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Reconceiving Employment Standards Legislation: Labour Law’s Little Sister and the Feminization of Labour

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RECONCEIVING EMPLOYMENT STANDARDS
LEGISLATION: LABOUR LAW’S LITTLE SISTER
AND THE FEMINIZATION OF LABOUR

Judy Fudge*

RÉSUMÉ

La Loi sur les normes d’emploi de l’Ontario a besoin de révision. Afin de déterminer le contenu de cette révision, il faut mettre en évidence les valeurs sous-jacentes qui soutiennent la Loi actuelle. L’auteur se propose de révéler les normes implicites partout présentes dans la loi du travail et d’expliquer comment ces normes sapent le processus actuel de restructuration économique. Cette restructuration constitue la «féminisation du travail». C’est un processus double dont les retombées économiques et politiques sont profondes et, par conséquent, dont l’issue est indéterminée. La féminisation du travail exige donc une restructuration radicale de la loi du travail. L’auteur propose ainsi les grandes lignes d’une nouvelle politique relative aux normes d’emploi.

Employment standards legislation has been “under review” in Ontario since 1976. Since then, there have been several ad hoc amendments to the legislation, most of which have been prompted by threatened or successful...
litigation\(^1\) or by severely deteriorating economic conditions.\(^2\) Recently, however, employment standards legislation has received renewed political attention. In October 1989, the Ontario Advisory Council on Women’s Issues released *Recommendations for Changes to the Employment Standards Act.*\(^3\) Guided by its belief that “the status of working women in Ontario is, to a large extent, determined by the Ontario *Employment Standards Act,*” the Advisory Council called for an end to ad hoc tinkering to the legislation.\(^4\)

The election of a New Democratic government in Ontario has reinvigorated the Ministry of Labour’s review of the *Employment Standards Act.*\(^5\) Moreover, the necessity of reforming the legislation is reinforced by the fact that in Canada it is no longer credible to deny that there is a connection between minimum wages and working poverty. Business, labour and governments all recognize that the current levels of minimum wages across Canada condemn recipients to standards of living that are well below the poverty level\(^6\)—although they each advocate different and incompatible solutions to the “problem” of the working poor.

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1. INTERCEDE, a domestic workers’ action group, threatened to bring a Charter action against the provisions in the *Employment Standards Act* (see infra, note 5) which failed to provide domestic workers with the same overtime benefits and maximum hours of work protections which were available to the majority of workers covered by the Ontario statute. The litigation was settled when the Ontario Cabinet introduced Regulation 308/87 which improved the standards for domestic workers. In addition, the successful Charter challenge to the *Retail Business Holidays Act*, R.S.O. 1980, c.453 resulted to changes in the *Employment Standards Act*.

2. For example, to deal with the public controversy generated by the large number of redundancies which resulted from the 1981–91 recession, the Ontario government amended the *Employment Standards Act* in order to provide employees with longer notice of extended lay-offs or redundancies due to closure, downsizing, etc. Later, a statutory entitlement to severance pay in mass lay-off and redundancy situations was added to the Act. It is important to note, however, that organized labour threw its collective muscle behind these amendments because the majority of unions were unable to obtain comparable or better provisions at the bargaining table.


5. R.S.O. 1980, c.137.

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It is obvious that employment standards legislation needs to be revised; what is not so clear is what form this revision ought to take. To determine this, it is first necessary to identify the normative assumptions upon which the current legislation is based. Labour law, broadly understood as any state (executive, legislative, judicial or administrative) intervention which regulates the labour market and the relationship between workers (labour) and employers (capital) is based upon a series of related norms about the proper role and form of law and the typical worker which is to be regulated. These norms influence, both explicitly and tacitly, policy design, implementation and administration and, perhaps even more significantly, where a particular regulatory regime fits into the hierarchy of political and administrative priorities.

