A New Code for New Times

Meeting the Challenge of Precarious Work
Executive Summary

This submission was produced by the Alberta Federation of Labour to put forward the urgent need for significant changes to the labour code in order to provide the constitutional right of employees to join unions and engage in collective bargaining to improve their lives. The number of unorganized workers in precarious working situations is growing in Alberta and Canada, bringing with it increased poverty and inequality. Union representation has been a fundamental cornerstone in the raising of living and working conditions in Canada. Today the most precarious workers in need of better wages, benefits and working conditions, are the least likely to successfully form unions and bargain. We argue that for these workers a new and modern labour code must be crafted to allow workers to open the doors to representation and the hope of better, more secure lives for themselves and their families.

- The quality of work is declining. Part time and temporary jobs are increasing faster than full time permanent jobs. Over the past two years Alberta shed more than 110,000 full time permanent jobs but saw an increase of more than 70,000 part-time jobs.
- Temporary jobs in Alberta increased 23 percent over the past decade to more than 220,000.
- Low wage work in Alberta (less than $15 per hour) covers 15 percent of the workforce and 300,000 employees. The largest groups of low wage workers are young people (45%) and women (61.7%).
- Recent studies show that precarious work is not an automatic stepping stone to higher paid secure employment because those jobs are declining as the workforce grows.
- Unionization rates in the traditional manufacturing sector continue to drop. Between 1997 and 2015 the number of union members employed in the sector nationally fell by 37 percent – a decline of more than 283,000 members.
- Alberta union density (23.5%) and density in the private sector (10.8%) are the lowest of any province in Canada. Only one in ten private sector employees have union rights and the number continues a downward slide on a year over year basis. If private sector union density was the same as the national average union membership would climb from 163,000 members to 240,000 members.
- Under existing labour code provisions covering organizing, union membership last year grew by less than 1,000 members, with more than one half of that growth occurring in the long-term care sector of the economy.
- The economic sectors in Alberta with the lowest wages and poorest working conditions are also the sectors where union representation is almost non-existent. Union density is these sectors is also lower than the rates in the same sectors nationally.
- Income inequality in Alberta has shifted from being similar to the national average in 1980 to being the worst in Canada by 2011.
- One of the most fundamental tools used over many decades to transform jobs from insecure with low wages and benefits to decent paying permanent jobs with benefits has been the ability of workers to organize and bargain.
• It has been widely recognized, most recently by the Changing Workplace Review in Ontario, that the present labour code, based primarily on the “Wagner Act”, is failing to provide the legal right and realistic opportunity for employees to organize and negotiate.

• There are a number of examples where bargaining units were legislated in the private and public sector that allowed union representation in industries that would traditionally have been impossible to organize and improvements to job security, wages and benefits were won.

• Any changes to the labour code must consider the plight of those workers who have the most need for union representation and are the least likely to be organized. The new workforce in Alberta and Canada requires a new vision for a labour code that opens the door to unionization for millions of workers in order to provide the opportunity for better jobs and, ultimately, a more equal and fair society.
“I’m concerned about the direction that Canada’s heading. So many people my age are struggling for jobs, working contract-to-contract, or going to grad school to avoid the labour market. And that won’t change until the rebirth of the labour movement. We need good jobs you can build a life on.”

Daniel Bastien, young service sector worker

Introduction

The purpose of this submission is to present the case for considering necessary and important changes to the labour code that will establish a revised legal framework to bring the right to union membership to large groups of employees who are de facto excluded today.

Union membership and access to collective bargaining has been established as a charter right for Canadians. Like any right, the challenge of government is to uphold the law and allow citizens to exercise those rights successfully and without fear. Today, in broad sectors of the economy, this is not true. A right that can only be exercised in the face of severe consequences (firings and discipline) is no longer a right but a risk.

In the most recent Supreme Court labour case involving the RCMP, the majority reaffirmed the Charter protects the right of employees to join a union and bargain collective agreements.

- By banding together in the pursuit of common goals, individuals are able to prevent more powerful entities from thwarting their legitimate goals and desires. In this way, the guarantee of freedom of association empowers vulnerable groups and helps them work to right imbalances in society. It protects marginalized groups and makes possible a more equal society.¹

The Supreme Court Justices understood the necessity of unions and the rights of employees to have access to them, but millions of Canadians, the vast majority of them poor and marginalized by age, gender and race, cannot exercise this right.

Precarious work is often the lowest paid, non-union, most dangerous, least stable, more likely to be temporary and hardest on families and the community. What makes this issue so important today is that precarious/lower wage work is the fastest growing sector of the labour market in Canada. For many the issue goes deeper than the challenge to pay the monthly bills. A growing body of research suggests the combination of poverty and employment insecurity leads directly in increased rates of mental health issues.

For workers today, especially in the private sector, the decline in unionization has gone hand in hand with this growing insecurity and falling incomes. The stagnation of wages and the lack of union representation have contributed directly to the growth of inequality in our country.
This submission examines the barriers these workers face trying to improve their lives. It looks at industries and sectors where unionization is virtually non-existent. The case has never been stronger and more urgent for governments to act. It is time to introduce labour code changes that will bring to life the “guarantee of freedom of association” that is so crucial to building not only a better life for individual workers and their families, but a better country for everyone.

The idea of changing the labour code to reflect a changing labour force in order to ensure fair access to union membership and collective bargaining is not new.

The right to organize and collective bargain has always been tied fundamentally to the legal framework which either encourages or discourages such activity. Our present system, based largely on the U.S. National Labour Relations Act (Wagner Act) of 1935, was created in 1944 (PC 1003) and resulted in the massive growth of private sector union members.

Public Sector workers were also denied union rights until major legislative changes took place federally and provincially that allowed workers to organize and collective bargain in the late 1960’s and early 1970’s. Those legislative changes accepted that the traditional “Wagner Act” model was not wholly appropriate for public sector bargaining and new forms and structures of collective bargaining were legislated.

There are serious challenges to fix this problem, but there are real answers, there are successful models and there is hope. What this paper does is outlines the need for those changes and asks that the plight of these workers, those most in need of union representation and most likely to never get it, are included in any discussion about the changes necessary to modernize the Alberta labour code.

**State of the Union**

The obituary for the labour movement has been written by many. However, as the old saying goes, “Rumors of my death have been greatly exaggerated.” Today the labour movement remains one of the most valuable organizations working people have to maintain and improve their lives. The union movement not only provides representation at the worksite, its’ voice and influence has been part of shaping economic and social policy in Canada for more than a century.

The benefits of being a union member are well documented. Union members in general have safer workplaces, higher wages, more benefits, including pensions and the legal right to representation with their employer. Unions also benefit the economy as a whole. The World Bank concluded, after a global-wide review, that unions were not only a critical factor in closing the inequality gap, but countries with higher unionization rates also had less unemployment and were more productive.2

Today, fewer and fewer Canadian workers have meaningful access to unions and the overall strength of the Canadian labour movement has declined. Traditionally union strength is measured by density – the number of union members as a percentage of the total workforce.

Overall in Canada the unionization rate as a percentage of the workforce has dropped from 30.9 percent in 1997 to 28.4 percent in 2016.3

In Alberta union density has been the lowest of all the provinces since the last decade. Unionization rates in 1987 were 28.4 percent but by 2015 the rate had dropped to 23.5 percent. The following
AFL Submission to the 2017 Workplace Legislation Review

A chart from Statistics Canada illustrates the drastic decline in unionization across all Canadian provinces since 1981.

