**Organizing Precariously-Employed Workers in Canada**

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**Introduction**

In Canada, terms such as precarious work and precarious employment are most commonly used to describe the proliferation of poor quality jobs in the labor market – that is, forms of employment characterized by low wages and few benefits, limited prospect for higher wages or economic advancement over time, minimal legal and social protections, few, if any, employment benefits and statutory entitlements, and little to no control over work activities, scheduling or job tenure. Although some forms of precarious employment may not take on all the characteristics of poor quality jobs, they are all characterized by some degree of exclusion from existing legal and social protections normally provided for full-time continuous employees. According to Vosko, in Canada (2000; 2006) and other industrialized contexts (2010), four key dimensions shape the nature of precarious employment and associate it typically with particularly forms of employment (e.g., part-time and temporary paid work and solo self-employment) -- (a) high levels of uncertainty; (b) low income; (c) lack of control over the labour process; and (d) a lack of access to regulatory protection. And these dimensions are shaped fundamentally by social marginality (i.e., subordination in labor market due to race, gender, immigration status, age, etc.). The term “informal employment” is rarely used to describe precarious forms of employment in Canada. The informal sector is relatively small in Canada, and there are multiple challenges to using the term “informal work” to describe the dominant forms of precarious employment in Canada, such as part-time work, temporary agency employment, subcontracted work and other forms of limited-term, contractual employment such as temporary foreign employment under labour migration programs such as the Live-in Caregiver Program (LCP) and the SeasonalAgricultural Workers Program (SAWP) (Vosko 2007).

While there is a significant body of literature on precarious employment in Canada, there are a limited number of studies examining efforts to organize precariously-employed workers. The most significant work published on the subject is a full-length monograph entitled *Self-Employed Workers Organize: Law, Policy and Unions* (McGill-Queen’s University Press, 2005) by Cranford, Fudge, Tucker and Vosko. This book examines four in-depth case studies of workers deemed “self-employed” – Toronto Star carriers, rural postal workers, homecare workers and freelance editors – and analyzes how they have attempted to organize unions. Labor unions and community organizations have also commissioned several important reports documenting employment standards violations for temporary foreign workers, which, in Canada, are migrant workers on short-term, guest worker contracts in specific occupations such as agricultural work, live-in domestic work, mining, low-skilled service work, etc., including extensive reports about temporary foreign workers by the Alberta Federation of Labor (2007), the Canadian Labour Congress (2011) and the United Food and Commercial Workers Union (UFCW) (2011a, 2011b).

Our inventory, which draws primarily on these academic case studies and policy reports, is divided into three parts:

1. Background on organizational landscape
2. Summary of strategies and tactics
3. Regulatory environment
4. Key cases for further in-depth study

**I. Organizational Landscape for Precariously-Employed Workers**

The Canadian Labour Congress (2006) has asserted that unions can play a major role in improving the status of precarious workers. Union strategies include an expanding role in providing education and training, as well as assisting in organizing informal workers and collectively bargaining for their rights as workers in Canada. According to Ken Lewenza, president of the Canadian Auto Workers union (CAW), the future of organized labour in Canada is to extend aid to “precariously employed, low wage, part-time and temporary workers, including those new to Canada and those who participate in migrant work programs” (Canadian Labour Reporter, 2012). While the organized labour movement has expressed concern about the need to raise the standards of precariously-employed workers few unions are engaged in systematic organizing efforts. One exception is the United Food and Commercial Workers (UFCW), which represents 250,000 private sector workers in Canada, the majority of whom do work related to the food industry. In agriculture, the UFCW, in conjunction with the Agricultural Workers Alliance, has created ten centers across the country for migrant farmworkers. In meat processing, UFCW Canada Local 1118 in Alberta has provided a path to permanent residency to temporary foreign workers in their collective agreements (UFCW 2011a). Another exception is the Hospital Employees Union (HEU), the largest union in British Columbia which represents 43,000 health care workers. After government-sponsored outsourcing and privatization in the health care support services sector (e.g. housekeeping, laundry and food services), HEU unionized over 3,000 newly privatized workers and raised wage standards from $8 per hour to $13 per hour in two rounds of collective bargaining (Chun 2012).

While unionization is the most common organizational form for organized labor, another organizational form that has developed out of the need to address precarious work in Canada are worker centers such as Workers’ Action Centre (WAC) in Toronto and the Immigrant Workers’ Centre (IWC) in Montreal. Worker centers practice a form of unionism best characterized as community unionism (Cranford et. al. 2006; Cranford and Ladd, 2003). Community unionism seeks to address the needs of nonunionized workers and the broader working class community through a combination of education, networking, organizing and legal advocacy. Community unionism involves a hybrid of groups with shared concerns, often working in coalitions, initiatives identified with community unionism involve immigrant service organizations, immigrant workers’ organizations, workers’ centres, industry-specific labour groups, and large-scale national and international unions. Community unionism is also characterized by mixture of participatory community and worksite based organizing. Many of the campaigns that they mount involve mobilizing, in some respect, for improving the status of workers in precarious jobs. We have included Figure 17.1 “Conceptualizing Community Unionism” from Cranford et. al 2006 to illustrate key characteristics of community unionism.

In addition to unions and worker centres, coalitions of social movement groups and legal clinics play major roles in supporting the precariously employed and their self organization. In the following section we list the key organizations that comprise this organizational landscape.

***A. Coalitions***

*BC Employment Standards Coalition*

The BC Employment Standards Coalition works on legislative proposals relating to minimum wages, employment of children, hours of work and overtime, statutory holidays, migrant workers, farm workers, domestic workers, and the enforcement of the Employment Standards Act (BC Employment Standards Coalition, 2012).[[1]](#footnote-1) Progressive lawyers, in addition to representatives from unions and community organizations, are an active part of the Coalition. The BC ES Coalition, which is led by David Fairey, was supported by the Trade Union Research Bureau up until January 2013 when the Bureau closed after 65 years.