Norms function to select, organize and describe salient features of our social environment and they emerge out of and in relation to particular historical processes. It is precisely because norms are historical products that they are subject to change. However, the longevity of the symbolic power or ideological force of a series of related norms typically exceeds that of their verisimilitude. In fact, a considerable distance may exist between what is conventionally considered normative and what has become common experience and practice at any particular time or place. However, at a certain point, if a norm is too far from our experience it will no longer be authoritative. But the supplantation of an old norm by a new one is not a simple process of substitution; an alternative norm must be constructed out of the changed social relations. Thus, it is crucially important to examine existing norms in order to evaluate their relevance to and influence upon the policy process.

In this paper, I will briefly identify the implicit but pervasive norms of labour law: norms about the best form of regulating industrial relations, the standard worker and how the economy operates. Then I will go on to sketch how the salience of these norms is being undermined by the effects of the current process of economic restructuring, which I shall call the feminization of labour. As I will explain, the feminization of labour is a twofold process which consists of the dramatic increase in both the labour market participation of women and in forms of work which are traditionally associated with women. I will then go on to outline the profound economic and political ramifications of this process. However, I will argue that the outcomes of this

process are indeterminate; that it presents both challenges and opportunities for those of us who are concerned with ensuring that Canadian working people receive a living wage and have decent working conditions. The feminization of labour requires us to radically reconstruct the norm of labour law and the norm of worker which informs Canadian labour policy and trade union strategy. The paper concludes by suggesting the broad outline of a revised employment standards policy.

THE NORMS OF LABOUR LAW

Although there are many forms of labour law—the contract of employment, collective bargaining, occupational health and safety, employment standards, and workers compensation legislation, just to name a few—in Canada, collective bargaining law receives the most attention—from legal academics, legal practitioners, trade unionists and policy-makers. This is because of the conventional commitment to industrial pluralism and voluntarism in labour relations law, practice and theory in Canada. Industrial pluralists, whose leading forefathers and proponents include Mackenzie King, Bora Laskin, Harry Arthurs, and Paul Weiler, have stated that the terms and conditions of employment are best set voluntarily by the parties themselves. However, they recognize a profound inequality in bargaining power between individual employees and employers. But rather than having the state directly set the terms of the employment relationship, industrial pluralists believe that it is preferable to provide a procedural mechanism whereby employees can join together in a trade union to bargain collectively with the employer. Under collective bargaining law employers are required to bargain with the trade union which has been certified as the representative for a unit of employees defined by the labour board. The problem is that collective bargaining does not protect a great many working people. Less than half of Canadian workers are covered by collective agreements and only about one-third of women workers are. This is because in Canada collective bargaining is highly fragmented—it typically takes place in an individual workplace rather than


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on an employer or industry-wide basis. This is not simply an unforeseen consequence of labour policy, but rather it is due to biases in the certification procedures which are embedded both within collective bargaining legislation and the policies of boards which administer the legislation. For this reason collective bargaining has not been widely extended to the service sector—where women dominate.

Despite the fact that collective bargaining is gender neutral on its face—at best it assumes a sexless worker, at worst an all male cast. Mostly, it has been done by men for the benefit of men. It theorists are mostly men, as are its functionaries: arbitrators, board member, union leaders, managers and lawyers. One of the presumptions of the postwar social consensus was that the labour force was unfragmented; that it was composed of full-time male workers in regular and secure employment. Unions bargained for a family wage for their male members. Until recently, women were ignored.

Although women have always worked, performing paid labour as well as housework, working for wages tended to be temporary and discontinuous, usually confined to the times in women’s lives when their family duties were the lightest or to moments of national emergency when they were called upon to substitute for men. Moreover, since women’s domestic activities did not qualify as work and their participation in the paid labour force was considered marginal at best, this reinforced the image of the model worker as a man with a dependent family.

For a time, the norm fit reality. Because women’s participation in the labour market was temporary and contingent it did not matter that collective bargaining did not extend to those sectors of the economy in which women were


employed. Instead, women were to rely on employment standards legislation for protection.