Figure 1.

*Unionization declined in all provinces from 1981 to 2012*

But the numbers do not tell the whole story. The decline in membership has been almost entirely in the private sector. Not only has private sector union membership dropped dramatically, it is also increasingly more difficult for private sector members to join a union. There are several reasons for this decline. Perhaps the most significant drop was in the manufacturing sector where plant closures and globalization of production has been the greatest. The private sector is also where precarious/low wage work has grown the fastest.

Across Canada, in both federal and provincial jurisdictions, public sector unions exist under somewhat different legislative frameworks (see section on history of labour legislation pg. 15). As well the number of small bargaining units and employers is far less than experienced in the private sector.

In fact, the data for Canada shows that union density in the public sector from 1999 to 2014 has grown from 70.4 percent to 71.3 percent. ⁴
Between 1997 and 2015 the number of actual public sector union members in Canada grew by 800,000, from 1.8 million in 1997 to 2.6 million in 2015.\(^{5}\)

Alberta public sector density is in line with the national trend. For the past two decades public sector density in Alberta has remained fairly consistent with the most recent data showing 70.7 percent union coverage. The Alberta public sector has 289,000 union members.\(^{5}\)

For private sector workers in Canada and Alberta opposite has been true.

In 1997 the Canada-wide unionization rate was 21.3 percent for private sector workers. By 2012 this had dropped to 16 percent. Meanwhile the number of private sector union members has actually dropped from 1.8 million in 2002 to 1.7 million in 2015, a reduction of 100,000. Historically, as density went down, the actual number of union members still continued to climb, just not fast enough to keep up with overall job growth. For the labour movement this drop in real numbers, combined with the drop in density, is especially troubling because there are fewer and fewer resources to meet the challenges ahead.

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**Figure 2.**

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<td><strong>Public Sector</strong></td>
<td>70.4</td>
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**Figure 3.**

Unionization rate by sex and age

The decrease in union membership for men has been the most dramatic, dropping from 42 percent in 1981 to 27 percent in 2014, a drop of 36 percent. The biggest drop came for young men between the age of 17 and 24 where the unionization rate went from 29 percent to 15 percent, a drop of 48.2 percent. Young women also saw a large drop from 24 percent to 14 percent, a 41.6 percent drop. The only place where the unionization rate actually grew between 1981 and 2014 was older women between the ages of 45 and 54 and women 56 to 64. While the growth was small compared to the losses in other groups, it would appear this happened because of the increased participation of women in industries with high unionization rates such as healthcare, social assistance, education services and public administration.  

One reason for the decline in the unionization rate for young men was the employment shift from industries and occupations with high unionization rates, such as construction and manufacturing, to industries with lower rates such as retail and professional services. 

The largest single drop in union members was a result of a dramatic change in union membership in the manufacturing section. In 1997 there were 620,000 union manufacturing workers but by 2015 this number had plummeted to 384,000, a drop of 283,000 members (37.3 percent).

The decline in union membership in manufacturing was also related directly to a 47 percent drop in plants that were operating in 1988 but were shutdown 9 years later.

The loss of factories and jobs in manufacturing has been attributed to causing 44 percent of the overall loss of union density in the business sector.

Although by a much smaller percentage (−7.6 percent) declines in forestry, fishing, mining and oil and gas also contributed to the overall decline in union density in the private sector.

Figure 4.
In Alberta, the rate of private sector unionization has dropped in lock step with the national drop, but with one significant difference. Alberta private sector unionization coverage has trailed the national average for many years. Private sector workers in Alberta have the lowest union density in the country with only 163,000 members representing 10.8 percent of the workforce. If the unionization rate was just at the national private sector rate nearly 80,000 more private sector workers would be members of the union. Where is the difference? In almost every Alberta private sector industry the union density is below the national average. Between 1997 and 2015 private sector union membership in Alberta has dropped from 14 percent to 10.8 percent.

Despite the growing number of small and medium sized employers, the labor movement in Canada and in Alberta is primarily centered on employers with more than 500 employees. In Alberta 81 percent of union members work for employers with 500 or more employees.

The lack of growth in private sector unionization has more implications than just a growing workforce without decent wages, benefits and some form of job security. A declining private sector membership also significantly weakens the ability of public sector unions to maintain living and working conditions in the face of increased legislative hostility from right-wing governments.

Combined with the loss of goods-producing jobs, another major factor in the decline is the inability of workers to exercise their right to join unions and bargain for better conditions.

**Union Certifications**

For employees seeking to better their conditions one of the most successful pathways has been to join a union and negotiate a collective agreement. However, the ability of workers to do this has decreased across the board and in industries where the most precarious work exits, the ability to organize is, for all practical purposes, non-existent.

As a result of employment shifts and labour code changes there has been a decline in new certificates in most jurisdictions.

Federal applications for certifications dropped by 33 percent between 2011-12 and 2015-16. At the same time as we see the drop in applications, we also see a drop in success rates. In 2011-12, 74 percent of the applications were successful but by 2015-16 the rate was down to 60 percent.

More disturbing was the immediate drop in success rate after the mandatory vote was introduced at the federal level. Nearly half of all applications failed (46 percent) after majority sign up was no longer enough to certify the bargaining unit. This change is being reversed by the new Liberal government. Federal jurisdiction covers an estimated 10 percent of the workforce in industries such as transportation and communications.

Organizing in Alberta has been equally challenging. In 2016, only 954 workers were granted the right to unionize at 36 worksites (Alberta has 154,000 businesses with employees). More than half of these new union members worked in the healthcare system, primarily in long term care. Construction related certifications were second, numbering at 14 involving 110 workers. The majority of these certifications were the Christian Labour Association of Canada (CLAC) who had 9 certifications representing a total of 56 workers. Many of the certifications had only one or two
workers suggesting that many of these companies were simply granting voluntary certifications.\(^\text{17}\) As the chart below indicates, construction and healthcare are the only sectors with any certification organization of note. Retail Trade, Food Services and Accommodation only received two certifications in 2016.

![2016 Alberta Union New Certifications by Sector](image)

In the previous year, the numbers were larger but the patterns were the same. There were 70 certifications granted in 2015 for a total of 3,089 workers. Healthcare, primarily long term care workers made up 66 percent (2,063) of all the workers organized. Construction accounted for 33 certifications and 434 workers. Again, CLAC represented 28 of those certifications for 171 employees. The remaining numbers are primarily construction camp workers in hospitality and housekeeping.\(^\text{18}\)

As mentioned in the previous section the decline in traditional unionized industries such as manufacturing and the shift to more temporary and part-time work has been a critical factor in the drop in density. However another major factor in the drop has been the shift to unbalanced labour codes – replacing card check and allowing employers the right to interfere in the employees’ decision.

**Employer Driven Labour Code Changes Drive Down Density**

One of the most significant changes was eliminating card check, a system where workers could sign cards and if 50 or 55 percent agreed to a union, the union was certified. One advantage of this was the ability of workers to organize without the employer having the opportunity to threaten and/or fire employees who wanted a union. In its’ place was the requirement for an automatic vote following the card sign ups – in effect workers had to declare twice whether they wanted a union or not.
Prior to 1977 federal and provincial governments all had card check certifications in their labour codes. Today only Quebec has card check at 50 percent, while Manitoba and Newfoundland have card check at 65 percent, forcing workers to have two-thirds support prior to unionization rather than the tradition 50 percent plus one. Alberta changed the law in 1988.