*Global Justice CareVan Project*

The CLC, in partnership with the UFWA Canadian office and UFCW Canada, began the Global Justice CareVan Project in 2001. Coordinated by a full-time UFCW staff member and run by volunteers, the Project has documented the working and living conditions of migrant farm workers. In 2002, the project opened the Migrant Agricultural Workers Support Centre where workers can come for information on health and safety, for interpreters to mediate between themselves and employers, for translation at the hospital, and for a place to register complaints (UFCW Canada and CLC 2002; Zwarenstein 2002).

*Good Jobs for All Coalition*

The Good Jobs for All Coalition is an alliance of community, labour, social justice, youth, and environmental organizations in the Toronto region.[[2]](#footnote-2) Formed in 2008, it was created to focus on how to improve living and working conditions in Toronto, Canada’s largest urban centre. This coalition listens to workers, shares their stories, and determines what is necessary to address the key issues affecting their lives. This includes reforming labour law and employment standards, as well as initiating community campaigns to pressure government to fix its laws. They build long-term strategies with allied unions and community groups to strengthen communities while aiming to achieve better jobs for those individuals. The coalition’s incentive is to build a movement of empowered workers across the city (Bhullar, 2011). In 2012, the Good Jobs for All Coalition ran a major campaign – the *Justice and Dignity for Cleaners Campaign -* to convince the Toronto City Council to review cleaning contracts in order to prevent engaging with firms that had violated employment standards and Toronto’s Fair Wage Policy (Good Jobs for All Coalition, 2012; Vosko & Thomas, 2012).

*Migrant Workers Alliance for Change (MWAC)*

The Migrant Workers Alliance for Change (MWAC) is comprised of various advocacy and community groups, community members, unions, and workers who have aimed to improve the working conditions and protection for live-in caregivers, seasonal agricultural workers, and other temporary foreign workers.[[3]](#footnote-3) It organizes campaigns to pressure the federal and provincial governments for employment protections for temporary foreign workers that are equal to those experienced by Canadian citizens and permanent residents, and for access to broader citizenship rights (Migrant Workers Alliance for Change, 2012). MWAC also publishes ‘Know Your Rights” pamphlets for agricultural workers, live-in caregivers and other migrants under other temporary foreign worker programs.

*Vancouver Living Wage Campaign*

Officially launched in August 2007, Vancouver’s living wage campaign sought to establish a wage floor based on the principles of a “living” wage, rather than the statutory minimum wage. Publicly, the campaign is led by First Call BC, an anti-child poverty coalition, which oversees a labor-community advisory committee. The living wage campaign has negotiated living wage standards in several municipalities in BC, including Vancouver, and is currently focusing on securing “good employers” who agree to pay workers a living wage. Two other key partners include the Vancouver office of the Canadian Centre for Policy Alternatives (CCPA) and the Hospital Employees Union (HEU). CCPA led the research efforts to calculate a living wage standard in Vancouver and surrounding areas. HEU supported the living wage campaign as strategy to increase its moral authority during private sector health care support service worker negotiations in 2008-09. See entry on HEU.

***B. Unions and Labour Centrals***

*Canadian Auto Workers (CAW)*

The CAW represents 225,000 members across Canada, working in almost every sector of the Canadian economy, from the auto and aerospace industries to food processing and hotels. In 2009, CAW demonstrated support for Bill 139, *An Act to amend the Employment Standards Act, 2000 in relation to Temporary Help Agencies,* whichproposed to introduce amendments to the Employment Standards Act (ESA) to improve protection and equality for temporary help agency workers. However, CAW also called for stronger ESA regulations and enforcement that went beyond what was proposed in Bill 139. CAW argued that restrictions on client companies to directly hire temporary agency workers need to be eliminated; that the ‘elect to work’ exemption for termination notice and severance pay needs to be eliminated; that a wage earner protection program should be established to compensate workers whose employers have not paid proper termination and/or severance pay; and that stronger enforcement of unpaid wages is necessary (Canadian Auto Workers, 2009).

*Canadian Labour Congress (CLC)*

The CLC is a national labour federation that represents over three million unionized workers in Canada. It organizes campaigns and rallies, lobbies politicians, and raises awareness about key issues in Canada’s labour movement through various media outlets (CLC, 2008). In 2008, the CLC undertook to identify the necessary training needs, financial resources and leadership required to increase the unionization of unorganized workers in precarious sectors. At this time, it called upon “governments and regulating bodies [to] develop strict enforcement and inspection strategies with the required financing and staff” to hold employers legally responsible, with penalty, for violations of health and safety legislation and it encouraged the restriction of using temporary agencies who are linked to precarious work conditions (CLC, 2008). In 2009, the CLC provided a Submission to the *Review of Labour Standards in the Canadian Labour Code regarding Canadian Labour Movement Priorities: Proposed Changes to Part III of the Canadian Labour Code*. The CLC suggested that the federal labour codes needed to be updated to include a decent national minimum wage, more rights to leaves, and more protection for precariously employed workers, including protections against forced overtime work and work schedule notification (Canadian Labour Congress, 2009). In 2010, the CLC responded to the “Fairness at Work: Labour Standards for the 21st Century” Commissioner’s report. This report focused on changes to Part III of the Canada Labour Code, and included many of the suggestions put forth by the CLC. The CLC had argued that there needs to be more effective access to minimum rights and standards for all workers that are in the federal jurisdiction to at least meet the best standards that are present at the provincial level that had been established in collective agreements and international labour standards, including the enforcement of leave provisions, protection of human rights, and better protection of part-time and contract workers (CLC, 2010). The CLC also called for more focus on covering precarious workers, including part-time, temporary, and contract workers –specifically, for these workers to receive equal pay for part-time and contract work to those who are performing the same work as full-time employees, as well as better access to benefits (Canadian Labour Congress, 2010).

