 1991); Irving Andre, "The Genesis and Persistence of the Commonwealth Caribbean Seasonal Agricultural Workers Program in Canada" (1990) 28 Osgoode Hall Law Journal 244; Tanya Basok, *Tortillas and Tomatoes: Transmigrant Mexican Harvesters* (Montreal & Kingston: McGill-Queen's University Press, 2002); Kerry Preibisch, "Foreign Workers in Canadian Agriculture: Not an All-Male Cast" *FocalPoint* (May-June 2007) 8; Ellen Wall, "Personal Labour Relations and Ethnicity in Ontario Agriculture," in V. Satzewich ed., *Deconstructing the Nation: Immigration, Multiculturalism and Racism in 90s Canada* (Toronto: Garamond, 1992) 261.

⁸ For information, see Backgrounder, Improvements to the Temporary Foreign Worker Program: Temporary Foreign Worker Program – Federal Roles, online: Citizenship and Immigration Canada, <http://www.cic.gc.ca/english/departement/media/backgrounders/2010/2010-08-18.asp#tph%20idtph>.

⁹ See, for example, Maria Deanna P. Santos, *Human Rights and Migrant Domestic Work* (The Netherlands: Martinus Nijhoff, 2005); Daiva K. Stasiulis and Abigail B. Bakan, *Negotiating Citizenship: Migrant Women in Canada and the Global System* (Toronto: University of Toronto, 2005); Agnes Calliste, “Canada’s Immigration Policy and Domestic Workers From the Caribbean: The Second Domestic Scheme” in Jesse Vorst *et al.* eds., *Race, Class, Gender: Bonds and Barriers*, 2nd Rev. Ed., (Canada: Between the Lines, 1991) 136. There have recently been changes to the requirements live-in caregivers must meet to apply for permanent residence status: see the Citizenship and Immigration Canada website: <http://www.cic.gc.ca/english/work/caregiver/index.asp>. The live-in caregiver program’s permanent residence/citizenship track has been called “good practice” by the ILO in its report on a rights-based approach to labour migration: United Nations, *International Migration Report 2006: A Global Assessment* (New York: UN, 2009), online: http://www.un.org/esa/population/publications/2006_MigrationRep/report.htm. note 9, 93.

¹⁰ This increasingly common employment relationship has been called “the boundaryless workplace”: Katherine Stone, “The New Psychological Contract: Implications of the Changing Workplace for Labour and Employment Law” (2001) 48 *UCLA Law Review* 519. Also see Judy Fudge, “The New Workplace: Surveying the Landscape” (2009) 33 *Manitoba L.J.* 131.

¹¹ On the measurements of precarious work, see Jamie Baxter, “Federal-Provincial Gaps Affecting Precarious Workers in Ontario” (December 2009) (on file with the LCO); Cynthia J. Cranford and Leah Vosko, “Conceptualizing Precarious Employment: Mapping Wage Work Across Social Location and Occupational Context” in Vosko, note 1, 49.

¹² The dimensions of social location should be regarded not as independent or compounding, and not in isolation, but rather in intersecting relationship to each other. (For a rationale for this, see Sylvia Fuller and Employment Law” (2001) 48 *UCLA Law Review* 519. Also see Judy Fudge, “The New Workplace: Surveying the Landscape” (2009) 33 *Manitoba Law Journal* 131. Leah F. Vosko, “Temporary Employment and Social Inequality in Canada: Exploring Intersections of Gender, Race and Immigration Status” (2008) 88:1 *Social Indicators Research* 31, 48. For other sources on social location, see Sylvia Fuller, “Temporary Employment and Social Inequality in Canada: Exploring Intersections of Gender, Race, and Migration” (2008) 88:1 *Social Indicators Research* 31, 34; Law Commission of Canada, note 1.

¹³ The relationship between precarious employment and older adults is an area of particular concern considering the aging Canadian population. The next 20 years are expected to result in a significant demographic shift where the number of Canadians over the age of 65 is expected to almost double from 13.2 per cent to 24.5 per cent: Martin Turcote and Grant Schellenberg, *Portrait of Seniors in Canada* (Ottawa: Statistics Canada, 2006), online: <http://www.statcan.gc.ca/pub/89-519-x/89-519-x2006001-eng.pdf>. For programs relating to older adults, see Human Resources and Skills Development Canada, “Targeted Initiatives for Older Workers”, online: <http://www.rhdcc-hrsdc.gc.ca/eng/cs/sp/hrsd/eppd/tiow.shtml>. The program is cost-shared with the provinces and territories. Ontario is a participant with programs targeting workers between 55 and 64 who live in areas “hard hit by the recession”, specifically communities “with high unemployment, largely dependent on a single employer or industry and [with] a population of 250,000 or less”: Ministry of Training, Colleges and Universities, “The Targeted Initiative for Older Workers”, online: <http://www.edu.gov.on.ca/eng/tcu/employmentontario/olderworkers.html>.

