

▼ NEW DIRECTIONS



New Approaches in Achieving Compliance with Statutory Employment Standards

15

New Approaches in Achieving Compliance with Statutory Employment Standards

by

Patrice Dutil and Ron Saunders



Canadian Policy Research Networks Inc.

600 – 250 Albert Street, Ottawa, Ontario K1P 6M1

Tel: (613) 567-7500 Fax: (613) 567-7640

Web site: www.cprn.org



The Institute of Public Administration of Canada

1075 Bay Street, Suite 401

Toronto, Ontario M5N

Tel: (416) 924 8787 Fax: (416) 924 4992

Web site: www.ipac.ca

©L'Institut d'administration publique du Canada et le Réseau de recherche politique canadien, 2005

The Institute of Public Administration of Canada and the Canadian Research Policy Network, 2005

ALL RIGHTS RESERVED/TOUS DROITS RÉSERVÉS

The Institute of Public Administration of Canada

The Institute of Public Administration of Canada (IPAC) is the leading Canadian organization concerned with the theory and practice of public management. Its scope covers governance from the local to the global level. It is an association with active regional groups across the country. The Institute recognizes and fosters both official languages of Canada

IPAC/IAPC
1075, rue Bay Street
Suite/bureau 401
Toronto, Ontario M5S 2B1
Tel: (416) 924-8787
Fax: (416) 924-4992
e-mail/courriel: ntl@ipac.ca or ntl@iapc.ca
Internet www.ipac.ca or www.iapc.ca

L'Institut d'administration publique du Canada

L'Institut d'administration publique du Canada (IAPC) est la principale institution canadienne qui s'intéresse à la théorie et à la pratique de la gestion publique tant au niveau local qu'au niveau mondial. C'est une association composée de groupes régionaux actifs à travers tout le pays. L'Institut reconnaît et promeut les deux langues officielles du Canada.

ACKNOWLEDGEMENTS

This IPAC project was made possible by

Labour Program of Human Resources Development Canada
The Law Commission of Canada

La Commission des normes du travail du Québec
Ministry of Labour of British Columbia
Ministry of Labour of New Brunswick
Ministry of Labour of Nova Scotia
Ministry of Labour of Ontario
Ministry of Labour of Saskatchewan

And the members of IPAC

who are dedicated to excellence
in public administration

Thank you

Table of Contents

Foreword from CPRN	i
Foreword from IPAC	iii
Executive Summary	iv
Acknowledgements	viii
1. Introduction	1
2. The Context of Global Competition	5
3. Who Are the Vulnerable Workers?	7
4. Tools to Ensure Compliance	8
A. Promoting Awareness	8
B. Efforts to Respond to Inquiries and Resolve Claims	14
C. Detecting Violations	16
D. Financial Incentives/Penalties	19
5. Measuring Performance	21
6. Conclusion: A New Mix of Government Tools	23
Addendum: Codes of Good Practice and “Hot Cargo” Laws	28
Appendix 1: Questionnaire for Government Officials on Measures Used to Obtain Compliance with Statutory Employment Standards	31
Appendix 2: Interview Questions for Government Officials	33
Appendix 3: Interview Questions for Business Organizations	35
Appendix 4: Questions for Labour Groups and NGOs	36
References	37
Our Support	38
New Direction Series	40

Foreword from CPRN

History tells us that societies are slow to recognize the point when economic change requires a rethinking of policies and institutions. When workers flocked to cities to work in the factories of the industrial revolution, for example, governments did not observe the deterioration in health and well-being until they needed to recruit armies for a military campaign. This happened first in Bismarck's Germany and later in Great Britain, when the men who volunteered turned out to be undernourished and sickly. Suddenly, the cost to society of poor nutrition, bad housing, and inadequate public health services, such as clean water, air, and sanitation facilities became a national problem, and it brought about a revolutionary change in the way governments conceived their responsibilities.

Over the past 25 years, labour markets in North America and other industrial countries have been changing in response to important social and economic forces. The image of the family with one wage earner (typically male) working full-time in a permanent job with a single employer has been replaced by a mix of two-earner or single parent families, with many working part-time or in temporary employment, sometimes combining two jobs in order to make ends meet. Self-employment has become much more prevalent.

Over the same period, disparities in earnings from employment have widened. The well paid have experienced earnings gains, while market incomes at the low end of the spectrum have stagnated or even declined. These trends leave many Canadian workers in a vulnerable position, meaning that their participation in the labour market leaves their well-being at risk. A large part of the labour force finds it difficult to access work that provides a decent income and working conditions that meet societal norms.