Employment standards legislation, like collective bargaining law, assumes a particular norm—but in this case the norm is female and subordinate, rather than male and dominant. Historically, employment standards legislation was introduced specifically for women and child workers. For example, minimum wage legislation was first introduced in Canada immediately following World War I by several provincial governments. Business opposed any intervention in the freedom of the market, but a minimum wage for women was strongly advocated by the National Council of Women of Canada. It urged the adoption of minimum wages for women on the grounds of the health of future mothers and moral purity—to save poor women from prostitution. The major trade union federation at the time supported minimum wages for women in order to protect male wages. In the end, minimum wages for women were enacted as an exceptional interference in contractually-based market relations which was justified on the ground that it was directed at women as a way of protecting them “not as wage-earners, but as reproducers and nurturers of the labour force of tomorrow.”

Employment standards legislation has not escaped its initial characterization as labour law’s little sister, despite the fact that now every jurisdiction in Canada has introduced comprehensive standards. This legislation provides a range of statutory entitlements including minimum wages, maximum hours of work, overtime rates, maternity leave, mass termination notice and statutory holidays to both male and female workers. Although employment standards legislation establishes a variety of statutory floors, it has received only sporadic attention from organized labour, business, government and academics.

There are two reasons for this lack of attention. The first revolves around the fact that the majority of workers who rely on employment standards are women or young, and thus do not fit the norm of a male worker with a dependent family. The second is the prevailing assumption that employment standards legislation is simply an adjunct to the collective bargaining process. Because this legis-


14. McCallum, ibid. at 40.

lation is considered secondary to collective bargaining law, it has not been effective in ensuring women a decent wage or secure employment. But so long as women were considered secondary workers no one, other than the women workers themselves, were particularly concerned.

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Times, however, have changed since the industrial pluralist paradigm was entrenched at the end of World War II. Most importantly, since the recession of the mid-1970's, most industrial economies have undergone a profound process of economic restructuring. The recession marked a shift from the use of labour-intensive to capital-intensive forms of production and to the end of the use of women as a supplementary labour force in manufacturing. Large numbers of women entered the new and expanding sectors of clerical, sales and service work. Part-time and temporary work increased, fed by the rising female participation rate. Union protection declined. Differences became more pronounced between the masses of women working in the feminized sectors of the economy and the few who found increased opportunities for success in business and the professions. In these ways the transformation of the female labour force was central to capitalist restructuring and the reconfiguration of the working class. This feminization of the labour force was matched by a complementary feminization of the labour market—the increase in jobs typically associated with women—jobs that are part-time, temporary, poorly paid and insecure.16

The feminization of labour not only threatens our norm of the male worker with a dependent family, it threatens our norm of collective bargaining as the most suitable means of improving terms and conditions of employment. The effects of privatization, the decline of the goods producing sector and the growth of the service sector have eaten away at organized labour’s foundation.17 The fragmented enterprise structure of the service sector, the anti-union stance of many of these employers and biases in the


certification procedures and policies of labour relations legislation create profound barriers to union organization. In addition, until quite recently trade unions have made but infrequent attempts to organize this sector, as they were content with their traditional constituencies in the manufacturing, resource and transportation sectors. While these sectors continue to remain organized labour's stronghold, their health is no longer certain. Union membership, particularly in the private sector, is declining. Perhaps this explains why the international convention of the United Steel Workers of America, held in Toronto 1 August 1990, passed a resolution declaring that "women are first class citizens not only in the union and labour movement, but also in the workforce and society." But the problem is that existing collective bargaining legislation and union organizing strategies simply do not protect workers in bad jobs, most of whom are women. Firms have responded to these structural changes in the economy caused by increased international competition by searching for low-cost flexible labour, labour which is extremely difficult to organize under existing Canadian collective bargaining law. Flexibility is an ideologically charged term which refers to a number of different, but related, strategies. In their search for flexibility firms everywhere are encouraged "to reduce their fixed wage labor force, make payment systems more flexible and use more contract workers, temporary labor and outsourcing through the use of home-working or subcontracting to small informal enterprises that are not covered by labor or other regulations and that bear the risks and uncertainty of fluctuating business."