The federal government was the most recent government to revoke card check and there was an immediate decline in union certifications. Employers have been the main force behind the elimination of card check because it made union organizing far more difficult. Shortly after the removal of card check from the federal labour code, employer side lawyer Howard Levitt said, “…there is no question in my mind that this legislation makes it more difficult to certify employees and easier to decertify them.”

A government study of the elimination of card check across Canada concluded the removal of card check and the introduction of mandatory voting (MV) had a dramatic impact on union density in private sector.

We found that the use of an MV regime has been an important factor in the decline in union density in the Canadian business sector. It is estimated that had all Canadian jurisdictions not used an MV regime for union certification starting in 1997, business sector density would have been substantially higher by 2012. Simulations show that union density would have increased by around a half a percentage from 1997 instead of dropping by 4 percentage points.

In British Columbia, a recent study showed the direct link between employer supported changes to the labour code and the decline in organizing. Between 1974 and 1983 under the card check system the average number of employees who joined a union was 7,411 per year. Between 1985 and 1992 under mandatory voting the numbers dropped to 4,106. Between 1994 and 2000, under the B.C. NDP’s labour code with card check reinstated the numbers jumped back to an average of 8,762 workers each year. The Liberals reversed the changes in 2002, bringing back the mandatory vote and opening the door to employer interference. The result was between 2002 and 2015 the number of workers certified dropped to a record low average of 2,526 workers per year. The shift in numbers directly follows the changes to the labour code.

The number of certifications in British Columbia followed the same pattern. Between 1993 and 2000 an average of 394 certifications were granted per year. In period of 2002 to 2015 the average number of certifications by year plummeted to 85, a drop of 77 percent.

The federal government has moved to re-instate the card check provision of the labour code. What is clear from the numbers and studies is that labour code changes that favour employers, especially eliminating provisions on card check and allowing employer interference, were directly responsible for the decline of the unionization in the private sector.

For the purposes of this submission the almost universal lack of certifications in large sectors such as retail trade and accommodation and hospitality services demonstrates that some of the workers that most need unionization are virtually barred from exercising that right.
Precarious/Low Paid Work in Canada

Most recently the plight of low-wage precarious workers made the headlines when federal Finance Minister Bill Morneau issued a dire warning to Canadians.

He proclaimed that Canadians should prepare themselves for an increase in the “job churn.” He described churn as employees forced to move from “job to job to job.”

While the comments drew sharp retorts from many critics, what the finance minister did have right was changing nature of the workplace in Canada, away from secure long term employment to short term, often part-time or temporary, low paying jobs.

In the big picture this is reflected in the continued loss of manufacturing jobs that traditionally have provided secure, well paid employment with benefits to more service sector orientated jobs that are traditionally lower paid without the benefits or similar job security.

Described often in the media as “precarious work” its continued expansion is being viewed with growing alarm by people and organizations representing a cross section of Canadians.

The nature of employment is evolving. Over the past several decades, the standard employment relationship – based on full-time, secure work, where employees have access to good wages and benefits – has been in decline. In its place, part-time, temporary and casual forms of work have become increasingly common (Law Commission of Ontario).

The commission undertook a review of precarious work in Ontario and concluded that 22 percent of jobs were precarious, “defined as having low wages and at least two of three other features, no pension, no union and/or small firm size.”

A study by McMaster University and the United Way of Toronto released in 2015 echoed those conclusions, pointing out that their survey of more than 4,000 workers found 44 percent of adults in the Greater Toronto and Hamilton area work in jobs with some degree of insecurity – up from 41 percent in 2011.

The other major conclusion of the study challenged the traditional view that these jobs were short term and precarious because people moved through them on their way to more secure and well-paying jobs.

One of the biggest ‘ah has’ for us was that no, in fact – if you are in precarious employment, there’s a very good chance you’re going to be trapped in it. (Susan McIsaac, president and CEO of the United Way of Toronto.)

This revelation was not new. A Statistics Canada study looking at low-wage employment over a 20-year period ending in 2005 found a similar challenge for low-wage workers.

However, despite increases in their educational attainment, low-wage workers generally have not experienced increases in their chances of escaping low earnings over the last two decades.
A key part of the precarious work picture is the growth of temporary jobs, especially for young women and men across the country.

A recent report by the Canadian Imperial Bank of Commerce (CIBC) concluded that the quality of work was declining in Canada.

Is the quality of employment in Canada in decline? We think so. By looking at the distribution of part-time vs. full-time jobs; self-employment vs. paid-employment, and the compensation of full-time paid employment jobs in more than 100 industry groups, we observe a slow but steady deterioration.26

Wages paid during the past decade has also declined according to the CIBC report.

The message is clear. The compensation distribution of full-time paid-employment has worsened over the past decade with the number of jobs in lower-paying industries rising faster.27

Young people appear to be one of the groups bearing the brunt of the growing part-time workforce. Between 1976 and 1978 the full time employment rate for males 18 to 24 averaged 76 percent and 58 percent for women in the same age group. For the period 2014 to 2016 the full-time rate for men age 18 to 24 was 59 percent and 49 percent for women.

Making matters worse for young workers is the revelation that the number of men working in temporary jobs has jumped from seven percent in 1989 (the first year data was kept) to 24 percent today, “mainly as a result of a sharp increase in temporary employment during the 1990’s”.28

For male workers, the drop in full time work extends from young workers to the rest of labour force, although not in quite the same numbers. For workers 25 to 29 the drop was ten percent, for workers 30-54 it was 6.8 percent and 13.6 percent 55 years or older. The Statistic Canada study suggests there are three reasons for the drop including higher unemployment rates and an increase in part-time work.

It appears that part-time work is rising because of the lack of full time jobs and not because more and more people want part-time work for other reasons such as family or school demands. Most studies find up to one-third of part-time workers are doing it because full time work is not available.29

While there has been some debate on whether an improving economy will solve this problem, a more sobering view can be found in the latest CIBC quality index report where they draw the conclusion that the slide towards temporary jobs is now a structural part of the Canadian labour market.

And here the trend is clear. Since the late 1980’s the number of part-time jobs has risen much faster than full time jobs. The damage caused to full time employment during each recession was, in many ways, permanent. That is, full time job creation was unable to accelerate fast enough during the recovery to recover lost ground.30
Long term trends show low paid jobs growing faster followed by mid-paying and finally high-paying jobs. Low-paying jobs are growing at twice the pace of high-paying jobs. The growth of self-employment accompanied this shift in the market place. \(^{31}\)

Statistics Canada found that the most dramatic growth was the use of contract labour by companies. Rather than hire employees, the company hires workers as contractors, usually on short-term contracts that can be renewed, but offer no security, benefits or long-term viability. Since 1997 there has been a significant increase in this practice, up 83 percent to 1.1 million people nationally. \(^{32}\)

Corporate surveys confirm that this trend is continuing. Deloitte’s Human Capital Trends report leaves little doubt about the growth of this part of precarious work.