This is the sixth in a series of seven CPRN papers mapping the nature of vulnerability in the labour market and exploring the policy implications. The next step will be to publish a synthesis of the key findings in the fall of 2005. The current report, prepared by Patrice Dutil of the Institute of Public Administration of Canada and CPRN's Ron Saunders, looks at how governments can improve compliance with laws that set out minimum standards of employment. A floor set of standards not only benefits vulnerable workers, but also provides a level-playing field for employers and may contribute to workplace productivity.

Finding ways to achieve compliance with limited resources is a challenge for governments across the country. Based on information and ideas gathered in interviews, questionnaires, a literature review, and a Roundtable discussion, this report identifies a mix of instruments that, with the investment of some new resources, has the potential to foster compliance with employment standards efficiently and effectively. The project has provided a valuable opportunity for collaboration between CPRN, with its interest in looking at how to improve the performance of labour markets and workplaces, and IPAC, with its interest in fostering effective public administration. It also provides valuable advice to administrators of employment standards in their search for more effective and efficient ways to ensure that employers are complying with the standards, and that workers are receiving the protections they deserve.

I would like to thank the Labour Program of Human Resources Development Canada, the Law Commission of Canada, the Commission des normes du travail du Québec, and the ministries of

labour in British Columbia, New Brunswick, Nova Scotia, Ontario, and Saskatchewan for their financial support for this project. I would also like to thank everyone who participated in the interviews and in the April 2005 Roundtable.

Judith Maxwell
President, CPRN

Foreword from IPAC

Over the past few years, the Institute of Public Administration of Canada has recognized the growing importance of regulation as an essential tool of the increasingly networked state. The rise of alternative service delivery options such as privatization, partnerships and special operating agencies and the correspondingly growing number of regulatory bodies – public, private and international – has articulated demands for a more sophisticated deployment of state regulation.

In recognition of the critical need to identify innovative regulatory solutions, IPAC established itself as a catalyst for dialogue on innovative regulation. Our first step in this direction was the hosting of our highly successful international “Red Tape to Smart Tape” conference in 2002 that attracted prominent participants from ten countries and four continents. We have followed up the success of that conference with other events and research activities, culminating in the creation of the IPAC SmartTape™ Centre for Innovative Regulation (www.smarttape.ca).

The current report, prepared by Ron Saunders of the Canadian Policy Research Networks and Patrice Dutil of IPAC, looks at how governments can fulfill their regulatory obligations in a manner that will improve the working lives of Canadians and also create a more transparent and effective role for government. The findings in this report point to the feasibility of building on successful practices across our country to construct a flexible, nimble regulatory system that will succeed in discouraging exploitation and in making creative and careful use of public administration.

I warmly welcome the opportunity to collaborate with the CPRN on this exciting project and join it in thanking the Labour Program of Human Resources Development Canada, the Law Commission of Canada, the Commission des normes du travail du Québec, and the ministries of labour in British Columbia, New Brunswick, Nova Scotia, Ontario, and Saskatchewan for their financial support for this project. I would also like to thank everyone who participated in the interviews and in the April 2005 Roundtable.

Joseph Galimberti
Executive Director, IPAC

Executive Summary

All Canadian jurisdictions have laws that specify minimum standards of employment. These standards include minimum wages, rules regarding overtime pay, the provision of paid vacations and public holidays, and job protection for employees who take maternity or parental leave. Without such laws, workers who lack power in the labour market may face terms and conditions of work below levels seen as acceptable by the public.

All the main social actors benefit from a set of minimum standards of employment. Workers' well-being is protected, and in turn employers find that workers who believe they are treated fairly are more productive: absenteeism and turnover rates are lower. A floor set of standards also provides a level playing field, so that fair employers cannot be undercut by those offering substandard terms of employment. Taxpayers are better off because of savings in social programs when workers who are paid adequately are less likely to turn to social assistance.

Of course, for workers, employers, and society to benefit from these laws, employers must comply with them. The challenge that public administrators face is to obtain compliance in an efficient and effective manner. Government officials cannot be in every workplace, so they necessarily develop strategies and tools to promote compliance within the resources available to them. Yet, workers' access to minimum employment standards depends upon the extent to which government bodies charged with administering these standards are successful in actively promoting and enforcing compliance.