22. Standing, supra note 16 at 1079. This is not only happening in developing countries as Standing and K. Ward, ed., Women Workers and Global Restructuring (Ithica New York: ILR Press, 1990) describe, it is also happening in industrialized countries, see supra, note 16.
Moreover, capital’s search for flexible labour is facilitated by implicit and explicit state deregulation of the labour market. Implicit deregulation includes the failure to enforce protective legislation, the erosion of standards contained in such legislation and the growth in “non-standard” forms of jobs that fall outside the ambit of legislative protection. Explicit deregulation, on the other hand, consists of privatization, the creation of regulatory exemptions for small enterprises, contracting out and collective bargaining policies which are not conducive to the growth of unionization.

In Canada, many aspects of the feminization of labour are evident. But it is wrong to think of the feminization of labour simply as a women’s problem; rather, it suggests a profound transformation in and further polarization of the labour market. Standing, an economist with the International Labour Organization, observes that “traditionally, women have been relegated predominantly to more precarious and low income forms of economic activity. The fear now is that their increased economic role reflects a spread of those forms to many more spheres.” Put simply, the fear is that men will be doing women’s work.

The question is whether in Canada we are seeing a short-term labour market adjustment, or whether economic insecurity will be spread throughout a transformed labour market. The federal government’s continued commitment to deregulation and privatization, as well as the decline in the goods producing sector and the low prices for Canadian resources, threaten organized labour’s traditional constituencies. The Free Trade Deal with the United States and its threatened extension to Mexico and the central bank’s faith in a high interest rate policy to curb inflation, suggest that the current process of economic restructuring is on-going.

THE POLITICS OF INEQUALITY

There are also profound political ramifications to the current process of economic restructuring. According to the Economic Council of Canada in its recent report entitled Good Jobs, Bad Jobs, the labour market is characterized by increasing polarization. After several decades of stability, the share of


24. Standing, supra, note 16 at 1094.

25. Supra, note 23 at 15.
wages going to middle class families shrank dramatically during the 1970s and 1980s. In 1967, 26.8 per cent of the Canadian workforce had annual earnings that could be characterized as “middle-level”. By 1986, only 21.5 per cent of the labour force, a drop of 5 per cent fell within this group.\(^\text{26}\) The squeeze on middle-level income jobs, currently called the “declining-middle”, is reflected in the unequal distribution of income among Canadian families. Moreover, this polarization in incomes is not solely a result of the shift to the service sector. Income polarization has occurred within all industry groupings, in the goods as well as the service sector. Fragmentation is increasing in the labour market.\(^\text{27}\) The rub is that fragmentation undermines the possibility for political solidarity.

Moreover, the process of restructuring itself exacerbates competition within the labour market, which is, in turn, exalted in “new right” popular discourse.\(^\text{28}\) The extension of flexible forms of work organization, which physically isolates workers from one another and has them competing against each other for employment and higher wages, further enhances the experience of fragmentation, competition and differences amongst workers.

Business’s search for flexibility has resulted in increased insecurity for growing numbers of working people, but that insecurity has not been spread evenly. The fact that the polarization of incomes and the restructuring of employment are gendered processes may further undermine the conditions for solidarity. In Canada, women continue to be paid less than men; according to the latest 1986 census figures, female employment income was 55.6 per cent of male employment income for all workers and 65.6 per cent for full-year, full-term employees.\(^\text{29}\) Women also are segregated into low-paying occupations.\(^\text{30}\) Although women represented 43.3 per cent of workers in all occupations in 1986, they were disproportionately represented in low-paying clerical (78.5 per cent), sales (41.9 per cent), and service (52.7 per cent) jobs.\(^\text{31}\)

\(^{26}\) Ibid.

\(^{27}\) Ibid.


\(^{31}\) Connelly supra, note 29 at 23.
Moreover, the broad occupational groupings also mask considerable occupational segregation within each group; women tend to dominate in the lower-paying positions. Finally, the growth in flexible employment has disproportionately affected women. Women and young workers presently comprise the majority of those employed in what are euphemistically called “non-standard” work forms: part-time employment, short-term work, own-account self-employment and temporary-help agency work, more accurately known as “bad jobs”.