> Canadian organizations are reaching out to the “open talent economy” 47 percent of Canadian respondents plan to increase their use of contingent, outsourced, contract or part-time workers in the next three to five years. \(^{33}\)

While businesses move more and more to the use of contract labour, Deloitte, in another survey of 4,000 workers in the United States found, “67 percent of respondents who have worked as an independent contractor would choose not to do so again in the future”. \(^{34}\)

A recent study in Toronto of immigrant women workers found that they experienced some of the worst exploitation in the hands of temporary employment agencies. The Toronto Star described their situations as “modern day slavery”. \(^{35}\)

An indication of this rise in contract work is the growth of temporary agencies, organizations that supply workers to companies, with the agency paying the worker directly, often on a daily basis. By 2008 temporary agencies generated more than $9 billion in revenue up from $1 billion in 1993. \(^{36}\)

Another indicator of precariousness in Canada in the last two decades is the increasing use of temporary foreign workers. Temporary foreign workers are often victims of labour exploitation, with poor wages, long hours and little power over their employment arrangement. Their use by employers also tends to suppress wages and negatively impact the labour market, as employers are incentivized to replace Canadian workers with less expensive foreign labour.

The Toronto Dominion Bank’s recent report on precarious work suggests that the trend to part-time and precarious work will continue for at least two more years and confirm the biggest losers in the job market are young people. One of the other conclusions of the study is that they lack of benefits, including pension plans, contributes to the precarious nature of the work.

> Precarious employment is closely associated with uncertainty. Taking a long-term perspective, uncertainty about retirement, particularly retirement income, and the lifestyle it affords, is another type of precariousness. The longer-term trend within Canada has been a decline in the share of the working population covered by these plans. \(^{37}\)

The bank states there was a sharp decline in coverage by defined plans (the most successful and secure plan for workers) from 90 percent of coverage to 71 percent. \(^{38}\)
Another component of the precarious job market is the low-wage sectors, where employees enjoy few benefits, often have insecure schedules and no union representation. Low-wage work, as we have seen, is growing at double the pace of high-wage work. More and more people find themselves working at or below the poverty level, sometimes holding two or more jobs.

The past two decades have seen a dramatic growth in the gap between the top and the bottom of the income scale. Dramatic gains in the top ten percent and even more so in the top one percent are contrasted with a stagnant growth of real wages for the middle income group and declining income for the low-paid sector of the economy.

Small employers are often the worksites where low wages are associated, particularly in the retail and hospitality sectors. It is also the employers where workers have little or no access to unionization. In the period 2005 to 2012 small businesses (1 to 99 employees) were responsible for creating 87.7 percent of the net employment change, creating 1.2 million jobs during the period. In contrast, firms representing 500 employees or more – where unionization is widespread, were responsible for creating just 4.6 percent of the jobs.

Overall 70 percent of all employment in Canada is with firms representing 99 or less employees. Employers with 100 to 500 employees represent 20 percent of the workforce and the remaining ten percent work for employers with 500 plus employees.39

### Food Bank Use

One indicator of the economic struggles of precarious workers is the use of food banks. Alberta has 84 food banks across the province and the jump in food bank use has been dramatic. Since 2006 food bank use climbed by more than 135 percent with 79,293 individuals using the service in 2016. More than 60 percent of that growth has come since 2014. For the purposes of this discussion a full 25 percent of those using the food bank in 2016 reported they held or recently held a job with an additional five percent collecting Employment Insurance. This is nearly twice the national average, where 16 percent are either employed or collecting Employment Insurance.40

The solid majority of users are under the age of 30 (61.5 percent) and 44 percent of users are under 17 years of age or younger.41

In Edmonton the number of food bank users who are either employed or collecting EI is 36.4 percent, significantly higher than the provincial or national levels.42

As part of their survey food bank users were asked what income they would need to stop using the food bank and 43 percent said $500 per month would let them stop relying on the food bank for survival.43
Growing Inequality in Alberta

The growth of inequality in Alberta is not new and for many years inequality has been the greatest in the province despite a booming economy through much of that time. Between 1982 and 2011 the share of income to the top one percent grew by 65 percent while the share of income for the other 99 percent actually dropped six percent.\(^{44}\)

The basic measure used to calculate the level of inequality is the GINI Index. Using this index in 1980 showed that inequality in Alberta was similar to the national average. However, by 2011, the picture had changed and Alberta now led the nation with incomes being the most unequal of all the provinces. Total income for the top ten percent went from 31.5 percent in 1992 to 40.5 percent while bottom 50 percent dropped from 18 percent to 15.9 percent. The higher income grew faster and the lower incomes dropped faster than the national average.\(^{45}\)

How does this compare to the rest of Canada? The top one percent of Alberta families have an average income of $675,000 compared to an average of $351,000 for the top one percent nationally.\(^{46}\)

The numbers led Ricardo Acuna, executive director of the Parkland Institute, to draw the obvious conclusion:

\[
\text{The evidence is overwhelming. The dark side of the story of Alberta’s economic success is that it is disproportionately benefitting only the top one percent of income earners and actually doing damage to Alberta’s workers and the public interest in general.}^{47}\]

Inequality creates many social and economic issues for society. The cause of it can be traced to a number of factors including restructured tax polices favouring the wealthy, increased compensation for the top income earners and the lack of access to education and healthcare. But low wages and benefits and the lack of unionization are a direct contributor to inequality and increased poverty. And, as we report elsewhere in this submission, low-wage and part-time work has been on the increase for a number of years in Canada. The number of workers earning less than the average wage has grown from 57 percent in 1997 to 61 percent in 2015. The group of workers earning less than the average wage but more than 50 percent of the wage saw their numbers jump by two million workers, to 6.5 million.\(^{48}\)

Precarious/Low-Wage Work in Alberta

Low-wage work ($15 an hour or less) is a significant part of the labour force in Alberta, with about 350,000 workers or 18.2 per cent of workers considered low-wage workers.

Like Canada, it is young Albertans (24 years old or younger) who are the single largest group of precarious workers with 135,000 workers or 45 percent of all low-wage workers. The next largest group is seniors (55 plus), with 42,000 or 14 percent of the workforce.

Part-time work makes up nearly half of all low-wage work (45.7 percent) or 135,000 people, while 22 percent of the workforce is working in temporary positions.
More than 60 percent are married with seven percent of families with a single earner supporting children.

The two large groups of employees have either been working in their job less than one year (41.2%) or one to five years (41.8%). The remaining 17 percent have been employed in the same job for five years or more.

Women make up 61.7 percent of the low-wage workforce. Families headed by female lone parents who work are more likely to live in low income in Alberta (24%) than the rest of Canada (16%).

Part-time work in Alberta as a whole made up nearly 400,000 jobs in 2015. Of that total 78,000 or about 20 percent of the people working part-time report that they are doing that involuntarily.

With the downturn in the oil and gas industry, The Toronto Dominion Bank predicted that Alberta would be one of the regions which is likely to see increased levels of precarious work.

Between January 2015 and January 2016, the Albertan economy shed 73,000 full-time jobs and created 35,000 part-time jobs. This trend continued into 2016. Between January 2016 and January 2017 the province lost an additional 40,000 full time jobs and saw part-time work grow by 34,000 jobs.

Equally problematic for thousands is the use of temporary labour in an effort to cut costs. In Alberta there are 221,000 jobs that are temporary, an increase of 23 percent over a decade ago when
there were 170,000 jobs. This growth far outstrips the growth of temporary work nationally during the same period (11.6%).

Hardest hit by the drop in permanent employment were Albertan young men between the age of 17 and 24 who saw a drop from 86.2 percent full time workers in 1976 to 69 percent fulltime workers in 2016, a drop of 18 percent.

Of particular importance is the concentration of the low-wage workforce in three main industries, retail trade, accommodation/food services and other services. These three industries make up two-thirds of employees earning less than $15 an hour (65.7%).