Achieving compliance with employment standards has become more challenging in recent years. The vulnerable sector of the labour force – workers who have little bargaining power in the workplace – is large and growing. There are several reasons why low-paid, unrepresented workers have difficulty gaining protection from minimum employment standards. Some are unaware of their rights. Others are misled to believe that they are independent contractors, when in fact they are in an employment relationship. Still others may be concerned that an attempt to assert their rights could cost them their jobs.

This report takes stock of compliance practices across Canada, in several states in the US, in New Zealand, and in the United Kingdom. It identifies practices that are believed to be effective and efficient means of reducing the burden of unresolved claims and achieving compliance. The information was gathered through interviews with government officials, representatives of business and labour groups, and people in non-profit organizations working on the front-lines to assist vulnerable workers. Government officials also completed a questionnaire about current practices. A Roundtable among the Canadian participants in the interviews was held in Ottawa on April 15th to discuss a draft of this report.

The main results are summarized below.

Efforts to promote compliance with employment standards involve a number of stages of activity. They include:

- Promoting Awareness: Actively informing employers and employees of their rights and responsibilities
- Responding to inquiries and advising people about the claims process.
- Resolving claims: investigating, mediating/persuading, adjudicating.
- Identifying high-risk employers/sectors and conducting audits of workplaces.
- Deterring violations through appropriate penalties.
- Measuring compliance regularly.

Based on the information and ideas gathered in the interviews, the questionnaire replies, the literature reviewed, and the discussion at the Roundtable, we identify a mix of instruments that appear to be promising in their potential to foster compliance with employment standards efficiently and effectively.

Facilitating Awareness

There is a rich array of tools in use in the jurisdictions we studied to promote awareness with employment standards. These range from media campaigns to interactive websites to outreach seminars. This is an area where partnerships between government and other organizations (business, labour, NGOs) can serve both efficiency (making good use of limited resources) and effectiveness (reaching the target) objectives. Governments should consider national campaigns on key standards, tailored as necessary in each jurisdiction, but coordinated in terms of the general messages and the timing of the campaign.

Awareness measures can be targeted, both in terms of the audience and the message. The interviews suggest the importance of targeting new entrants to the labour market (youth in school, new immigrants, new employers) and employers in high-risk sectors. Broad media campaigns should focus on one critical issue at a time. For example, the issue of the definition of employer and employee is worthy of special attention.

The Complaints Process

Most jurisdictions in Canada seem to have had success in reducing the backlog of claims through such measures as call centres, self-help kits, and mediation. As noted above, processing inquiries and claims expeditiously is a valid objective, and these instruments are therefore useful parts of a government's toolkit.

However, as some NGOs pointed out, some of these tools – particularly self-help kits and mediation – can be overused. For example, for workers who do not have much power in their relationship with their employer, mediation can mean agreeing to settle for much less than what they are entitled to. In cases of small claims, a mediated outcome may still be better for all concerned than a long, drawn-out process leading to adjudication. But in cases where the monies at stake are sizeable from the point of view of the employee, mediation might not be the right instrument.

In addition, given the understandable reluctance of some employees to complain while they still have a job, it may be appropriate to allow complaints to be made anonymously.

Some jurisdictions have moved in this direction. However, there are practical limits to the utility of anonymous complaints. If it is a small workplace and/or the issue remains confined to one individual, it is difficult – in some cases, impossible – to protect anonymity as the case proceeds. Anonymity can be useful in a larger workplace where it triggers a broader investigation.

Detecting Violations/Active Audits/Measuring Compliance

At least in high-risk sectors, complaints ought to trigger a broader inspection of the workplace. There should also be follow-up audits of employers found to seriously violate the law, without waiting for new complaints.

Most importantly, there is a strong argument that governments should conduct random audits of workplaces in high-risk sectors. Many jurisdictions in Canada have done this to some extent in the past, but find it difficult to find the resources to sustain it. Certainly, government inspectors cannot be everywhere. But governments can and should at least identify the highest risk sectors, conduct random audits in those sectors, and publicize the fact that they are doing so.

Information about non-compliant employers should be shared, to the extent that privacy laws allow, among agencies regulating different aspects of the workplace, as non-compliance in one area increases the likelihood of non-compliance in other areas.

Penalties

Penalties for violations of employment standards are important for their deterrent value. While education and persuasion may be appropriate for minor offences (and an effective awareness campaign may avoid many minor offences), there should be real penalties for serious violations, even if the employer agrees to pay. Otherwise, the incentive will be for some employers to deliberately not comply, knowing that the worst that can happen is that they have to pay what was owed to begin with.