THE PROBLEMS WITH EXISTING EMPLOYMENT STANDARDS LEGISLATION

In light of the increasingly fragmented nature of the labour market, the challenge is to develop strategies which unite workers, rather than replicate and emphasize differences between them which already exist. The effects of the process of restructuring are not inevitable and depend, in part, on whether workers, their organizations and supporters can mobilize in ways that check the process of polarization and shift the burden of economic insecurity from workers to employers.

Existing labour standards legislation has failed to protect workers from employers’ attempts to exploit flexible labour. The standards provided are low either in real terms or in relation to benefits provided in Western Europe. The minimum wage has declined since the 1970s by 30 per cent in British Columbia, Alberta and Quebec and by 20 per cent in the remaining provinces. Business, labour and governments each acknowledge that the current level of minimum wages condemns the majority of minimum wage workers to a standard of living that is well below the poverty level. Statutory maternity leave is much more restricted across Canada than it is in Western Europe, and meaningful parental or family responsibility leave is only now being enacted. Job protection in the event of illness is only required in the federal

34. Parental benefits of 10 weeks available to natural fathers and paid through the unemployment insurance fund were added to the Unemployment Insurance Act, R.S.C. 1985, c.U-1 as a result of a successful Charter challenge. In R. v. Schachter (1990), 90 C.L.L.C. 14,005 (F.C.A.) a natural father challenged the Unemployment Insurance Act on the ground that benefits were not available to natural fathers and
jurisdiction. In addition, there is little guarantee of equal treatment for part-time employees and as a consequence the vast majority of part-time workers do not receive either the same pay or employment-related benefits as full-time workers. These are just a few of the shortcomings in the level and scope of benefits provided by Canadian labour standards legislation.

Exclusions, both tacit and explicit, in the scope of employment standards legislation undermine its effectiveness in relieving economic insecurity. Jurisdictions across Canada exclude a range of different kinds of workers, usually on the basis of the sector in which the worker is employed, from a variety of the standards. Domestic workers and agricultural workers are two notable examples. Moreover, the implementation of minimum service requirements in order to be eligible for statutory benefits, such as maternity leave for example, exclude the growing number of temporary workers from protection.

Not only are the levels of benefits too low and the exclusions too wide, employment standards legislation is not effectively enforced. In Ontario there are repeated violations of maximum hours of work standards. Homework, which is growing at a rapid pace, lends itself to employer abuse, and it is virtually unregulated. A recent study of the dispute resolution procedures and compliance performance under the Ontario Employment Standards Act hence constituted a violation of s. 15 of the Canadian Charter of Rights and Freedom, Part I of the Constitution Act, 1982, being schedule B of the Canada Act (U.K.), 1982, c.11. Most of the provincial governments have amended their employment standards statutes in order to provide unpaid leave for parents who elect to collect the 10 weeks of parental benefits rather than return to work. However, it is important to note that despite these recent changes, Canadian parental leave policies will fall short of what has been advocated; see, Canadian Advisory Council on the Status of Women, Integration and Participation in Women’s Work in the Home and the Labour Force (Ottawa, 1987) and M. Townson, A National System of Full Paid Parental Leave for Canada: Policy Choices, Costs and Funding Mechanisms (Ottawa: Women’s Bureau, Labour Canada, 1983).

36. E. B. Akeyeampong, “The Changing Face of Temporary Help” (Summer 1989) Perspectives on Labour and Income 43. Akeyeampong found that in 1986 the overwhelming majority of temporary help workers were female and that between 1983 and 1985 employment in the temporary help industry had increased by 27 per cent compared with an overall employment growth of 5 per cent during the same period.
characterized it as a not very effective collection agency. In fact, if anything, the unlikelihood of detecting violations and the low penalties assessed for the few which are detected create an incentive for employers to avoid minimum standards legislation. It is cheaper for employers to break the law and run the slight risk of detection than to obey it.