*Canadian Union of Public Employees* *(CUPE)*

CUPE is Canada’s largest union. Through collective bargaining, CUPE has improved the wages and working conditions of its 500 home care worker members; however, it recognizes that a majority of Ontario’s 40,000 home care workers do not belong to a union, and are not covered by a collective agreement (CUPE –Ontario, 2009). These workers are in the ‘elect-to-work’ assignment employee category, which increases their vulnerability as temporary workers. They receive low wages, have no full-time employment, no pensions, no benefits, and no travel compensation, while also being exempt from the requirement in Ontario to receive termination notice or severance pay (CUPE –Ontario, 2009). CUPE is especially concerned about the exclusion of home care workers from legislative protection covering temporary agency workers (CUPE, 2009).

*Communication Workers of America –Canada (CWA)*

The CWA has sponsored an online outreach program called Workershelp.ca, which contains straightforward information about employment standards rights at provincial and federal levels. Workers can also contact Workershelp.ca via email or phone in order to get help with understanding their rights, and how to enforce these rights. The Interfaith Worker Justice Network (2008) also funded the creation of a website to provide workers with accessing information on employment and labour standards, regulations and laws, called Canmybossdothat.com.

*Hospital Employees Union (HEU)*

The HEU, the largest union in BC, represents 43,000 health care workers in BC, approximately 3,000 of whom represent private sector health care support services workers in the laundry, housekeeping and food services departments of hospitals and long-term care facilities across the province. HEU began actively organizing private sector workers after the passage of Bill 29 in 2001, which authorized third party contracting in BC’s public health care sector. Most private sector support staff workers are employed under subcontracting agreements secured by three major multinational corporations – Aramark, Compass and Sodexo. HEU has negotiated two rounds of collective bargaining with multinational subcontractors that increased hourly wage rates from $8 per hour to $13 per hour between 2005 and 2009. During the second round of negotiations, HEU launched a living wage campaign, in collaboration with First Call BC (an anti-child poverty coalition) and the Canadian Centre for Policy Alternatives (CCPA) to strengthen the moral basis of its bargaining demands (See Chun 2012).

Some private sector health care workers are also represented by Local 1-3567 of the Industrial, Wood and Allied Workers (IWA). IWA negotiated “sweetheart” deals with multinational contractors that subject newly privatized workers to six-year union contracts at an average wage rate of $10.25 per hour, which was 79 percent lower than the HEU support service workers’ wage of $18.32 per hour and twice the average length of union contracts in the entire country (Canadian Labour Congress 2008:26). HEU leaders believed that the IWA would have never “tolerated [these conditions] for its core, male membership” employed as lumberworkers, sawmill workers and timber transport workers, which partially explains its decision to actively re-unionize private sector workers after health care restructuring (Cohen 2006:638).

*Ontario Federation of Labour (OFL)*

The OFL is a central labour made up of 54 unions representing over one million Ontario workers. The OFL pushes for legislative change in every area that affects the daily lives of workers, including employment standards, fair wages, and workers’ compensation. The OFL regularly submits proposals to the Ontario government, while mobilizing through public awareness campaigns to place pressure on the government to secure change for all workers (whether they belong to a union or not) through internal and public awareness campaigns (Ontario Federation of Labour, 2013). In 2009, the OFL presented to the Standing Committee on The Legislative Assembly Bill 139, arguing that employment standards need to be updated to better protect workers in temporary agencies, specifically to: prevent temporary agencies from charging workers fees; provide legislative protection for home care workers; remove the barriers to permanent employment where workers were placed by agencies; recognize that temporary agencies and the client companies are joint employers of temporary workers; eliminate the ‘elect to work’ exemption from severance and termination pay; and ensure temporary workers have equal access to termination and severance pay (Ontario Federation of Labour, 2009).

*United Food and Commercial Workers (UFCW)*

UFCW Canada is Canada’s largest private sector union, representing some of the most notoriously vulnerable employment industries, including agriculture, retail, clothing manufacturing, food processing, hotel and hospitality, restaurants and food services. Almost half of UFCW members are under the age of 30 (UFCW, 2013). Part-time and full-time members have access to the same level of assistance. Thousands of members are also Temporary Foreign Workers, and UFCW advocates on their behalf for permanent residency and a path towards citizenship for all workers entering Canada. UFCW Canada Local 1118 in Alberta and UFCW Canada Local 832 in Manitoba have been especially effective in collective bargaining for Temporary Foreign Workers (UFCW, 2013). UFCW Canada was able to secure collective agreements in British Columbia, Manitoba and Quebec that protect the right of temporary and domestic workers to return to work the following year based on the years of service they have worked (UFCW, 2013a).

UFCW has been a strong supporter of Walmart associates’ rights to unionize. Since 2002, there have been over 20 different Walmart worker groups across Canada that have applied to become UFCW Canada members. A few have obtained a UFCW Canada collective agreement in their workplace, including one in Saskatchewan, and one in Quebec (UFCW, 2013b).

***C. Workers Centres and Associations***

*Agricultural Workers Alliance (AWA)*

AWA is associated with United Food and Commercial Workers and maintains 10 help centres across Canada that provide farm workers with assistance when workers encounter abusive employers or unsafe conditions, need medical treatment, have Workers Compensation claims, and require parental leave benefits. The AWA also offers health and safety training and information about unionization (UFCW, 2013a). Actions by UFCW Canada and AWA have led to: health and safety coverage and training for farm workers in Ontario; a legal challenge in support of the right to unionize farm workers in Ontario; a Human Rights complaint that resulted in rent reduction for migrant farm workers in Quebec; compensation for unjustly repatriated migrant workers; partnerships with Mexican states that officially advocate for fair treatment and rights of farm workers; and parental leave benefits for seasonal and migrant workers. The AWA has also pressured the Alberta government to end the exclusion of farm workers from Health and Safety coverage and has filed charges with the International Labour Organization (ILO) against the Ontario ban on farm worker unions, citing it as a violation of human and labour rights under the United Nations conventions (UFCW, 2013a). In April, 2008 the UFCW signed a Cooperation Agreement with the Government of the State of Michoacan, Mexico, to provide labour protection and security to the Michoacan citizens who work in North American agricultural programs. This joint effort to protect workers has led to the provision of support and services, which include counselling, advocacy, pensions, parental benefits, workshops on health and safety and workers’ compensation, ESL, and toll-free long distance calls between UFCW support centres and any location in the worker’s home state (CLC, 2011).

