

SETTING THE STANDARD

*Submission to
Federal Labour Code Review, Part III*

August 2005

CITIZENS *for* PUBLIC JUSTICE



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by Citizens for Public Justice

Citizens for Public Justice (CPJ) is a national, non-partisan organization which promotes justice in Canadian public affairs. We respond to God's call for love, justice, and stewardship through research, education and advocacy.

Citizens for Public Justice is pleased to participate in this review of Part III of the Canada Labour Code. Our two recommendations to this review are that:

- The federal minimum wage should be made a living wage, a level of pay adequate for an individual working full-time at the minimum wage to rise above the low-income cut-off in a large city – meaning it should be raised to \$10 an hour.¹
- The Canada Labour Code should set a high benchmark for employment standards with effective enforcement to create a culture of compliance among employers.

These recommendations flow from CPJ's work on reducing child poverty in Canada. CPJ's child poverty work is motivated by our core guidelines for public justice and our commitment to helping Canada fulfill its international human rights obligations, as a signatory to the United Nations Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child.

The Guidelines for Public Justice, which underlay CPJ's work, are the following:

1. **Human Dignity:** the right of all persons and their communities to be treated with justice, love, compassion and respect, and their responsibility to treat others likewise.
2. **Mutual Responsibility:** the duty of all persons to contribute to the well-being of the community as they are able, and the duty of each community to contribute to the well-being both of all its members, regardless of their ability, and of those in the larger society.
3. **Economic Equity:** the right of all persons and communities to adequate access to the resources necessary for a full life, including access to worthwhile work, fair employment conditions and income-security provisions, and our communal responsibility to use such resources responsibly.
4. **Social Justice:** the right of all persons and communities to full participation in the life and decision-making of Canada, and to adequate access to the resources necessary for a full life, including access to adequate education, health care, housing and child care, and our communal responsibility to use such resources responsibly.
5. **Environmental Integrity:** the duty of all persons, communities and institutions to live in harmony with, and to practise responsible stewardship of the earth and the environment.
6. **Fiscal Fairness:** the right of all persons, communities and institutions to fair fiscal treatment and the responsibility of all to contribute fairly for the well-being of all.

Setting a standard – Public Justice, Human Rights and Labour Standards

The principle of economic equity implies, among other things, that someone who works full-time (40 hours a week), full-year should earn enough income to make a decent living. In the past, when it was assumed that a typical household was made up of a husband employed full-time, a wife working as a homemaker and children, a living wage was conceived as an income sufficient to maintain such a family, including saving for retirement. Given the changes in labour force participation and the development of income security programs, such as old age security and child benefits – not to mention universal health insurance – a living wage has come to be more commonly understood as a wage sufficient to keep an adult who is working full-time above the poverty line (See Appendix).

Canada's employment standards – both at the federal level and provincially – were fashioned in an era where they were seen to protect marginalized and vulnerable workers (women and children, in particular). Labour unions were assumed to fulfill that function for other workers – particularly men working full-time. The nature of Canada's economy and labour force has changed substantially in the past forty years, as the Commission's background documents point out. Those changes, including the decline in union density in the private sector, indicate that the old assumption that employment standards serve vulnerable workers, while unions serve secure workers, no longer holds. Indeed, the Canadian Labour Congress observes:

The erosion of collective bargaining and the very low level of union density in many sectors of the economy means that employment standards must now be seen as a fundamentally important form of protection for all workers, rather than as 'labour law's little sister' as was the case in the 1960s. Their potential relevance to the real lives of workers is greater than when Part III was drafted.²

Just and equitable employment standards are an important tool in securing the human right to an adequate standard of living. As the background on the Federal Labour Standards Review states, the purpose of Part III of the Canada Labour Code is "to establish and protect the employee's rights to fair and equitable conditions of employment."³

The United Nations Universal Declaration of Human Rights (1948), Article 23 states:⁴

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

Furthermore, Article 7 of the United Nations International Covenant on Economic, Social and Cultural Rights declares that "the States Parties to the present Covenant recognize the right of

everyone to the enjoyment of just and favourable conditions of work.” It highlights the right to fair wages and equal remuneration, a decent standard of living, safe and healthy working conditions, equal opportunity, and access to rest, leisure, and reasonable hours of work.⁵

As a signatory member country of the human rights declaration and a party to the covenant, the Canadian government pledged its commitment to the promotion and protection of human rights. Legislated regulation of labour market standards is one way of ensuring the right to human dignity for workers and their families.