¹⁴ Specifically on employment disadvantages for persons with disabilities, see, for example, Gail Fawcett, *Bringing Down the Barriers: The Labour Market and Women with Disabilities In Ontario* (Ottawa: Canadian

Council on Social Development, 2000); The Roeher Institute, *Labour Force Participation and Persons with Disabilities Who Are Severely Disadvantaged in the Ontario Labour Market: Background Papers for the Working Group on Employment Equity and Persons with Severe Disabilities* (North York, Ont.: The Roeher Institute, 1993). For the Ontario government programs relating to persons with disabilities and employment, see Ministry of Community and Social Services, “Don’t Waste Talent”, online: <http://www.mcscs.gov.on.ca/talent/>.

¹⁵ On the “gendering” of the workplace, see Cranford and Vosko, note 11. In particular, women are more engaged in domestic work performed within the household, ranging from child care to elder care to grocery shopping to other aspects of social reproduction. With respect to unpaid work doing housework, caring for children and caring for seniors, see Statistics Canada, “Time spent doing unpaid work, by sex 2008 Canada”, online: <http://www.statcan.gc.ca/pub/11-402-x/2010000/chap/sc/tbl/tbl09-eng.htm> This has consequences for health, leisure time and other aspects of life. For example, more women provide informal health care for a long-term condition than do men and women spend less time on social activities, more often cancel holiday plans, spend less time with their spouse, spend less time with children and postpone their education plans. See Statistics Canada, 2007 General Social Care Tables, Table 5-4 (Population of caregivers by selected consequences of providing informal care for a long-term health condition or physical limitation, by sex and age — Ontario), online: <http://www.statcan.gc.ca/pub/89-633-x/2008001/t043-eng.pdf>. Disparities in experiences and treatment of women and men within the employment relationship are important as systemic gender discrimination exacerbates precarious employment: Judy Fudge and Leah Vosko, “Gender, Segmentation and the Standard Employment Relationship in Canadian Labour Law and Policy” (2001) 22:2 *Economic and Industrial Democracy* 271.

¹⁶ For an elaboration on these ideas, see Vic Satzewich, “The Political Economy of Race and Ethnicity” in Peter S. Li ed., *Race and Ethnic Relations in Canada* (2d ed.) (New York: Oxford University Press, 1999); Grace-Edward Galabuzi, *Canada’s Economic Apartheid: The Social Exclusion of Racialized Groups in the New Century* (Toronto: Canadian Scholars’ Press, 2006); Gillian Creese, “Racializing Work/Reproducing White Privilege” in Vivian Shalla and Wallace Clement eds., *Work in Tumultuous Times: Critical Perspectives* (Montreal & Kingston: McGill-Queen’s, 2007) 192.

¹⁷ See, for example, Richard Spaulding, “Peoples as National Minorities: A Review of Will Kymlicka’s Arguments for Aboriginal Rights from a Self-Determination Perspective”(1997), 47 *University of Toronto Law Journal* 35.

¹⁸ Statistics Canada data showed that immigrants in “economic families” (a group of two or more related people living in the same location) arriving in the preceding five years had a low-income rate of 32.6% in 2005, compared to the rate of 6.9% for their non-immigration counterparts, with a low-income rate of over 58% for unattached individuals compared to over 26% for non-immigration unattached individuals: Chantal Collin, Hilary Jensen, *A Statistical Profile of Poverty in Canada* (Ottawa: Library of Parliament, 2009) 22, online: <http://www2.parl.gc.ca/Content/LOP/ResearchPublications/prb0917-e.pdf>. The authors also refer at p.24 to studies showing that “individuals who belong to visible minority groups are more likely to experience poverty than those who do not”; for example, “[i]n 2004, 86% of recent immigrants with low incomes were members of a visible minority”, citing Dominique Fleury, *A Study of Poverty and Working Poverty Among Recent Immigrants to Canada, Final Report* (Human Resources and Skills Development Canada, 2007); also see Marina Jiménez, “Immigrants battle chronic low income”, *The Globe and Mail* (January 31, 2007) A5.