*Immigrant Workers Centre/Centre des Travailleurs et Travailleuses Immigrant (IWC/CTI)*

The Immigrant Workers Centre/Centre des Travailleurs et Travalleuses Immigrant (IWC/CTI) was founded in 2000 in Montreal. It builds the power of nonunionized workers, specifically immigrants from South and Southeast Asia, Eastern Europe, and the Caribbean. Generally, these groups are the most vulnerable to labour that is below legal standards, including home workers and domestic workers (Cranford & Ladd, 2003). The IWC/CTI provides classes on education and rights, including labour history, labour laws and training on organizing. The centre offers individual services to immigrant workers and their families on issues of paid work and links together immigrant communities and unions that are seeking to unionize new workers. The IWC/CTI also organizes campaigns to amend the Quebec Labour Standards Act to provide better protection to immigrant workers and to raise the minimum wage (Crandford & Ladd, 2003).

*Independent Worker Association (IWA)*

United Steelworkers of America (Canada) and Migrante Ontario established the IWA to address worker concerns in the Temporary Workers Program and the Live-in Caregiver Program. The IWA lobbies provincial and federal governments on the behalf of home care workers, calling for: regulation of hiring agencies; that full health benefits be provided through transition status, including medical subsidies; that workplaces be systematically monitored to ensure that employers abide by the *Employment Standards Act*; that procedures to protect workers and resolve conflict be established; and that workers be provided with access to transition shelters. The IWA has also called for: the granting of immigration status and work permits upon arrival; that the live-in requirement must be made optional; that the Canadian government demand for the enforcement of human rights in labour-providing countries; that work permits be skill-specific and not tied to one employer; and that the Canadian government sign and acknowledge the *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*.

In addition to its lobbying efforts, the IWA provides training for workers on immigration law, employment standards and labour rights, and health and safety legislation (United Steelworkers, 2008). It provides domestic workers with access to discounted legal counselling, insurance and dental plans, accounting and long-distance telephone services for small membership fee of $10 a month. Priorities for assisting LCP workers include: educating live-in caregivers about their rights; helping those who face the threat of deportation by abusive employers; and lobbying for regulations against caregiver recruitment agencies that take advantage of workers by charging large fees yet not securing employment for these workers (Keung, 2008). A similar association was formed between the USW and taxi drivers in Quebec, which resulted in the group gaining the USW as a bargaining and lobbying agent for its 5,000 members (Keung, 2008).

*Windsor Workers’ Action Centre (WWAC)*

The WWAC has a goal to implement policies for improving the timeliness of law enforcement when labor laws are violated and for all workers to receive appropriate termination and severance pay owed (the Workers First Petition Campaign, initiated in May 2010) (Windsor Worker’s Action Centre, 2013). Currently, WWAC is initiating their Sweatshop Campaign, which is aimed at locating local workplaces in Ontario that operate using sweatshop conditions. This involves the repeated violation of health and safety standards, employment standards, and other human rights issues (Windsor Worker’s Action Centre, 2013).

*Workers’Action Centre –Toronto (WAC)*

This worker-based organization is committed to improving the working conditions and lives of those who are employed in unstable, low-wage work. They are dedicated to giving these workers a voice, and to promoting dignity and fairness in the workplace. In 2011, they initiated the *Stop Wage Theft Campaign,* which aimed at tackling: underpayment or nonpayment of wages for hours worked; not being paid legally owed wages, including minimum wage, overtime pay; the mislabelling employees as “independent contractors” or “self-employed”; and the charging of fees to acquire a job (Workers’ Action Centre, 2012). Additionally, WAC pressured the Ontario government to reverse its decision to cut $6 million from Employment Standards enforcement. In a span of 3 months, WAC, along with other community partners,[[4]](#footnote-4),mobilized to ensure these funds were included in this proactive approach to enforcing Employment Standards in the government’s Poverty Reduction Strategy. In May 2012, the McGuinty government reversed the cuts (Workers’ Action Centre, 2012).

D. ***Agencies***

*International Labour Organization (ILO)*

The ILO is a UN agency seeking to promote social justice and internationally recognized human and labour rights. At the International Labour Conference in 2002, the ILO proposed the “*Resolution on Decent Work and the Informal Economy”* which recognized that precarious workers should have the same rights as formal workers, including access to decent work, and the ability to organize (Bonner & Spooner, 2011). Although the ILO encourages states to take this into consideration, governments do not necessarily include these suggestions in their policy.

*Metcalf Foundation*

The Metcalf Foundation provides grants for a variety of initiatives. One of their areas of focus is the improvement of the economic livelihood and quality of job access to low-income individuals. Recently, the Metcalf Foundation funded the research of Fay Faraday, who provided an in-depth overview of how Canadian law constructs Migrant Workers’ insecurity (Faraday, 2012).

*Parkdale Community Legal Services (PCLS)*

PCLS provides poverty law services to low-income residents in Toronto’s Parkdale area, including workers’ rights advocacy involving grassroots organizing, lobbying, and law reform. It also contributes assistance to community organizations and social justice groups and provides legal education (Parkdale Community Legal Services, 2013). Recent contributions include collaborating with the Workers Action Centre on the Bad Boss Campaign, the Employment Standards Enforcement Campaign, and the Expanding the Employment Standards Act Campaign. PCLS is involved with the Employment Standards Working Group, which is a coalition of unions, legal clinics, and community groups who are committed to improving the policies and practices of the Employment Standards Act (Parkdale Community Legal Services, 2012).