Several jurisdictions have recognized the potential deterrent value of publicizing the identity of serious offenders. All jurisdictions should make information about the rules on penalties readily and clearly available to employers and the public. The ability to hold corporate directors liable for employment standards violations also seems to be a necessary tool, to enhance the ability of governments to recover the funds owed to employees.

Training of Enforcement Staff

Training programs should be provided, especially for new enforcement officers or when new tools have been developed, to ensure that the instruments available to enforcement officials are consistently applied.

Measuring Compliance

The use of random audits, advocated above to enhance detection of violations of the law, would also allow governments to generate a measure of compliance with key standards that can be tracked over time. Surveys of employees can also provide useful information about compliance, but just measuring how quickly complaints are resolved or how many are voluntarily settled is clearly inadequate to assess the extent of compliance with the law.

Conclusion

A mix of tools holds promise for promoting compliance with employment standards, including:

- Partnering with business organizations, labour, school boards, and NGOs on awareness initiatives.
- Providing broad awareness campaigns on key standards, and targeted awareness initiatives focussed on high-risk sectors, youth, and recent immigrants.
- Allowing complaints to be made anonymously (as a potential trigger to a broad workplace investigation), and using mediation judiciously.
- Conducting broad workplace audits when complaints occur in high-risk sectors or in workplaces with a poor previous record of compliance.
- Sharing information about non-compliant workplaces across regulatory agencies.
- Conducting random audits in key sectors, and using the information generated to track compliance over time.
- Providing a range of tools to apply penalties, and ensuring that penalties are applied in the case of serious offences; and
- Training enforcement staff to ensure consistent procedures

Moving in these directions will likely require some temporary increase in resources, since more active measures (such as random audits in high-risk sectors) will uncover violations that had not been previously detected. However, partnerships on awareness initiatives can help keep costs down. Most importantly, once a culture of compliance is established, the rate of violations should decline, so that the additional resources may be needed only in the process of transition to a new context in which everyone understands what the standards are, and that they need to be taken seriously.

Acknowledgements

This Project was made possible by the support of:

- La Commission des normes du travail du Québec
- The Ontario Ministry of Labour
- The Nova Scotia Ministry of Labour
- The New Brunswick Department of Training and Employment Development
- The Saskatchewan Ministry of Labour
- The British Columbia Ministry of Labour
- Human Resources and Skills Development Canada
- The Law Commission of Canada

We would also like to thank everyone who participated in the interviews, questionnaire replies, and the Roundtable held in Ottawa on April 15, 2005, to discuss a draft of this report. These participants included: government officials in departments/ministries of labour or labour standards commissions throughout Canada; officials from business, labour, and other non-government organizations; and government officials in several labour departments outside Canada.

Thanks also to Nicholas Ignatieff, who advised on the overall approach to the research; Deborah Nixon, who helped with the design of the interview protocol and conducted most of the North American government interviews; Zsuzsanna Lonti, who conducted the interviews with officials in New Zealand; Michael McConkey of IPAC, who conducted background research; and Richard Brisbois of CPRN, who conducted some of the NGO interviews.

1. Introduction

All Canadian jurisdictions have laws that specify minimum standards of employment. These standards include minimum wages, rules regarding overtime pay, the provision of paid vacations and public holidays, and job protection for employees who take maternity or parental leave.^{1 2} They are designed to provide a floor for the terms of employment in each of these areas. Without such laws, some workers (those who lack power in the labour market) might face terms and conditions of work below levels seen as acceptable by the public.

All the main social actors benefit from a set of minimum standards of employment. Workers' well-being is protected, and in turn employers find that workers who believe they are treated fairly are more productive: absenteeism and turnover rates are lower. A floor set of standards also provides a level playing field, so that fair employers cannot be undercut by those offering substandard terms of employment. Taxpayers are better off because of savings in social programs when workers who are paid adequately are less likely to turn to social assistance.

Of course, for workers, employers, and society to benefit from these laws, employers must comply with them. The challenge that public administrators face is to obtain compliance in an efficient and effective manner. Government officials cannot be in every workplace, so they necessarily develop strategies and tools to promote compliance within the resources available to them.