The failure of employment standards legislation to provide an adequate standard of living for many workers is exacerbated in the context of economic restructuring. Many of the expanding forms of flexible labour fall outside the scope of the legislation. Since most employment standards benefits depend upon continuous employment with a single employer, many workers fall outside the scope of the legislation. By linking economic security to a worker’s relationship with a particular employer, we ignore the fact that long-term employment is increasingly rare. This emphasis upon the length of employment with a particular employer as a means of determining entitlement to employment benefits encourages employers to use labour flexibly through a variety of means, including on-call labour (business’s counterpart to just-in-time inventory), temporary and part-time work, contracting out, and lay-offs, while imposing few burdens upon employers regarding the social costs of such flexibility. Employers have managed to ensure that the social cost of flexible labour, unemployment and poor wages, is borne by employees, who, in turn, call upon the state for protection.

Increasingly public policy in Canada is preoccupied with improving equity in the workplace. Pay equity legislation has been introduced in five jurisdictions across Canada in order to address the systemic gender-based wage discrimination which results from the occupational segregation of women workers. Employment equity and affirmative action policies, although not as high on the public policy agenda as pay equity, are contemplated as a means of redressing discriminatory employment policies which disadvantage women, visible minority, native and disabled workers. But while the

symbolic importance of public policies designed to remedy invidious forms of discrimination should not be under-estimated, such policies ignore the central element of the current crisis of income distribution—the polarization of the labour market. What these polices attempt to do is neutralize the discriminatory elements in the unequal distribution of job opportunities and job-related benefits; the underlying exploitation of workers remains untouched. This is because both pay and employment equity, as conventionally conceived, are limited to remedying discrimination which takes place within a single employer’s establishment. The problem is that women and visible minority workers tend to be crowded into establishments or sectors where few white men are employed. Moreover, it is likely that it is precisely these employers who are introducing flexible forms of labour. Ultimately, the problem is that pay and employment equity policies are designed to give women, visible minority, Native and disabled workers an equal part of an increasingly bad deal. For this reason, an employment standards policy which is designed to prevent the exploitation of flexible labour is a necessary first step for improving the wages and working condition of the most disadvantaged workers in Canada. Consequently, a revitalized employment standards policy must be a central element in an integrated labour policy which is concerned with equity in the workplace.

TOWARDS A REVISED EMPLOYMENT STANDARDS POLICY

Employment standards legislation will have to be substantially revised if workers are to be effectively protected from unregulated restructuring. The

Act, R.S.C. 1985 (2d Supp.) c.23 which requires federally regulated employers to keep track of the employment status and the employment opportunities of the four “disadvantaged” groups (women, Native Canadians, disabled people and visible Minorities) identified in the Abella Report. In addition, the New Democratic Party government in Ontario has announced its intention to introduce employment equity legislation.

42. This is clearly the case with respect to women workers: see, M. Gunderson, “Male-female wage differentials and policy responses” (1989) 27 Journal of Economic Literature 46; R. Robb, “Equal pay for work of equal value: Issues and policies” (1987) 13 Canadian Public Policy 445. There is insufficient data to verify this claim with respect to race and ethnic segregation, although casual observation lends some support to this proposition.

question is, what kinds of changes should be advocated to protect workers in light of the feminization of labour.

But this question cannot simply be answered by iterating a number of technical amendments; rather it requires us to rethink the role of employment standards legislation. Employment standards legislation should be moved from the margin to the centre of a revised labour policy which consists of a constellation of related pieces of legislation, including collective bargaining, pay and employment equity. The point of reconceptualizing the role of employment standards legislation is to ensure that it is no longer seen as simply an adjunct to collective bargaining: a fall-back mechanism designed to cover inadequacies in collective bargaining legislation. Limiting employment standards legislation to such a secondary role blinds us to the possibility that effective and extensive minimum standards may be a necessary condition for the extension of collective bargaining. It is precisely because employers are able to exploit flexible labour that the collective bargaining norm is threatened.