***E. Worker Cooperatives***

Worker cooperatives are another alternative form of worker organization that combats a cycle of precarious employment, creating a new work space, instead of making demands on the state or employers (Wilson, 2010). The aim of cooperatives is to create a non-oppressive alternative, where workers have control and flexibility over their lives, and can therefore create a more satisfactory work-life balance (Wilson, 2010). The collective ownership can provide a greater sense of security to workers, as well as a sense of community that may be absent from precarious employment. As found in the 2010 study by Wilson, although the workers she interviewed were still receiving minimum wage in their cooperative, the control over their lives (their schedule, required tasks, etc.), combined with access to certain benefits, appeared to outweigh the lower income they received.

**II. Organizing Strategies and Tactics Among the Precariously Employed**

***The New Union Project***

The CAW (Canadian Auto Workers) and CEP (Communication, Energy and Paperworkers Union), two of Canada’s largest unions, have been discussing a merger known as the New Union Project. This new unified union aims to place an emphasis on becoming more relevant to workers who are in non-unionized workplaces (Doorey’s Workplace Law Blog, 2012). This would include offering a form of associated membership to workers who are not employed at a workplace that is organized by CAW, CEP, or the new union. Specifically, this new union would offer services and support to non-union workers who are engaged in conflict, involve itself regularly in community campaigns and struggles, use its resources to fight for justice and security for *all* workers, and to shift towards “movement-building” as opposed to simply servicing local union members (New Union Project, 2012).

***Bad Boss Hotline***

The “Bad Boss” hotline was created in Ontario in the 1990s by the Ontario Federation of Labour and the Employment Standards Work Group (ESWG), which was a reactive campaign that was trying to assist poorly treated precarious workers. The hotline received many reports of employers violating Employment Standards, which were recorded and compiled into a report that was used to provide support for later campaigns by the ESWG to pressure the government for improvements to ES legislation and enforcement (Vosko & Thomas, 2012). The report was titled *Bad Boss Stories*, and included detailed accounts of violations including unpaid wages, unpaid overtime, unpaid vacation pay, wages less than minimum wage, denial of severance pay, hours of work exceeding the legal maximum, employer intimidation, and refusals for employees to take sick days or statutory holidays (Vosko & Thomas, 2012).

***Court Actions Regarding Temporary Foreign Workers***

Two unions, the International Union of Operating Engineers (IUOE) Local 115 and the Construction and Specialized Workers Union Local 1611, have used legal strategies to prevent the use of temporary migrant workers in a B.C. mining project by HD Mining (Stueck and Friesen, 2012). The two unions filed a court action against the company to block worker permits for the alleged 200 Chinese workers, to protect Canadian and permanent citizen miners, essentially preventing the industry from turning to informal workers instead of using protected unionized workers (Stueck & Friesen, 2012). The two unions argued that there is no evidence that a labour shortage exists, nor is there a lack of suitable Canadian miners who could fill the positions –in fact, they claim that 300 applications were received from Canadian citizens or permanent residents (Moore, 2012). Additionally, there are 474 miners who are out of work in BC, 100 of whom reside in the area of the mine in question (Moore, 2012). According to the court documents, the company was going to pay the temporary migrant workers $10 an hour less than the prevailing industry wages in Canada, and provide no benefits to workers. The unions requested that the court declare the work permits invalid on grounds that the company violated stipulated federal regulations, including the hiring of foreign workers when no labour shortage existed (Moore, 2012). HD Mining had already brought over 16 temporary foreign workers, however they are sending them back to China in response to the court delays they are experiencing (CBC, 2013). Although the federal government did initially approve of the plan to bring these miners to Canada on temporary work permits, based on the issues that have been exposed with this case, the government has now decided to review its entire temporary foreign worker program to prevent further controversy. The action on the part of these two unions demonstrates the new role of unions: that is, to ensure that industry wages and rights are kept the same regardless of the worker’s status. This exposes a larger issue – since the resources do not appear to exist for the government to invest in monitoring individual employers to make sure that they are following legal protocol, unions have a renewed function: monitoring workplaces industry-wide to ensure that workers are being protected by the policies the federal and provincial governments have in place. Without proper enforcement, policy does little for workers. It is not that these workers completely lack legal protection; rather, due to their status as temporary and/or migrant workers, they have few options in terms of enforcing their rights.

***Class Action Suits[[5]](#footnote-5)***

**CSWU Local 1611 v. SELI Canada and Others**

On 3 August 2006, the Construction and Specialized Workers’ Union, Local 1611 (CSWU) filed a representative complaint on behalf of 38 Latin American workers (hereafter referred to as “the Complainants”) against their employers, SELI Canada Inc (a subsidiary of Italian company, SELI SPA), SNC Lavalin Constructors Inc. (a subsidiary of Quebec-based SNC Lavalin Canada, Inc.), and SNCP-SELI Joint Venture (hereafter collectively referred to as “the Respondents”).[[6]](#footnote-6) The Complainants had come to Vancouver in April 2006 on temporary work visas from Costa Rica, Colombia, and Ecuador to carry out specialized tunnel-boring operations on the Canada Line construction project. On 12 October 2006, the CSWU amended their complaint to include claims that the Latin Americans were being discriminated against in comparison to 22 European workers, who arrived in September 2006 mainly from Italy, Portugal and Spain to conduct specialized tunnel work alongside the Latin Americans.