There are a number of similarities between these industries that explain this. The structure of these industries is heavily weighted to small and medium-size businesses, well above the provincial average. The industries also have a high percentage of young people working in them with 43 percent of all young workers employed in these three sectors. These sectors are also where workers have almost no union representation or rights.

Figure 6.

**Retail Trade**

There are 229,300 employees in retail trade making up about 14 percent of the workforce in Alberta. Nearly five percent in this industry are unemployed. The industry is expected to grow at a rate of 0.4 percent from 2015 to 2019. Nearly one-third (32.3%) are part-time employees. With an average job tenure of 47 months, the industry has a turnover rate nearly double the provincial average (88.8 months).
In terms of employer size, nearly 80 percent work for employers with less than 100 employees, with 39.2 percent working on jobs with less than 20 employees and 39.5 percent for employers with 20 to 99 employees. In both cases this is higher than the provincial breakdown.

The same trend follows through for the demographic makeup of the workforce. Nearly double the number of young people (22.5%) work in this industry than participate in the provincial workforce (13.9%). The bulk of the workforce is 25 to 54 years old (59.8%).57

This sector is the largest private sector employer of immigrants with 68,900 finding work in this part of the economy.58

There are no figures available for part-time work in this industry.

Wages for this sector in Alberta dropped three percent between September 2015 and September 2016.59

Among the commonalities of these three sectors is the almost total lack of union density. Retail Trade is the highest with nine percent, largely attributable to the organization of several large chains. This number is well below the national average of 13 percent union density for this sector.

In the past two years, there appears to be only 2 certifications in this area for a total of 29 employees.

**Accommodation and Food Services**

More than 150,000 employees work in this sector or about 6.7 percent of the workforce. There are 8,300 workers unemployed representing 5.1 percent of the workforce. The industry is expected to grow at two percent a year from 2015 to 2019 and employment will increase to 6.9 percent of the workforce.

Workers in the industry are challenged to earn a full pay cheque with the average hours worked each week at 31.4 compared to 36.9 hours per week for the province as a whole. Turnover is almost double the provincial average and 9.1 percent of the workforce has multiple jobs.

Small and medium-sized employers dominate this industry with 90 percent of employees working for companies with less than 100 employees and 41 percent working for companies with less than 20 employees. Many of those small businesses are franchises for larger corporations. The workforce is overwhelmingly women (62.7 percent) and the participation of young people is almost triple (36.8 percent) the provincial participation rate (13.9 percent). Unions are almost non-existent in this sector with 2.9 percent coverage. Again, this is below the national unionization rate, which is 6.7 percent for the sector.60

Organizing is virtually non-existent in this area. In the past two years Alberta Labour Board data indicates there were a handful of successful certifications with three of them at colleges or universities and three certifications at construction sites.

The median hourly wage is $14 per hour, more than $11 below the provincial average.61 There are 47,100 immigrant workers in the sector.62
**Other Services**

This sector covers a variety of employers including repair work (industrial, commercial and residential), personal services (hair care and esthetic services), social advocacy groups and religious organizations. More than 117,000 Albertans work in this sector, representing 5.1 percent of the workforce. Unemployment rests at 5,100 (4.2%). The industry is expected to grow by 1.3 percent a year between 2015 and 2019. Employment numbers will climb to 5.4 percent of the workforce.

The sector is dominated by small employers with 68.3 percent of employees working for companies with less than 20 employees. Only a small portion of the employees work for employers with 100 to 500 employees and there is no data on 500 plus employees. Young people make up 14.2 percent of the workforce, slightly above the provincial average. The unionization rate in this sector is only three percent, well below the national union coverage of nine percent.63

Figures for the past two years show an estimated 150 workers were certified at six sites, a combination of non-profit and industry services. Like the other two sectors unionization attempts are minimal.

**Unionization Linked Directly to Better Pay, Benefits and Security**

These three sectors, among others, are known for their lack of unionization. With little or no union presence, there is virtually no upward pressure to improve wages and benefits.

Statistics Canada, in a report on union density, concluded that the rate of unionization of a particular sector or industry had a direct impact on the nature and security of employment in that industry.

Unionization rates also varied across various occupations and other job characteristics. For instance, full-time work, longer job tenure, large firms, higher educational attainment and better wages were all associated with higher unionization rates.64

In his submission to the Changing Workplace Review, University of Toronto professor Rafael Gomez reinforces the point that a significant shift is taking place from union to non-union worker sites.

When unionized enterprises shutdown (as many have, for example in manufacturing) and are replaced by new non-union operations (in, for example retail and high tech industries) union density falls and the collective bargaining coverage rate declines as it has almost continuously done for the past several decades.65

It is widely accepted that unionization raises wages and benefits.

In Alberta the union advantage has been well-documented. Union wages are on average $4.75 an hour higher (18%) than non-union employees. It was significantly higher for women where the union premium is 35%.66
For young people, some of the hardest hit by the shifting labour force, the union advantage is $4.92 per hour. This translates into $7.5 million more each week for workers aged 15-24 years. The largest gap was for unionized aboriginal workers who earned $8.47 an hour more, an extra $7.7 million dollars more each week then their non-union counterparts.

Overall the union wage advantage translates directly into $65 million more each week or $3.3 billion annually into worker’s pockets and into the Albertan economy.

Another equally important benefit for employees working under a collective agreement is the provision of benefits including pensions, dental plans, extended health, sick leave and vacation entitlement.

Statistics Canada reports nationally that one of the biggest benefits of a union is membership in a retirement plan. Nearly 83 percent of union members are in a plan compared to just 33 percent of non-union members. Nearly double the number of union members have dental coverage (77% to 45 percent). The same is true for supplemental health care plans (84 percent compared to 45 percent). Another area of advantage is better vacation entitlement and pay (85 percent to 64 percent).

The union advantage extends to employees staying safe on the job. Union workers have better safety programs, more input to safety issues, stronger enforcement of safety rules and more support when injured on the job. A 2011 blitz of the virtually non-union residential construction section in Alberta uncovered widespread employer non-compliance. A majority had safety violations including 90 employers where the violations posed an imminent danger of injury or death. Unionized workers are far more likely to exercise the right to refuse unsafe work than non-union workers.

Can unions bring up wages, benefits and working conditions for workers in precarious/low wage industries? Research shows that unionization is especially beneficial to workers in traditionally low wage industries.

“Economic research shows that unionized workers typically receive higher wages than otherwise comparable non-union workers. This “union wage advantage” is greatest for people who would otherwise be lower-paid workers. This group notably includes workers with less formal education and skills, younger and less experienced workers, and women and workers of colour who experience discrimination in the job market.”

Do workers in the non-union sectors want a union? The answer is that large groups of them do. According to research on Canadian workers by Meltz and Lipset, two renowned labour relations scholars, 30 percent of non-union workers want the right to unionize. This includes industries and sectors where unions are weak like retail trade, where they report 31 percent want unionization and the financial sector (3.5% unionization) but more than 33 percent want to be represented by a union.

Unionization remains the most viable solution for workers facing precarious/low wage employment situations.
A Brief History of the Legislative Framework for Collective Bargaining

There are two critical time periods in Canada for the development of legislative frameworks for organizing and collective bargaining. The first was the declaration of the Wagner Act in the United States and the subsequent passage of PC 1003 in 1944 by the federal government.

The second period were the moves by federal and provincial governments to provide a legislative framework for public sector workers – started original by the CCF in Saskatchewan in the 1940’s. For the vast majority however, the changes came provincially and federally in the late 1960’s and early 1970’s. The result was the creation of major public sector unions and collective bargaining rights covering more than two million workers today.