¹⁹ Over 60% of Canada’s population growth occurs through immigration. One in five residents is born outside Canada and over half of immigrants come to Ontario, although immigrants are increasingly settling across the country. Increasing numbers of immigrants come from Asia, including the Middle East, with the proportion from Central and South America and the Caribbean and Africa increasing slightly between 2001 and 2006. For sources on immigration, see Statistics Canada, *Report on the Demographic Situation in Canada: 2005 and 2006 Edition* (Ottawa: Statistics Canada, 2008), online:

<http://www.statcan.ca/english/freepub/91-209-XIE/91-209-XIE2004000.pdf>; Anthony Reinhart, “A nation of newcomers”, *The Globe and Mail* (December 5, 2007) A1; Tina Chui, Kelly Tran and H  l  ne Maheux, *Statistics Canada, 2006 Census: Immigration in Canada: A Portrait of the Foreign-born Population, 2006 Census: Findings*, online: <http://www12.statcan.ca/census-recensement/2006/as-sa/97-557/index-eng.cfm>.

²⁰ On temporary status immigrants, see Citizenship and Immigration Canada (CIC), “Facts and Figures: Immigration Overview – Permanent and Temporary Residents” (2008): Citizenship and Immigration Canada, online: <http://www.cic.gc.ca/english/pdf/research-stats/facts2008.pdf> [CIC, “Facts and Figures 2008”], 62: cited in Jamie Baxter, “Precarious Pathways: Evaluating the Provincial Nominee Programs in Canada” (March 2010) (unpublished paper on file with LCO).

²¹ On the diversity of non-status residents, see the example of the Brazilian community: Brazil-Angola Community Information Centre, *The Many Faces of Brazilian Immigrants in Ontario* (Toronto, 2009) 40, online: https://tspace.library.utoronto.ca/bitstream/1807/24744/1/The%20Many%20Faces%20of%20Brazilian%20Immigrants%20in%20ON_English_2009.pdf.

²² Costa Kapsalis and Pierre Tourigny, *Duration of Non-standard Employment* (Statistics Canada, Ottawa, 2004), online: <http://www.statcan.ca/english/freepub/75-001-XIE/11204/high-1.htm>.

²³ Cranford and Vosko, note 11, 64-65.

²⁴ Ministry of Labour, “Enforcement Activities: Investigations and Inspection Statistics” (2009), online: http://www.labour.gov.on.ca/english/es/report_card/rc_1.html.

²⁵ The Supreme Court of Canada has reserved its judgement in *Attorney General of Ontario v. Fraser* (32968), on appeal from the Ontario Court of Appeal which held that the *Agricultural Employees Protection Act, 2002* was unconstitutional: *Fraser v. Attorney General (Ontario)* 2008 ONCA 760, (2008), 92 O.R. (3d) 481. For a summary of the case before the SCC, see the Supreme Court of Canada website: <http://www.scc-csc.gc.ca/case-dossier/cms-sgd/sum-som-eng.aspx?cas=32968>. In November 2010, the ILO ruled that the *Agricultural Employees Protection Act, 2002* is a violation of human rights under the UN Conventions on Freedom of Association and Protection of the Rights to Organize and the Right to Organize and Collective Bargaining. For the Interim Report of the ILO Committee on Freedom of Association, see online: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_146695.pdf.

²⁶ The Canada-Ontario Immigration Agreement (Original signed November 21, 2005), online: <http://www.cic.gc.ca/english/department/laws-policy/agreements/ontario/ont-2005-agree.asp>; the agreement was extended in May 2010. The Agreement now has a specific part applying to temporary foreign workers: Annex G (Temporary Foreign Workers) of Appendix “A” of The Canada-Ontario Immigration Agreement, online: http://www.cic.gc.ca/english/department/laws-policy/agreements/ontario/can-ont-amend_agree.asp. Temporary foreign workers may shift their work status to one leading to permanent residency through the Canadian Experience Class program. The requirements for the Canadian Experience Class program conform to the interest in “skilled work”, that is, managerial, professional or technical and skilled trades: Citizenship and Immigration Canada, “Canadian Experience Class: Who Can Apply”, online: <http://www.cic.gc.ca/english/immigrate/cec/apply-who.asp>.

²⁷ See the conditions of the PNP at Ontario’s website, “Opportunities Ontario”, online: <http://www.ontarioimmigration.ca/en/pnp/index.htm>.

²⁸ Canada-Ontario-Toronto Memorandum of Understanding on Immigration and Settlement (original signed September 29, 2006), online: <http://www.cic.gc.ca/english/department/laws-policy/agreements/ontario/can-ont-toronto-mou.asp>.