According to the CSWU, the Complainants had been discriminated against “on the basis of their race, colour, ancestry, and place of origin” in violation of s.13 of the *British Columbia Human Rights Code.*[[7]](#footnote-7) The Tribunal deemed the complaint to be justified, and that the situation was a *prima facie* case of discrimination. It also declared that the Respondents had “engaged in ‘coercive and intimidating’ conduct” in order to get 21 Latin American workers to sign a petition to opt out of being represented by Local 1611 in the human rights complaint.[[8]](#footnote-8) The Respondents were ordered to pay each member of the Complainant group the difference between the salaries and expenses paid to them and the average salaries and expenses paid to the European workers. They were furthermore ordered to pay each Latin American worker $10,000 each for injury to dignity. The Respondents moved to appeal the decision with the BC Supreme Court. As of 27 May 2011, the workers have yet to be compensated.[[9]](#footnote-9)

**Herminia Vergara Dominguez v. Northland Properties Corporation Doing Business as Denny’s Restaurants, and Dencan Restaurants Inc.**

In January 2011, a class action was filed against Northland Properties Corporation and Dencan Restaurants Inc.(“the Defendants”) by Herminia Vergara Dominguez on behalf of approximately 50-62 class members who had been recruited through the Canadian Temporary Foreign Worker Program (TFWP) to work for the Denny’s 24-Hour restaurant chain in British Columbia. Represented by lawyers Charles Gordon and Christopher Foy, the class members accused the Defendants of “breach of contract, unjust enrichment, breach of good faith and fair dealing and breach of fiduciary duty,” and requested compensatory damages and $9 million punitive damages. Migrante BC, a community-based organization that advocates for the interests of Filipino migrant workers locally and internationally, took the lead on supporting efforts to organize TFWs working at Denny’s.

According to the notice of civil claim issued on 7 January 2011, the class members (defined as all of the Defendants’ employees in BC who had been hired under the TFW Program) came to Canada after having signed employment contracts that guaranteed them 40 hours of work per week and 50% pay over regular wages for overtime, reimbursement for return airfare, among other terms. Their applications for entry into Canada were facilitated by third party agents, **International Caregiver Employment Agency (ICEA)** and/or **Luzern International Manpower Services Corporation**, which had allegedly been authorized by the Defendants to recruit Filipinos to work at Denny’s restaurants in BC. In violation of their contracts, however, the class members were required to pay a fee of approximately $6000 to these intermediary actors for their services, which the Defendants refused to cover. Furthermore, the workers were not regularly given 40 hours of work per week, nor were they compensated for overtime. In addition to these financial burdens, it was argued that the class members suffered emotional hardship–such as “humiliation, anxiety, damage to self-confidence and self-esteem, and loss of dignity”–as a result of the Defendants’ allegedly exploitative misconduct.

On March 1, 2013 Denny’s settled the class action suit in a $1.3 million agreement. The settlement reimburses affected workers for lost hours, overtime, airfare costs and employment agency fees.[[10]](#footnote-10)

**III. Regulatory Environment for the Precariously Employed**

***Legislative measures and institutional interventions***

In Saskatchewan, legislation allows for either the employee or a third party of the employee’s choice to submit a written claim against the employer. This claim will then be investigated by the Compliance and Review Unit if supporting evidence is provided along with the written formal complaint, and the worker is still employed by the offending employer. This provides more anonymity, therefore protecting the worker while he or she is still working, and also opens up the potential for unions to assist non-unionized workers (Vosko & Thomas, 2012).

The Alberta government has initiated a shaming tactic against exploitive employers by launching a website listing employers who have not paid workers their appropriate wages. This webpage lists the names of approximately 1,700 employers who have a combined 3,500 claims against them for unpaid earnings, adding up to over $14 million dating as far back as 10 years ago. The only way employers can have their names removed from this list is by paying workers the earnings they owe (Alberta Government, 2012).

In Manitoba, the provincial government initiated the *Worker Recruitment and Protection Act* (WRAPA) in 2009, requiring employment service agencies to be licensed and registered with Manitoba’s Labour and Immigration Departments. Neither employers nor brokers can access the federal TFWP without providing proof of provincial registration. If an employer *does* attempt to bypass this provincial requirement, the employers are redirected to the province to become registered. In addition to the registration requirement, WRAPA ensures compliance by recruiters and employers through the use of strong penalties and enforcement provisions (CLC, 2011). To restrict the number of people who are eligible to be licensed recruiters, applicants must be members of the Canadian Society of Immigration Consultants, or of the Law Society of Canada/Chambre des Notaires de Quebec. The eligible recruiter must also provide an irrevocable letter of credit or deposit for $10,000. If they later breach any requirements in the Act, such as the nonpayment of wages to workers, the letter of credit/deposit is surrendered to the province and used to pay any necessary compensation to wronged migrant workers. Additionally, the Director of Employment Standards is capable of investigating the history, character and business relationships of the individual applying to be licensed, in order to evaluate their eligibility (Faraday, 2012). If the applicant provides false, misleading or inaccurate information, fails to meet the Act’s qualifications, or demonstrates in any way that they will not act honestly, the Director can suspend, cancel, or refuse to issue a license to the recruiter. WRAPA seeks to provide protection against the typical insecurity experienced by temporary foreign workers by preventing potential exploitation by recruiters in the first place.

***Legal Exclusions***

In Canada, employment law provides workers with access to employment insurance, pension benefits, mandatory sick pay and statutory holiday pay, parental leave, and workers compensation if injured (Bhullar, 2011). However, access to all benefits is dependent on worker status: employees who are identified as “full-time” are fully eligible, while coverage of those who are identified as “part-time” or “temporary” is more limited (Bhullar, 2011). For example, it is more difficult for part-time and temporary workers to meet the necessary criteria for receiving employment insurance because they need a certain number of hours to qualify, while workers who are misclassified as “own-account self-employed” or as “independent contractors” are not eligible for employment insurance at all (Bhullar, 2011). Furthermore, although a number of legally binding labour protections are in place, the primary issue rests with enforcement. Labour ministries across Canada do not have the capacity to ensure every workplace is following proper protocol, especially when reliant on a system of reaction rather than one of prevention. However, certain advancements have been made, as demonstrated by the following cases.