Of course the desire to form unions existed long before these time periods. Here in Canada attempts to form unions’ dates back to the 1800’s and the first piece of labour legislation was passed by the MacDonald government in 1872. The Trade Union Act simply allowed workers to organize without fear of criminal action – a situation that was highlighted by the strike at The Globe newspaper.

Successive federal governments brought in legislation that would require conciliation prior to any strike action or lockout action. Specific legislation was used to control strike action in 1903 when the Railway Labour Disputes Act was passed which forced compulsory conciliation on railway unions. Further legislation, mostly restricting workers’ rights, was passed over the next three decades. None of the legislation provided a legal framework for recognizing a union or requiring collective bargaining in good faith by the employers.

The most significant breakthrough came in 1944 when the federal government passed legislation that provided the framework for unionization and bargaining, based almost exclusively on the U.S. model passed nearly a decade earlier.

In 1935 the U.S. government of Franklin Roosevelt passed the “National Labour Relations Act” or as it was popularly named the Wagner Act after the senator who spearheaded it. It culminated decades of struggle by workers to organize into unions, decades filled with small victories and many more defeats. The industrial revolution was in full swing, but the legal framework for workers to organize unions was out of step with the changing nature of work.

The Wagner Act spelled out the rules for organizing and certifying unions. It required companies for the first time to negotiate with the union legally elected by workers to represent them. It spelled the end of company unionism. Gone were the days when labour disputes focused on the demand for union recognition, the issue that had dominated collective bargaining for decades. The legislation would form the fundamentals of labour legislation and change the course of labour history in North America. It was the foundation from which the middle class was built in the United States and subsequently in Canada.

Six American Federation of Labour unions, spurred on by the passing of the Wagner Act, formed the Congress of Industrial Organizations and began the largest organizing drive in history. The result was the most dramatic growth in union membership in industries such as steel, auto, paper, rubber and wood, across America. Union density climbed from a low of 13.5 percent in 1935 to 22.5 percent by 1940 and 30 percent by the end of the war.
In 1935 Canadian union density numbers were similar to the U.S. with 14.5 percent organized. While U.S. numbers increased quickly after the Wagner Act was passed, Canada’s did not and fell behind the United States until similar legislation was passed in Canada at both the provincial and federal levels.

The first real change to previous labour legislation came in Ontario in 1943 when the government introduced the Ontario Collective Bargaining Act – similar legislation to the Wagner Act. The act established the first labour court in Canada to oversee labour relations.

The next breakthrough came with the election of the CCF in Saskatchewan in 1944. Under the leadership of Tommy Douglas, the most progressive labour code (based primarily on the Wagner Act) was introduced to the Canadian context. Like the Wagner Act, it provided a legal framework for organizing and the obligation for the company to recognize and negotiate with the union. The CCF government, for the first time in Canada, also gave public sector workers the right to organize and bargain collectively with the government.

During the war support for the CCF was rising and the Mackenzie King Liberal Government of the day took several steps to undercut this momentum. The Liberals introduced new labour legislation in February 1944. Based almost exclusively on the Wagner Act, it curtailed employers’ rights to interfere in the union drives, provided a process for certification for the first time and required them to negotiate with the union.

Motivation for this shift came primarily from the political arena, where the CCF had won the Saskatchewan election and came within four seats of forming government in Ontario. Four days after the Ontario election, four federal by-elections were held and the CCF won two of them.

In his memoirs, Paul Martin senior, then Minister of Labour in the Liberal government credits the CCF with getting the legislation passed. In his memoirs he describes PC 10034 as:

> The labour code for which I had agitated for so long, removed all obstructions by employers to the rights of their workers to join and establish unions. But it also tended to retard the advances of the CCF within the ranks of labour. In effect, we had implemented the CCF’s labour program as formulated at a special conference at Regina in the first days of 1944.75

The results in Canada were as dramatic as those in the United States. From 1940 to 1955 the density of the labour movement went from 16.3 percent to 33.7 percent. This was made possible by the new legislative framework. Most provinces embraced similar legislation following the war. It was primarily large industrial employers where most of this growth occurred.76

One of the final pieces of the Canadian legal framework came when Justice Ivan Rand brought down a legal ruling in 1946 declaring that Ford workers would not be required to join the union but that all workers would be required to pay dues if a union was certified at the workplace. This became known as the “Rand” formula and formed the basis for union recognition for the majority of workers, especially in the private sector.
While the union movement continued to grow slowly for the next two decades the next big change in the right to representation for employees was made possible by provincial and federal governments that legislated the right of public sector workers to join unions and seek collective bargaining. For the vast majority of public sector workers this occurred in the late 1960’s and early 1970’s.

The major breakthrough came after a multi-year review by several federal governments led to the passing of the Public Service Staff Relations Act, a law which gave collective bargaining rights to federal civil servants. Like their private sector counterparts in 1935, public sector associations restructured their organizations to form the Public Service Alliance of Canada. Through a series of labour board rulings the union became the major organization of federal public sector workers, representing 180,000 workers by the 1980’s.

Across Canada, provinces moved to provide similar rights to provincial employees to seek certification and exercise collective bargaining rights. In similar ways associations were transformed into union status through the passing of laws granting workers the same rights as private sector workers.

In most cases, the governments who passed the laws, did not discourage or fight the organization of their employees. Large numbers of workers were unionized in a relatively short period of time.

In Alberta, the legislative changes that resulted in 30,000 public sector workers gaining the right to unionization occurred in 1968.77

It is important to note that governments were not restricted by the “Wagner” model when developing legislation that facilitated organization and collective bargaining. From the point of view of the labour movement, the legislation was some of the most progressive in the western world.

When most federal and provincial jurisdiction extended collective bargaining to public employees, there was recognition that the special circumstances of the public sector required a different legislative framework.

Certification procedures in these new laws made it easy for the existing employee organizations to become certified bargaining agents. Most statutes called for supervised elections (or sufficient union cards being signed), while a few jurisdictions actually named an organization as the sole bargaining agent in the statute. Card signing or election campaigns were largely a formality, as there was never any government opposition (Fryer, 1995). Although an individual’s right not to join a union was preserved, legislation generally required all employees to pay dues to the certified bargaining agent.78

Since those days, public sector unions have faced a series of assaults on their right to negotiate and take job action. Governments have intervened on numerous occasions passing legislation ordering workers back to work, banning strike action completely and removing clauses from collective agreements without negotiations.

But union density remains high and consistent in Canada for public sector workers and the basic legislative foundation has remained in effect. This includes the recognition of the union’s right to
collect dues and in many other cases legislation establishes bargaining units, including non-voluntary multi-employer bargaining units.

In both of these cases, PC 1003 and the public sector legislation, governments played a central role in creating the conditions necessary for unionization. The legislation was geared to the existing needs and structures and facilitated the creation of bargaining units and collective bargaining. In both cases the legislation specifically opened the door for workers to organize and sparked a major growth in representation amongst workers, representation that would not have happened without government action.

Today, a new and growing workforce is emerging that once again requires the government to provide a labour law framework that allows this workforce to exercise the same rights to improve their lives as employees in the traditional private sector and public sector.