The federal government should serve as a model employer, setting a just and exemplary standard for the labour market in Canada. In addition, federal legislation on issues such as wages and enforcement of labour standards should set a high standard for other levels of government.

Fair Wages – The Minimum Wage as a Living Wage

A 2000 report by UNICEF, *Child Poverty in Rich Nations*, examines the role of the labour market in contributing to the level of child poverty in rich nations, such as Canada. The report details a strong correlation between child poverty rates and the percentage of full-time workers who are low paid (defined as earning less than two-thirds of the national median wage).

Currently, Canada’s labour market does not guarantee a pathway out of poverty for families on low incomes. Andrew Jackson, of the Canadian Labour Congress, describes the current economic situation for many families:

Minimum wages are far too low in all provinces to put working poor families, even those with full-time, full-year jobs, above the poverty line, and even \$10 an hour, full-time, full-year jobs supplemented by government income supports leave most families in larger cities at risk.⁶

Labour standards, particularly those that concern the minimum wage, have a significant impact on the well-being of our nation’s children and families. The income that working families receive should give them the resources and opportunities to participate fully in the social, cultural, legal, economic and political benefits of society.

Studies on the effects of minimum wages show that an increase in the minimum wage generates increases in the total amount of money paid to low-wage workers in general.⁷ The minimum wage sets the bar for other wages. Thus, an increase in the minimum wage for low-wage workers creates a “spill-over” effect, raising the income of those workers whose earnings are just above the minimum wage. This is an important example of how improvements in employment standards can have benefits for a broad sector of workers in society.

We recommend that the federal government make the federal minimum wage a living wage – a wage that allows a person working full-time, full-year to earn enough money to rise above poverty levels. In our work on child poverty with Campaign 2000, we have estimated a living wage as two-thirds of the national median hourly wage, calculated at \$10 an hour in 2004 dollars and indexed to the cost of living.⁸

Fair Working Conditions

Current changes in the Canadian labour market leave many Canadian workers in a precarious position, “meaning that their participation in the labour market leaves their well-being at risk...making it difficult to access work that provides a decent income and working conditions that meet societal norms.”⁹

The rise in precarious employment calls for updating the labour code. At root, the need for change stems from the fact that precarious jobs create economic insecurity for workers and their families. Demand for a flexible workforce on the part of employers cannot be unjustly placed on the shoulders of individual workers.

Some conditions that the labour code needs to address include:

- The need for pay equity between contract workers and permanent employees and between part-time and full-time employees;
- Access to benefits for part-time and contract workers;
- Provision for the conversion of part-time and contract positions to full-time and permanent positions;
- Ending the prohibition against temporary agency workers taking permanent work with an employer for whom they have worked.

This is not an exhaustive list of the measures needed to improve the conditions of work under the Canada Labour Code. They do, however, suggest the kinds of changes needed given changes in the labour market, Canada’s human rights obligations and the demands of public justice.

Some of the rise in precarious work is due to inadequate enforcement of labour standards. For example, workers may be misclassified as independent contractors, without the benefit of protection under employment standards, when they really are employees.

The federal government needs to create an effective culture of compliance with and enforcement of labour standards. Such enforcement is an important way to protect the rights and dignity of workers.

Recent research by the Canadian Policy Research Networks and the Worker Action Centre on employment standards highlights key enforcement policy tools:¹⁰

1. Education and awareness: Educational campaigns are necessary so that both employers and employees, particularly new entrants to the labour market, are aware of employment standards. Partnering with schools, unions, employer associations, and community organizations is an important way to distribute this information.
2. Complaints process: The government needs to develop quick and efficient means of responding to inquiries regarding workplace violations. In particular, workers must be able to claim their rights while in the workplace, without fear of wrongful dismissal or harassment.
3. Detecting violations: Compliance goes beyond responding to individual complaints to comprehensive audits and random inspections of workplaces.