In Section 2 of the Charter of Rights and Freedoms, Canadians are entitled to freedom of peaceful assembly [s. 2(c)]; and freedom of association [s.2(d)]. The Supreme Court of Canada recognizes that the Charter protects the right of employees to collective representation, which includes the right to join a union, to collectively engage with others in order to advance workplace objectives, and the right to participate in a process of collective bargaining (Faraday, 2012). However, based on the reaction of employers towards temporary workers, as well as the prevention of temporary foreign workers, Seasonal Agricultural Worker Program workers, and those employed by the Live-in Caregiver Program who are legally prohibited from joining unions to collectively bargain, there is clearly a double standard in regards to who is entitled to these rights.

Employment Standards (ES) legislation is provincially regulated for the majority of workers in Canada. ES legislation covers employment terms, including the minimum wage, maximum hours of work, paid vacation, leaves, severance, termination, public holidays, and overtime pay and hours. Although all workers in Canada are entitled to these standards, enforcement can be lacking for non-unionized workers who do not have the added protection required to safeguard against exploitation (Vosko & Thomas, 2012). The main method for enforcing employment standards when non-unionized is through complaints that are filed by individual workers, which would eventually be investigated by an officer from the Ministry of Labour. Employers can face legal penalties if a violation has been confirmed by the Ministry of Labour, and the worker could potentially receive a settlement. However, many individual workers will not file complaints because they fear that they will lose their job, or be deported in the case of Temporary Foreign workers (Vosko & Thomas, 2012). Although workplace inspection is a better way for detecting ES violations, less than one percent of Ontario workplaces are inspected a year (Ibid.).

The Ontario *Open for Business Act* (OBA) was designed in 2010 to address a backlog of 14,000 complaints by promoting efficiency in the investigation and resolution of Employment Standard complaints, which included a requirement for employees to bring their complaints to their employer first before filing a complaint with the Ministry of Labour, and to gather their own information to support their claim. The expectation was that mediation could occur, where a settlement would be negotiated instead of imposing actual sanctions on employers. The OBA has been criticized for the power imbalance it creates, further preventing adequate enforcement of employment standards for precarious workers (Vosko & Thomas, 2012).

Appropriate means for ensuring compliance and monitoring enforcement are lacking in the federal TFW program, preventing the assurance of protection for migrant workers from exploitation and hazardous working conditions (CLC, 2011). This issue is made worse for those who are unable to join formal labour organizations. For instance, Live-in Caregivers do not have the right to unionize because their place of work is in the private domestic sphere and it is not recognized as a proper workplace (CLC, 2011). For migrant workers who are employed in Canada’s Seasonal Agricultural Worker Program (SAWP), also not permitted to unionize, the condition of repatriation allows Canadian employers to send injured or sick workers back to their home country without the availability of a review process when conflict arises between employer and employee, and without the ability to appeal the repatriation decision (CLC, 2011). In each of these programs, the vulnerability of the workers is much higher because of the legal restrictions on their ability to join a formal union, or to access legal means for securing protection. Recommendations put forth to improve the vulnerable status of Temporary Foreign Workers include: not having migrant workers’ permits tied to a single employer; subjecting employers to mandatory monitoring; providing access to settlement services for migrant workers; allowing a viable, accessible path for permanent residence for low-skilled migrant workers similar to the access available for high-skilled migrant workers (Canadian Council for Refugees, 2012); and permitting unionization for all workers.

**IV. Key Cases For Further In-Depth Study**

In terms of the increased assistance unions are providing the precariously employed, it is necessary to study the progress, as well as the lack thereof, in raising standards across industries rather than just individual worksites, and in improving policies for protecting all workers, regardless of work/employment status. The following unions, organizations, and coalitions/ initiatives are some of the most predominant “ones to watch” in upcoming years: Migrant Workers Alliance for Change (MWAC); Good Jobs for All Coalition; BC Employment Standards Coalition; Canadian Auto Workers (CAW); Ontario Federation of Labour (OFL); Canadian Union of Public Employees (CUPE); United Steelworkers Canada and Migrante Ontario: Independent Worker Association (IWA); United Food and Commercial Workers (UFCW) – especially the assistance provided in addressing the on-going prevention of Wal-Mart employees from being able to unionize in North America; Agricultural Workers Alliance (AWA); Workers’ Action Centre (Toronto), specifically their *Stop Wage Theft* campaign; Windsor Workers’ Action Centre; Immigrant Workers Centre/Centre des Travailleurs et Travailleuses Immigrant (IWC/CTI); Canadian Labour Congress (CLC); and the New Union Project (merging of CAW and CEP).

Additionally, there is a shortage of studies on the dynamics of precarious employment in provincial labour markets, despite 90 percent of labour regulation in Canada being coordinated by the provincial labour codes (Vosko & Noack, 2009). The limited awareness prevents alternative labour market structures and policies from being developed to prevent the insecurity experienced in various forms of precarious employment.