Achieving compliance with employment standards has arguably become more challenging in recent years. There is evidence that the vulnerable sector of the labour force – workers who have little bargaining power in the workplace – is large and growing. There is clear evidence that non-standard work (i.e., work other than the full-time permanent job, such as part-time, temporary, and self-employed work) has been gradually but steadily increasing since the 1970s.³ There is also evidence that while some non-standard workers are very well paid, on average non-standard workers are paid less and have less access to employment benefits than other workers.⁴ Overall, a sizeable share of jobs in Canada are quite low-paid: in the year 2000, almost one quarter of all jobs and one-sixth of full-time jobs paid less than \$10 per hour (2001 dollars) (Morissette and Johnson, 2005; Morissette and Picot, 2005). The incidence of low pay is particularly high for young people, women, the less educated, and recent immigrants. In addition, unionization rates have been on the decline, especially in the private sector.

Low-paid, unrepresented workers may have difficulty in benefiting from minimum employment standards. Some are unaware of their rights. Others may have been misled to believe that they are independent contractors, when in fact they are in an employment relationship. Still others may be concerned that an attempt to assert their rights could cost them their jobs. For vulnerable workers who are in an employment relationship, access to minimum employment standards

¹ Canadian jurisdictions also have laws designed to provide a safe working environment that safeguards the health of all workers.

² These standards are under provincial jurisdiction with the exception of federally regulated companies. (About 10 percent of the workforce is under federal jurisdiction.)

³ See Betcherman and Lowe (1997) and Vosko, Cranford, and Zukewich (2003).

⁴ See, for example, Chaykowski (2005).

depends upon the extent to which government bodies charged with administering these standards are successful in actively promoting and enforcing compliance.

The environment for many employers has also become more challenging. The pressures of global competition, deregulation of product markets, and changes in technology mean that to “stay ahead of the pack” (and in some cases, to survive) employers have increasingly looked for ways to reduce costs and increase the flexibility of their operations. In the absence of a widespread culture of compliance with employment standards, some will be tempted to provide terms of employment below the legislated minima (even if there are long-run adverse effects on productivity).

Accordingly, public administrators across Canada face a common challenge: finding effective and efficient ways to obtain compliance with employment standards

For most labour departments and commissions, the main intervention in enforcing standards is to respond to individual inquiries and complaints (claims). The focus of attention is to avoid large backlogs of unresolved claims. The speed with which claims are resolved is important for all concerned, and there is no doubt that many governments have improved their response time. Most have established call centres and report that officers working in the field or on the phone are very successful in resolving disputes. (Nova Scotia reduced complaints by about 35 percent after requiring complaints in writing, instead of taking them over the phone; and by providing clearer messages from the call centre.)

All the same, many public servants, labour activists and business associations have observed that the system is not performing as it should. The practice of dealing with compliance one case at a time is expensive and risks overloading the available capacity. Moreover resolving claims quickly is not the same as achieving compliance, since vulnerable workers will often be reluctant to complain. Many agree that employment standards are not well enough understood, or not acted upon, because governments are seen as ineffective in dealing with abuses.

This report takes stock of practices across Canada, in several states in the US, in New Zealand, and in the United Kingdom. It identifies practices that have promise as effective and efficient means of reducing the burden of unresolved claims and achieving compliance.⁵ Our objective is to reflect on what practices might be adopted more generally to promote compliance with employment standards while making more effective, smarter use of the public service. Much of this report is necessarily impressionistic because the jurisdictions studied generally do not have hard data on the impact of their initiatives on compliance. However, based on the information we gathered, the interviews conducted, and our review of the literature, we conclude that governments have it within their means to support compliance with employment standards and discourage abuse so that individuals, fair employers, and society at large can benefit from the application of the law.

⁵ This project complements other research by both IPAC and CPRN. CPRN’s series on vulnerable workers includes the publications, *Defining Vulnerability in the Labour Market*, (Saunders, 2003), *Non-standard Work and Economic Vulnerability* (Chaykowski, 2005), and *Towards Enhancing the Employment Conditions of Vulnerable Workers: A Public Policy Perspective* (Vallée, 2005) as well as research in progress on low-paid workers. This report also takes advantage of the work of the IPAC SmartTape™ Centre on Regulatory Innovation (www.smarttape.ca) which is focusing on results-based regulation.

Canadian jurisdictions, it must be said, compare well with their counterparts internationally. Whether it be in the definition of their mandates, in their appreciation of the challenges they face or in their administrative responses, we found no more effective mechanisms elsewhere. Most countries in continental Europe rely on their highly unionized work environments to ensure that abusive employment practices are discouraged. The greater social consensus on employment conditions, of course, does not extend to everyone, and department officials in New Zealand, the US, and the UK⁶ were acutely aware of the same issues Canadian governments are dealing with in terms of ensuring compliance of employment standards for vulnerable workers.