4. Financial penalties: Penalties for employer violation of standards are important for their deterrent value. There need to be real penalties for violations.

We believe that governments are capable of supporting compliance with employment standards so that individuals, employers and society at large can benefit from a just and equitable employment environment.

Conclusion

“A job is the best route out of poverty.” Unfortunately, that common sense assumption does not always hold true in Canada. Many people are stuck in low-paying jobs that offer little economic security. Often they are denied protection of their basic human rights under employment standards. There is no jurisdiction in Canada where an adult working full-time at the minimum wage can earn enough to rise above the low-income cut-off in a large urban area. Governments have the responsibility to set minimum wages and employment standards and to effectively ensure that employers comply with them. To pay a living wage and to be able to earn a living wage is a basic requirement of social justice. The Canada Labour Code must meet that requirement. The Canada Labour Code, and its enforcement, should also set a high standard for other jurisdictions in Canada.

REFERENCES:

¹ In 2004, \$10 an hour was needed for a person working full-time to earn enough to rise above the pre-tax low-income cutoff for a city of 500,000 or more.

² Canadian Labour Congress, *Labour Standards for the 21st Century: Canadian Labour Congress Issues Paper on Part III of the Canada Labour Code*, April 6, 2005.

³ “Backgrounder: Part III (Labour Standards) *Canada Labour Code*,” Government of Canada, July 25, 2005. Available: www.flis-ntf.gc.ca/en/bg_02.asp

⁴ United Nations Universal Declaration of Human Rights, 1948. Available: www.un.org

⁵ United Nations Covenant on Economic, Social and Cultural Rights, 1966. Available: www.un.org

⁶ Jackson, Andrew, “Precarious Jobs and Social Exclusion: New Issues and New Policy Directions,” *Horizons*, Vol. 7, No.4, December 2004, p. 41. Available: http://policyresearch.gc.ca/page.asp?pagenm=v7n2_art_07

⁷ Goldberg, Michael and David Green, “Raising the Floor: The Social and Economic Benefits of Minimum Wages in Canada,” *Canadian Centre for Policy Alternatives*, September 1999, p. 21. Available: www.policyalternatives.ca

⁸ Freiler, Christa, Laurel Rothman and Pedro Barata (2004) *Pathways to Progress: Structural Solutions to Address Child Poverty*, Campaign 2000.

⁹ Saunders, Ron, “Defining Vulnerability in the Labour Market,” *Canadian Policy Research Networks*, Vulnerable Workers Series, No.1, November 2003, p. 20. Available: www.cprn.org

¹⁰ Saunders, Ron and Patrice Dutil, “New Approaches in Achieving Compliance with Statutory Employment Standards,” *Canadian Policy Research Networks*, Vulnerable Workers Series, No.6, July 2005. Available: www.cprn.org

Berinstein, Juana and Mary Gellatly, “Effective and Enforced Employment Standards for Improved Income Security,” Worker Action Centre, Toronto, Ontario, 2005.

Appendix

The minimum wage as a living wage

A backgrounder paper
Jeanette Unger
August 1, 2005

Historical Background

In the early twentieth century, wage labour became the primary means of provisioning for workers and their families. This was the era of the male breadwinner ideal. Through the collective bargaining of their unions, men fought for living wages that would be sufficient to support a dependent wife and children. A living wage meant more than putting food on the table and keeping a roof over head. It also had to allow “sufficient provision for the future to bring elementary contentment, and security against sickness, accident, and invalidity.”¹

At the same time, minimum wage legislation arose as a way of protecting women and children, who were mostly not unionized, from overt exploitation.² Thus, the purpose of early minimum wage laws was to protect vulnerable workers. Women were still primarily identified as mothers, not as workers, and thus a minimum wage was a wage sufficient for a temporary spell of independence or only enough to contribute to her own support within an extended family.³ In 1918, the provinces of British Columbia and Manitoba passed minimum wage legislation that applied only to women in some types of employment. By the 1920s, Nova Scotia, Quebec, Ontario and Saskatchewan followed suit.⁴