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1. Members of the Coalition include: West Coast Domestic Workers Association; Philippine Women Centre of BC; West Coast Leaf; Vancouver Committee for Domestic Workers and Caregiver Rights; First Call: BC Children and Your Advocacy Coalition; Organizing Centre for Social and Economic Justice; Justicia 4 Migrant Workers; Living Wage Campaign; South Okanagan Immigrant and Community Services; Community Legal Assistance Society; AMSSA; Canadian Centre for Policy Alternatives; Victory Square Law Office, Fiorillo Glavin Gordon Lawyers; Trade Union Research Bureau; Hospital Employees Union; United Food and Commercial Workers, Local 1518; Canadian Auto Workers; BC Federation of Labour; BC and Yukon Territory Building and Construction Trades Council; BC Government and Service Employees’ Union; New Westminster and District Labour Council; Vancouver and District Labour Council; Progressive Intercultural Community Services Society; Collectivo Red Legal; Migrante BC; Port Alberni and District Labour Council; Nanaimo, Duncan, and District Labour Council. [↑](#footnote-ref-1)
2. The Good Jobs for All Coalition is made up of the following groups: [ACORN / Association of Community Organizations for Reform Now](http://www.acorncanada.org/); [Canadian Auto Workers](http://caw.ca/); [Canadian Federation of Students](http://www.cfs-fcee.ca/html/english/home/index.php); Canadian Hispanic Congress; [Canadian Labour Congress (Ontario Region)](http://www.canadianlabour.ca/ontario-region); [Canadian Tamil Congress](http://www.canadiantamilcongress.ca/); [Canadian Union of Public Employees](http://cupe.ca/); [Council of Canadians](http://www.canadians.org/); CORD / Community Organizing for Responsible Development; [Green Enterprise Toronto](http://www.greenenterprise.net/torontogeooffice); [Jamaican Canadian Association](http://jcaontario.org/); Jane/Finch Green Jobs Coalition; [Labour Community Services](http://www.labourcommunityservices.ca/); [Labour Education Centre](http://www.laboureducation.org/); [Migrante](http://migrante.ca/); [No One Is Illegal Toronto](http://toronto.nooneisillegal.org/); [Ontario Public Service Employees Union](http://opseu.org/); [Scarborough Civic Action Network](http://www.agincourtcommunityservices.com/community-engagement/scan.php); [Service Employees International Union](http://www.seiu.ca/); Social Planning Council – York Region; [Toronto & York Region Labour Council](http://www.labourcouncil.ca/); [Toronto Environmental Alliance](http://www.torontoenvironment.org/); [Toronto Workforce Innovation Group](http://www.workforceinnovation.ca/); [Unite Here Local 75](http://www.uniteherelocal75.org/); [United Food and Commercial Workers](http://www.ufcw.ca/); [United Steelworkers](http://www.uswa.ca/); and the [Workers’ Action Centre](http://www.workersactioncentre.org/). [↑](#footnote-ref-2)
3. MWAC is comprised of the following groups: Alliance of South Asian Aid Prevention, Asian Community Aids Services, Canadian Auto Workers, Caregivers Action Centre, Industrial Accident Victims’ Group of Ontario, Justicia for Migrant Workers, KAIROS, Migrante Ontario, No One Is Illegal –Toronto, Parkdale Community Legal Services, Social Planning Toronto, United Food and Commercial Workers and the Workers’ Action Centre. [↑](#footnote-ref-3)
4. The *Stop Wage Theft Campaign* supporters include: ACORN; ATU Local 113; Barrio Nuevo; Brantford Steelworkers Action Centre; Bread and Bricks Social Justice Club; Canadian Auto Workers; Casa Maiz; CAW Local 444 NTC; CAW-Sam Gindin Chair in Social Justice and Democracy; Chinese Inter Agency Network; Community Advocacy Legal Centre; Community Development Council Durham; Courier Worker Centre; CUPE 3906; CUPE Ontario; CUPW- National; CUPW Toronto Courier Local 104; Educators for Peace and Justice; Elementary Teachers’ Federation of Ontario; FCJ Refugee Centre; Good Jobs for All Coalition; IAVGO; Income Security Advocacy Centre; Itech Envrionmental; Jane Finch Against Poverty; Justice for Migrant Workers; Legal Assistance of Windsor; London and District Labour Council; Maquila Solidarity Network; Metro Toronto Chinese and Southeast Asian Legal Clinic; Migrante Ontario; New Directions Speakers School; No One Is Illegal; Ontario Council of Agengcies Serving Immigrant; Ontario Network of Injured Workers Group; Ontario Federation of Labour; OSSTF District 9; Parkdale Community Legal Services; Pathway to Potential; Peel Poverty Action Group; Quinte Labour Council; Ryerson University, School of Social Work; Scadding Court Community Centre; Scarborough Civic Action Network; SEIU, Local 2 “Justice for Janitors”; Social Planning & Research Counicl of Hamilton; Social Planning Council of Cambridge and North Dumfries; Social Planning Council of Sudbury; Social Planning Network of Ontario; Social Planning Toronto; Society Staff Union; Thorncliffe Neighbourhood Office; Toronto and York Region Labour Council; Toronto Workers Health and Safety Legal Clinic; UFCW Canada; United Steelworkers Toronto Area Council; USWA Local 8330; Windsor and District Labour Council; Windsor Workers’ Action Centre. [↑](#footnote-ref-4)
5. Notwithstanding these cases, class action lawsuits remain the exception in Canada as a means to address employment disputes. [↑](#footnote-ref-5)
6. This complaint with the BC Human Rights Tribunal followed an unsuccessful complaint with the BC Labour Relations Board in the summer of 2006. The Labour Board decided that the discrepancy in pay-rates between the Latin American and Canadian workers did not infringe upon the BC Human Rights Code. The Board reasoned that, after taking into account the accommodation, meals, and transportation provided to non-Canadian workers, the earnings between Canadian and non-Canadian workers were comparable. See SELI Canada v. CSWU Local 1611, BCLRBD B36/2007: (“Decision of the Labour Board”). [↑](#footnote-ref-6)
7. S.13 of the BC Human Rights Code relates to “Discrimination in Employment.” It reads: “A Person must not: a) refuse to employ or refuse to continue to employ a person, or; b) discriminate against a person regarding employment or any term or condition of employment because of the race, colour, ancestry, place of origin, political belief [or] religion…” See *Human Rights Code*, accessed 1 July 2012, <http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96210_01>. [↑](#footnote-ref-7)
8. “Canada Line Companies Intimidated Foreign Workers: Tribunal,” *The Vancouver Sun,* accessed 2 July 2012, http://www.canada.com/vancouversun/news/story.html?id=f8250bcd-3939-4176-974f-82a7b86459f6&k=69555. [↑](#footnote-ref-8)
9. Joe Barrett, “Migrant Workers Win Human Rights Case,” *Temporary Foreign Workers in Vancouver,* accessed 2 July 2012, http://www.tfwvancouver.ca/TFW/default/show\_article/15. [↑](#footnote-ref-9)
10. http://www.cbc.ca/news/canada/british-columbia/story/2013/03/06/bc-dennys-foreign-workers.html [↑](#footnote-ref-10)