²⁹ The *Convention on the Protection of the Rights of All Migrant Workers* was adopted by General Assembly resolution 45/158 of 18 December 1990, online: <http://www2.ohchr.org/english/law/cmw.htm>. For a list of signatories, see United Nations Treaty Collection, online: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4&lang=en. See a list of conventions at International Labour Organization, online: <http://actrav.ilo.org/actrav-english/telearn/global/ilo/law/lablaw.htm>. The fundamental conventions relate to forced labour, freedom of association, discrimination and child labour. Ratifications of the ILO Fundamental Conventions (as of September 29, 2010), online: (<http://webfusion.ilo.org/public/db/standards/normes/appl/appl-ratif8conv.cfm?lang=EN>). ILO Declaration on Fundamental Principles and Rights at Work (June 1998), online: <http://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm>.

³⁰ See the following provisions of the *ESA, 2000*: 54 (termination); 64(1) (severance pay); and *Workplace Safety and Insurance Act, 1997*, S.O. 1997, c.16, s.41(1).

³¹ *ESA, 2000*, Part XVIII.1.

³² On the exclusion of domestic workers from collective bargaining, see section 3(a) of the *LRA, 1995*. The Ministry of Labour has published a “factsheet” about the rights of homeworkers: Ontario Ministry of Labour, “Homeworkers”, online: http://www.labour.gov.on.ca/english/es/pubs/factsheets/fs_homeworkers.php.

³³ *Employment Protection for Foreign Nationals Act (Live-in Caregivers and Others)*, 2009, S.O. 2009, c.32. The Act has not yet been extended to other workers under federal migrant workers programs.

³⁴ On the OHS and farm workers, see Ontario Regulation 414/05, ss.3 and 4. For a critique of the extension of the OHS to agricultural workers, see Eric Tucker, “Will the Vicious Circle of Precariousness Be Unbroken? The Exclusion of Ontario Farm Workers from the Occupational Health and Safety Act” in Vosko, ed., note 1, 256.

³⁵ For sources on these developments, see Ministry of Labour, “Making Construction Sites Safer”, online: <http://news.ontario.ca/mol/en/2010/05/making-construction-sites-safer.html>; “Christmas Eve scaffolding collapse leads to charges,” CBCnews (August 14, 2010), online: <http://www.cbc.ca/canada/toronto/story/2010/08/14/toronto-scaffold-accident-charges.html>; Anthony Reinhart, “Three charged in deaths of migrant workers who fell 13 storeys from scaffold”, *The Globe and Mail* (October 14, 2010) A12 (This is the first prosecution in Ontario under the amendments to the Criminal Code enacted as Bill 45 six years ago.); Ari Altstedter, “Ontario acts to prevent worker deaths”, *The Globe and Mail* (December 17, 2010) A16; Ontario, “New Chief Prevention Officer to Oversee Workplace Safety” (December 16, 2010), online: <http://news.ontario.ca/mol/en/2010/12/new-chief-prevention-officer-to-oversee-workplace-safety.html>.

³⁶ On the impact on health, see the following: Wayne Lewchuk, Alice De Wolff, Andy King and Michael Polanyi, “The Hidden Costs of Precarious Employment: Health and the Employment Relationship” in Vosko, ed., note 1, 141. For a brief statement of some of the health concerns associated with migrant workers, see Kerry Preibisch, “The Second Generation of Permanently Temporary Workers,” Presentation at Permanently Temporary: Temporary Foreign Workers and Canada’s Changing Attitude to Citizenship and Immigration Community Research Symposium February 4, 2010) 14, online: <http://ceris.metropolis.net/research/policy/CommunityResearchSymposium2010/PermanentlyTemporary.pdf> (“TFW Symposium”). For the impact on hotel housekeepers, primarily immigrant women of colour, see Serena Liladrie, “Do Not Disturb/Please Clean the Room: The Invisible Work and Real Pain of Hotel Housekeepers in the GTA”, *Policy Matters* (January 2010), online: http://ceris.metropolis.net/frameset_e.html. Institute for Work & Health, “New Canadian immigrants face less than ideal working conditions”(July 2008), online: <http://www.iwh.on.ca/media/2008-jul-09>; Janet McLaughlin, “Challenges and Considerations: Providing Accessible Health Care for TFW”, TFW Symposium 32; Wayne Lewchuk, Alice de Wolff, Andy King and

Michael Polanyi, "From Job Strain to Employment Strain: Health Effects of Precarious Employment" (2003)
3 Just Labour 23.

³⁷ See, for example, the persons eligible to take English or French language classes under the services sponsored by the Ontario government: Ontario Ministry of Citizenship and Immigration, "Learn English or French", online: <http://www.citizenship.gov.on.ca/english/keyinitiatives/language.shtml>.