In 1925, British Columbia passed a *Men’s Minimum Wage Act*. The male breadwinner ideal meant that the minimum wage for men was initially set at a higher rate for men than for women. Almost a decade later, other provinces also extended the minimum wage to men. Gender-based minimum wage differences declined with the movement for equal pay during the 1950s and disappeared altogether by the 1970s.⁵

After the Second World War, numerous studies on social security in Canada were done. In his study, *Report on Social Security in Canada*, Leonard Marsh examined the situations that affected family income levels. He saw two major causes: 1) special expenditures (such as illness or accidents) and 2) the failure of the market to relate wages to family size. He advocated for

¹ Ryan, Monsignor John. *Distributive Justice: The Right and Wrong of Our Present Distribution of Wealth*, quoted in Deborah Figart, “Introduction to Living Wages Around the Globe.” *Living Wage Movements: Global Perspectives*” edited by Deborah M. Figart. New York: Routledge, 2004, p. 5.

² Shenk, Christopher. *From Poverty Wages to a Living Wage*. Toronto, Ontario: The CSJ Foundation for Research and Education and the Ontario Federation of Labour, November 2001, p.1.

³ Figart, Deborah M. and Ellen Mutari, “Wages and Hours: Historical and Contemporary Linkages.” *Living Wage Movements: Global Perspectives*,” p. 30.

⁴ Shenk, p.1.

⁵ Labour Program (HRDC) Database on Minimum Wages, Government of Canada, July 29, 2005.

http://www110.hrdc-drhe.gc.ca/psait_spila/Imnec_eslc/eslc/salaire_minwage/intro/index/cfm/doc/english

universal social programs, worker retraining, and minimum wage provisions that varied according to family size.⁶

Instead of focusing on wages, the rise of social security in Canada meant the development of programs such as Unemployment Insurance (1940), the Family Allowance Act to support families with children (1944), and Old Age Security (1951). Employment standards legislation focused on the maintenance of minimum standards of wage rates.

Contemporary Context

Today in Canada, the terms of debate surrounding wages have changed. With the rise of the welfare state, Canadians now have access to universal programs that assist families with children (refundable child tax credits), provide security for retirement (Canada Pension Plan, Old Age Security, Guaranteed Income Supplement), and supply health insurance. The idea of a sufficient wage is now negotiated in the context of social benefits provided by the state.

Contemporary labour market changes have important impacts on the discussion of wages: the rise of women in the workforce, the increase in non-standard work, the decline in unionization⁷ and the global nature of the economy.⁸ These changes mean that old assumptions about the role of wages in providing for individuals and families no longer work. It is no longer appropriate to describe a living wage as a wage obtained by a male breadwinner belonging to a union. Nor does it make sense to think of minimum wage as a supplemental income earned by wives or children on top of the income of the male breadwinner. It is time to see the minimum wage as a living wage for all workers.

Determining a Living Wage Level

For the minimum wage to be a living wage, it should allow an individual working full-time to rise above the poverty line. While a wage can be defined in strict monetary terms as a transfer of cash and non-cash benefits from employers to employees, a living wage is situated in a social context that includes access to paid time-off, benefits from social assistance, income support programs, and public services such as childcare, health benefits, transportation, and education.

There are several ways to determine a living wage. The first involves a percentage of the average wage with periodic adjustments to ensure its value is not lost over time. For example, the Manitoba Just-Income Coalition calculates its living wage as 60% of the average industrial wage and then indexed to a commonly accepted indicator.⁹ The Ontario Federation of Labour

⁶ Shenk, p. 2.