**The Critical Need for Labour Law Changes**

There are a number of areas where labour legislation in Alberta needs to be changed to bring it in line with the mainstream. Areas such as employer interference, majority certification, successorship and support for first contracts are only a few of these. Without those changes, wages will continue to decline, inequality will continue to grow and the union movement will continue to lose density. The “right” to join a union has been transformed all too often into the “risk” to join a union. It is not a “right” if the fear of severe consequences to your livelihood makes you afraid to exercise your right.

However, it has been accepted for some time that the present labour legislation, even when reformed to protect the basic right to join a union and collective bargain, will not be enough to break down the barriers that prevent hundreds of thousands of workers from exercising their constitutional right to join a union.

In a paper commissioned by the Changing Workplaces Review panel in Ontario, U of T professor Rafael Gomez writes;

> …the changing economic situation when combined with a more hostile legislative business environment have precipitated a major decline in private sector union coverage. The barriers and challenges to organizing under this (Wagner) model are well documented. From the point of view of societal equity the lack of worker voice and employee representation disproportionately impacts youth, racialized minorities, recent immigrants and workers who are concentrated in sectors of the economy without significant union representation.79

Business has also acknowledged major changes in the workforce and government regulations have effectively made union organizing difficult.
In discussing the trend towards declining density, particularly in the private sector, the B.C. Business Council concluded the following make unionization difficult:

- The shift of employment towards services-producing industries (where unions are weaker) and away from manufacturing and other goods-producing sectors (where they tend to be more established).
- The growing role of small enterprises and self-employment as a source of jobs. This development is not favorable to unions which have trouble organizing and servicing smaller workplaces.
- Government policy and regulatory initiatives that have diminished unions’ economic power (e.g., deregulation of some industry sectors, free trade, open market public procurement policies, etc).\(^{80}\)

The facts, as presented in this submission and other sources speak for themselves. Dramatically low-union density is widespread in key industries and particularly where workers are employed by smaller employers. Those same sectors, for obvious reasons, are also where low wages, no benefits and generally precarious work are endemic. Enterprise bargaining and certification based on a specific geographical location is a significant barrier to not only organizing but negotiating and servicing a collective agreement.

This weakness in the legislative framework was identified more than 25 years ago in the final report of a British Columbian labour code review panel submitted in 1992. Chaired by well-respected mediator Vince Ready, the report provided a unique insight into the plight of workers who need unionization but are effectively barred because of the failure of existing labour legislation covering certification and collective bargaining. The majority of the panel members concluded the following:

It is simply impractical and unacceptably expensive for unions to organize and negotiate collective agreements for small groups of workers if the dues cannot begin to cover the costs involved in developing separate collective agreements for each of their work sites. As a result, persons employed as clerical support staff in small business, farm workers or gas station attendants do not have any real prospect of ever being represented by a trade union under present labour legislation. Yet, these are the very workers who are most in need of trade union representation.\(^{81}\)

Their conclusion was to recommend a new form of certification that became known as sectoral bargaining. The panel’s proposal outlined a process whereby industries and employees that were historically under represented by collective bargaining could gain this right. The panel called for multi-employer bargaining units in geographic and/or sectors that would allow a master collective agreement to apply. Employees joining the union where two or more other employers in similar occupations and geographic areas had signed collective agreements would automatically receive the benefits of the existing agreement. This was seen, combined with other labour code changes that protected employees and facilitated first collective agreements, as a major step forward.

In her paper on sector bargaining, labour lawyer Diane MacDonald argued that existing labour legislation was geared towards large, mass production, industrial, vertically integrated firms, leaving out a large part of the labour force. She also points out that organizing and negotiating in small
workplaces is extremely difficult because of the inability for workers to act without the employer knowing who is supporting the union. There have been a number of attempts to organize franchise restaurants and they have ended in failure because of employer interference and employee turnover.

She concludes:

We need to remove the structural barriers to collective bargaining for vulnerable working people. There is no reason why shifts to smaller workplaces and to precarious forms of employment should be correlated with a diminution in the quality of wages and working conditions. Sectoral certification offers the potential for the precariously employed and those in small workplaces to organize and have a collective voice in their workplaces.82

One of the issues facing workers and unions is the expense of organizing small workplaces. While a small number of employees provide a small dues base, the cost of just getting the collective agreement could reach $20,000.

With a small bargaining unit, particularly if it is made up of low-wage workers, the union dues will never be substantial. Unions cannot sustain this kind of economic loss indefinitely. Larger bargaining units would be financially more feasible and would better empower employees in smaller bargaining units.83

In a submission to the provincial government in British Columbia, the B.C. Federation of Labour outlined why new labour code provisions were necessary because the old forms of enterprise organization and bargaining were not relevant to large sectors of the workforce.

The traditional employer-employee relationship is increasingly being replaced by contract and sub-contract service arrangements. As well, large service sector companies with multiple worksites/locations were not the dominant source of employment they are today...

Simply stated multi-location employers are practically unorganizable under the current Code.

Lastly the economy has changed radically and the fastest growing sectors in small and medium-sized business have small workplaces where employees wishing to join a union face significantly different conditions than in a large industrial or public sector workplace. If workers have the democratic right to join a union, labour legislation should make that right accessible to all and deal with the realities of different types and sizes of workplaces.84

York University professor Dr. David Doorey, an expert in workplace law, also concludes the laws covering certification and collective bargaining were not designed to allow workers in small and medium-sized workplaces to organize.

If history tells us anything, unions won’t have much success in sustaining decent collective agreements in the retail sector. There’s a number of reasons why collective bargaining has not penetrated the retail sector, but an important one is labour law.
The labour law model we use was never intended to promote collective bargaining in small to medium-sized outlets or franchises of large corporations. It was designed to allow men in heavy manufacturing and mining, working in large work sites with hundreds of workers, to unionize and bargain ‘family wages’ and benefits at a time when the single-male-income earner model dominated policy.\textsuperscript{85}

Those words are doubly true today and in Ontario the panel reviewing the labour code has put the entire issue of the failure of the labour code to provide access to collective bargaining for thousands of employees on the table for discussion.

In their July 2016 mid-term report, the Ontario based Changing Workplaces Review panel, recognized the issue of access to collective bargaining and the weaknesses of the present legislation in this regard was a very important issue. The panel says one of its' highest priorities is dealing with the issue of precarious work. An entire section of the report was focused on broader-based bargaining structures.

It is said that the Wagner Act model limits access to collective bargaining to many thousands of workers because there is no practical way for collective bargaining to operate in much of the present economy.

This is seen to affect vulnerable workers in precarious work, especially in industries where such workers feature prominently, such as in restaurants, (particularly fast-food), accommodation, retail and other service industries. While this is generally seen as a private sector problem, it is said to also to occur in the public sector (e.g., in home care).\textsuperscript{86}

The review panel members outlined a series of nine options for extending collective bargaining and workers representation to vulnerable workers. They provided a summary of the nine options they would be considering.

1. Maintain the status quo.

2. Adopt a model that allows for certain standards to be negotiated and is then extended to all workplaces within a sector and within a particular geographic region, etc. This could be some form of the ISA model or variations on this approach that have been proposed in a very detailed way (as discussed above).

3. Adopt a model that would allow for certification of a unit or units of franchise operations of a single parent franchisor with accompanying franchisees; units could be initially single sites with accretions so that subsequent sites could be brought under the initial agreement automatically, or by some other mechanism.