Employers have argued that they must use flexible forms of labour in order to be more efficient. But the question is whether business is simply exploiting workers by using flexible labour; that is, whether it is simply shifting the burden of economic insecurity further on to workers, rather than adopting more efficient and productive means of employing labour. One way to prevent the former is to impose obligations on employers to provide economic security and flexibility for workers; in other words, employment standards legislation should be designed to ensure that employers internalize the costs of flexible labour rather than shifting it to workers or the state.

Employers respond to the demand that they internalize the costs of flexible labour by saying that they cannot afford to do so. Not only are employers unable to pay higher minimum wages, they also declare that any attempt to provide workers with greater flexibility through better maternity and family leaves, more vacation time at a greater rate of pay and a shorter work week, for example, would drive them out of business. Because capital, unlike labour, is mobile, it can always relocate to exploit cheaper labour in jurisdictions where there is no regulation. Thus, increased regulation would result in fewer jobs, a reduced tax base, and greater economic misery for us all.

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44 Business fears the knock-on effect of an increase in the minimum wage; see V. Galt, "Minimum wages fail to improve lot of working poor, group says" The [Toronto] Globe and Mail, (12 September 1989) A13; Transitions, supra, note 33 at 290.
According to this argument, since business cannot afford to bear these costs, they must be borne by workers or the state.

It may be that, ultimately, this scenario is correct. Capital's mobility may make it impossible for any one jurisdiction to impose an obligation on business to internalize the costs of flexible labour. But it is important to test this possibility—to let business and governments say that unregulated capitalism cannot provide workers with a living wage. Unless capitalism can provide greater economic security and equality for working people it will fail to live up to the values of liberal democracy with which it is associated. In that way the contradiction between efficiency and productivity, as conventionally understood, and equality and democracy which has long plagued liberal democratic capitalism will become evident. As the contradiction between norm and reality heightens we would then have to face this larger problem and develop strategies which directly confront the flaws within the dominant system of production. Until such time, it is possible to develop strategies which respond to the process of restructuring by requiring employers to internalize the social costs of doing business.

Effective and extensive standards would help to prevent employers from exploiting flexible labour. Such standards should be devised to include those workers, especially women and visible minorities in non-standard employment in the service sector, who, if not protected, will bear the brunt of economic restructuring. What we need is a new norm of worker and a new norm for the role of labour law. By imposing effective universal standards, protective legislation could help halt the substitution of non-standard work for traditional jobs as employers would no longer obtain the benefit of exploiting unregulated labour. As well, it could help to provide workers with the flexibility to adapt to the process of restructuring. The abolition of service eligibility requirements, and implementation of family responsibility leaves, sick leaves, a reduced work week and increased vacation time would enable the growing ranks of women workers, in particular, to accommodate both their domestic responsibilities and the exigencies of life.

Rather than simply tinkering with the existing model of employment standards which conceives such legislation as secondary to collective bargaining and private ordering, a revised employment standards policy should be designed to

mediate the current process of economic restructuring. To this end, it should be informed by a list of priorities fueled by a consideration of the economic and political ramifications of the feminization of labour. These priorities would include 1) preventing economic exploitation of non-standard work forms, 2) providing workers with the flexibility to manage their work and domestic responsibilities, and 3) ensuring that the burden of increased economic insecurity is not borne by workers but is shifted to employers.46.

A political strategy centred around ensuring effective and inclusive employment standards legislation would help to address the increasing polarization in the labour market. Such legislation would directly address the problems of the worse off workers, and it would make it more costly to exploit flexible labour. Moreover, it would help to provide the conditions for solidarity in the labour market, rather than reflecting and replicating the fragmentation which currently exists. Reconceived, employment standards legislation could be a key element in an integrated political program to provide all workers with a decent standard of living and dignity in their work lives. In other words, it is time for labour law’s little sister to grow up.

46. In the larger paper, I develop and elaborate five central elements of a revised employment standards policy, which are: 1) the provision of a living wage; 2) an end to the exploitation of flexible or non-standard labour; 3) increased flexibility for workers; 4) income and job protection; and 5) effective enforcement. In describing these five central elements I critically examined existing provisions in employment standards legislation, with the Ontario legislation as the main point of comparison.