⁷ “In 2003, 4.3 million employees were unionized, a 12% increase from 3.8 million in 1997. However, growth in union membership has not kept up with employee growth (+17%) over the period. In 1997, 34% of all employees in Canada were unionized, compared with 32% in 2003. Recent declines in unionization rates have occurred among men, people aged 25 to 54 years, and those working in the private sector.” Statistics Canada, *The Canadian Labour Market at a Glance*, November 2004. <http://www.statcan.ca/english/freepub/71-222-XIE/2004000/chart-k64.htm>

⁸ For more information see: *Labour Standards in the 21st Century*, Canadian Labour Congress Issues Paper, April 6, 2005. Available: <http://www.canadianlabour.ca/updir/standardsEn.pdf>

⁹ Manitoba Just Income Coalition, August 2, 2005: <http://www.just-income.ca/>

calculates a living wage as 70% of the average wage with indexation.¹⁰ Public Interest Alberta uses 50% of the province's average wage with adjustments as the value of the average provincial wage changes over time. The average wage in Alberta is currently \$18.09/hour, which would place a living wage at \$9.05/hour.¹¹

Another method relates the hourly minimum wage to two-thirds of median income. In his writing on precarious work in Canada, Andrew Jackson of the Canadian Labour Congress defines low pay as anything less than two-thirds of the national median hourly wage, or anything "less than about \$11 per hour in today's dollars."¹² This definition of low pay is also used by UNICEF in their research on child poverty in rich nations. Their research shows a strong link between child poverty rates and the percentage of full-time workers who are low-paid, or earning less than two-thirds of the national median wage.¹³

A third way to determine a living wage is to use an indicator of poverty, such as Statistics Canada Low Income Cut Off's (LICO). A living wage should bring a person's income above the poverty line. For example, Campaign 2000 uses the pre-tax poverty line for a single person in a large metropolitan area. The 2004 pre-tax LICO for a single individual in a large city is \$20,337.¹⁴ In order for such a person, working 40 hours/week for 52 weeks, to rise above the poverty line they would need to earn \$10/hour (putting their annual income at \$20,800). Likewise, the Nova Scotia branch of the Canadian Centre for Policy Alternatives describes a living wage as a single individual wage that brings a worker up to the poverty line as determined by the LICO's.¹⁵

Conclusion

Much of the welfare reform in Canada during the 1990s, reforms that reduced welfare incomes and tightened access to these programs, was introduced by politicians who stated that a job is the best route out of poverty. That statement presumes that people can get jobs that pay living wages. In the early 2000s, there was no province in Canada where a person working full-time, full-year at a minimum wage job could earn enough to rise out of poverty.¹⁶

The federal, provincial and territorial governments have an important responsibility to ensure that all people have adequate access to the resources necessary for a full life, including access to worthwhile work, fair employment conditions and income-security provisions. Indeed, Canada's obligation to meet these conditions is enshrined in our commitments under the United Nations

¹⁰ Shenk, p. 12.

¹¹ Public Interest Alberta, August 2005: http://www.pialberta.org/know_the_facts/families_in_need/minimum_wage

¹² Jackson, Andrew, "Precarious Jobs and Social Exclusion: Key Issues and New Policy Directons" *Horizons: Policy Research Initiative*, Vol 7, No.2, December 2004, p.41.

¹³ UNICEF, "A League Table of Child Poverty in Rich Nations," *Innocenti Report Card* No. 1, June 2000. UNICEF Innocenti Research Centre, Florence, Italy. Available: www.unicef-icdc.org

¹⁴ National Council of Welfare Reports, *Welfare Incomes 2004*, Volume 123, Ottawa, Spring 2005.

¹⁵ Canadian Centre for Policy Alternatives, August 2, 2005.

http://www.policyalternatives.ca/documents/Nova_Scotia_Pubs/2005/time_for_a_real_raise.pdf

¹⁶ Battle, Ken. *Minimum Wages in Canada: A Statistical Portrait With Policy Implications*. Ottawa, Ontario: Caledon Institute of Social Policy, January 2003.

Universal Declaration of Human Rights.¹⁷ Setting minimum wage rates at a living wage level is a key policy tool, if Canadian governments are to fulfill those human rights obligations.

¹⁷ The United Nations Universal Declaration of Human Rights (1948) Article 23 states:

- Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
- Everyone, without discrimination, has the right to equal pay for equal work.
- Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
- Everyone has the right to form and join trade unions for the protection of his interests.