4. Adopt a model that would allow for certification at a sectoral level, defined by industry and geography, and for the negotiation of a single multi-employer master agreement, allowing newly organized sites to attach to the sectoral agreement so that, over time, collective bargaining could expand within the sector, along the lines of the model proposed in British Columbia.
5. Adopt a model that would allow for multi-employer certification and bargaining in an entire appropriate sector and geographic area, as defined by the OLRB (e.g., all hotels in Windsor or all fast-food restaurants in North Bay). The model would be a master collective agreement that applied to each employer’s separate place of business, like the British Columbia proposal, but organizing, voting, and bargaining would take place on a sectoral, multi-employer basis. Like the British Columbia proposal, this might perhaps apply only in industries where unionization has been historically difficult, for whatever reason, or where there are a large number of locations or a large number of small employers, and, perhaps only with the consent of the OLRB.87

In Ontario, the Changing Workplace Review is scheduled to be completed and a report delivered in the first half of 2017. What recommendations they will make and how the Liberal government responds to them remains to be seen. But clearly the panel members have made this issue the key focus of their review and have considered this issue in their deliberations.

“The scope of our Review is very broad and, while we intend to deal with a variety of matters, in keeping with our mandate, our key focus will be on vulnerable workers in precarious jobs and the need for legislative amendments to address some of the issues facing these workers.”

Existing Models of Broader Based Bargaining

When searching for answers to open the door to collective bargaining rights and more secure and respectful employment relationships to vulnerable workers, there is no need to start from scratch. There are a number of examples where multi-employer bargaining units exist today. Some were created voluntarily between the parties and others were imposed by government regulation. In European countries the sectoral nature of bargaining was entrenched in labour codes from the turn of the last century.

For the purposes of this submission a brief overview of these existing bargaining structures will be provided. Obviously a longer and more in depth look at what each one accomplishes and its applicability to the Alberta labour market will be necessary.

The following are some of the existing broader based bargaining structures:

1. Decrees in Quebec: In Quebec since 1934, vulnerable workers have been offered protection by the “Decrees Act”. While the system was historically used more widely, it remains a critical part of labour relations law in the province. It was last updated in May of 2015. The Decrees Act covers some 9,000 employers and 75,000 employees. There are 14 decrees in place with 94 percent of the employees covered working in three industries: automobile services, security agencies and building services. The last two industries being sectors with large-scale low-wage and vulnerable workers often in temporary contract positions. The system allows for the development of an industry-wide committee of unions, employees and employers which collectively set the minimum conditions of employment for the entire industry. Unique in the system is the self-regulation whereby the industry or “Parity” committee collects money from the industry for enforcement and has the power to fine employers up to 20 percent of the unpaid wages or compensation.
The decree can also be restricted to a region such as the “Montreal Region Decree” in the automotive services sector. The decree covers minimum standards for wages, working hours, holiday pay, special leave and advance termination notices. It also provides for a training and certification of trades people.

2. Construction Industry: Generally construction workers are employed on a short-term temporary basis working on numerous worksites over the course of a several years. The traditional Wagner Act approach to collective bargaining did not work for this industry and most governments have recognized this and acted accordingly. There are, in most provinces, provisions of the labour code which specifically cover the negotiations of collective agreements in the construction industry. They require that unions and employers negotiate multi-employer agreements which set standards across primarily the organized contractors. Quebec has the most developed of these bargaining regimes where about 250,000 construction workers in all sectors are covered automatically by the contract. The regulations require collective bargaining industry-wide, workers are allowed to change unions on an annual basis and there is a mandatory apprenticeship-training scheme for all trades.

The result is an industry where wages and benefits are standardized and regardless of what sector workers find themselves working in, industrial, commercial or residential, they are covered.

A critical benefit of these construction agreements in most provinces has been the joint financing and sponsorship of apprentices, making the unionized sector of the construction industry by far the most successful in qualifying fully trained trades people.

From province to province, depending on the legislation, there are numerous outstanding issues and concerns about the structures that have been imposed. (The AFL has submitted a separate proposal concerning the construction industry.)

3. Public Sector Bargaining: There are many examples where the bargaining framework for public sector workers has been created and regulated by government legislation. This includes legislating such fundamental issues as who is in the bargaining unit, the size of the bargaining unit and the employers who are required to negotiate where multi-employers exist.

More recently several provincial governments have created multi-employer bargaining councils in two of the largest sectors – education and healthcare. In some cases those employer councils are broken down even further – with different services relegated to different bargaining structures. In British Columbia, under the NDP, the legislation provided for automatic inclusion under the collective agreement for newly signed up workers/employers in the sector. Union side bargaining committee members are assigned depending on union strength in the sector. There is no question this encouraged collective bargaining and raised standards industry-wide in some sectors such as long-term care. The result was employers and workers in the non-union sector also tended to get a financial package – minus the pensions – that their union counterparts enjoyed.
4. Movie Industry: Under the federal Status of the Artist Act (SAA) the government has decreed that professionals in the industry can form associations/unions and engage in collective bargaining despite the fact most are not employees in the traditional sense of the word. Unlike traditional union organizing the SAA allow the workers to organize, certify and bargain without the mandatory 50 percent buy-in. In part this was done because the actual number of workers in the industry is a moving target. The negotiations establish minimum terms and conditions. In its report the Ontario Changing Workplace Review Commission found that, “The SAA model holds the potential to extend collective bargaining to types of workers who may not conventionally be thought of as “employees”. The Commission noted that one weakness of the structure was that there was no requirement for employers/producers to recognize the union and enter into collective bargaining for their employees.

A similar sectoral model exists in British Columbia where, depending on the size of the production, employees are covered by a master agreement. The agreements are different based on the economic challenges of the different productions. 89

5. European Experience: In European countries a much different model emerged that was based on a sectoral and/or nation-wide approach from the very beginning. There has been extensive writing on this subject and for the purposes of this paper a brief summary is all we are including.

Sectoral bargaining is a feature imposed by government regulation in most cases in almost all European countries. Industry councils, formed by multi-unions and multi-employers, bargain the minimum standards for all employees in the sector or industry. Unlike Canada where all members pay dues if they are covered by the collective agreement, in Europe the opposite is true. In general union membership is completely voluntary and lack of it does not deny the employee the right to the benefits contained in the agreements negotiated by the unions. Unions were also given responsibility in several countries for administrating state-benefits to all employees.

In some countries, like France, the vast majority of workers work under union collective agreements (80 percent) but less than ten percent are actually members of a union. Union centrals in Europe often reflect the political and/or religious groups in the country.

There are ample examples of legislative forms of multi-employer collective bargaining to show that governments have, where it was deemed necessary, taken action. The precedent to legislatively structure collective bargaining, including different forms of certification and imposed multi-employer/union bargaining units has been well-established.
Conclusion

The rapid growth of low-wage, part-time, temporary, casual and generally precarious work is putting an increasing strain upon society as a whole. While the Federal Liberal Finance Minister Bill Morneau claims that we as citizens must simply adapt to this reality, it falls upon more ambitious leaders to imagine a better way. As union members and leaders, we know that part of the solution to precarious work is for ordinary workers to find the means of working together, to organize for our collective good. The legislative framework for workers to accomplish this, via the Wagner model, is not sufficient to the task of organizing many workplaces. This is inadequate. It is a constitutional right to organize and form a union, not just in traditional unionized workplaces that Wagner covers but in all workplaces. Just as the legislation on labour moved to accommodate traditional private sector workers and public sector workers, so must it now move to accommodate workers in sectors that are typically regarded as non-union. In Alberta we live in a moment of opportunity, a moment when real change is possible. Such change does not happen by itself. It requires a government willing to show significant leadership.

Endnotes

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