Some new resources are likely required, at least transitionally, to ensure greater compliance with employment standards. This study concludes that there are strategies involving new mixes of current practices that could be activated to keep the costs of government compliance efforts under control while fostering a culture of compliance. The objective would be to suffocate the conditions for abuse, so that compliance improves, and the costs to government of administering the law are eventually reduced. Establishing a culture of compliance offers benefits for workers, employers, and governments, as described above.

A Note on Methodology

IPAC and CPRN recognize that various jurisdictions in Canada have already made efforts to improve compliance with employment standards legislation. Based on the wide range of practices, the analysis that follows examines the activity of obtaining compliance with employment standards in its key phases. The objective is to find the most effective tools, to examine how performance can be usefully measured, and ultimately how the resources of the public service can be used most effectively (given that it is highly unlikely that moneys will flow to this activity in a sustained, increasing basis).

This report takes account of initiatives currently under way in Canada, but also looks at practices and recent initiatives in other jurisdictions to identify creative approaches to obtaining compliance with employment standards in an efficient and effective manner.

The first step in the research was to conduct an exhaustive search of the empirically based literature the field of employment standards.

The second step consisted of interviews with government officials, representatives of business associations, labour and NGOs from across Canada and with government officials in several states in the United States, in the United Kingdom, and in New Zealand. (The government officials also filled in a written questionnaire.) Questions used in the interviews are appended to this report.

A roundtable discussion of a draft report took place in Ottawa on April 15, 2005. That discussion has informed the final report.

⁶ In the United Kingdom, responsibility for compliance with minimum conditions of work is divided between the Low Wage Commission, which monitors and upholds regulations pertaining to minimum wages, and the Department of Trade and Industry.

2. The Context of Global Competition

The regulation and administration of employment standards occurs in the context of a global economy in which capital and products flow more freely across national borders. Companies are able to operate in almost any part of the world. Product markets have become much more competitive in most industries, so that firms are under pressure to control costs more so than in the days of when competition was largely within national borders. They also have the capacity to move when they feel overregulated, and to establish complex supply chain networks, where parts of the final product may be produced overseas.

In the opening paragraph to his book *Labor Regulation in a Global Economy*, George Tsogas vividly describes the current situation facing public servants whose task is to regulate employment standards in the current economic context:

In the early nineteenth century, when David Ricardo conceived his trade theory of comparative advantage, a country's capital and technology were nearly as fixed as its land. Nowadays, with the exceptions of Antarctica and North Korea, any transnational corporation (TNC) can establish operations anywhere in [the] world. Production has a global character that transcends state boundaries. Advances in production systems, telecommunications, and transportation technology have made it possible to coordinate extremely complex manufacturing processes – from product design and investment financing to inventory management and marketing – in several countries simultaneously. The removal of trade barriers has further enhanced TNC's ability to shift plants, production, and investment across the globe, in an incessant drive for "competitiveness."⁷

These conditions have produced one of the most salient corporate features in the current phase of globalization: the corporation as networked supply chain. Writing in 2001, Virginia Haufler observed that General Motors, for example, has a network of over 30,000 suppliers, it manufactures in over 50 countries, and has over 260 major subsidiaries, joint venture partners, and affiliates. Nike doesn't even own any factories, but has a global web of contractors who produce the products that carry its famous logo.

The combination of reduced barriers to the flow of capital and the technological means to fully utilize such open markets have created the possibility for such corporations to establish these flexible networks of production, which enable them to maximize their advantages within local economies. This is why the few scholars who study labour regulation have insisted on the need to treat the issue from a global perspective. Most countries of the world simply cannot afford to lose the investment and jobs that could be entailed if corporations relocate their facilities in response to labour regulations that they believe will hinder their competitiveness.

However, as noted in the introduction to this report, the provision of a floor set of standards designed to ensure that people have decent pay and terms of employment, offers benefits to workers, employers, and society at large. There may be debates over the specific elements of these standards, but that is outside the scope of this paper. Our focus here is on how best to

⁷ Tsogas (2001, p. 3).

administer the standards that exist, so that there is a level playing field with respect to the minimum conditions of employment, and that vulnerable workers are protected.

3. Who Are the Vulnerable Workers?

As noted in the introduction to this paper, achieving compliance with employment standards is particularly important for employees who have little power in the labour market. Low pay and lack of representation are among the indicators of vulnerability. Vulnerable workers need the active protection of the law in order to secure decent pay and working conditions.⁸ They (and more importantly, their employers) need to be made aware of their rights.

Who are the people hurt by employers violating employment standards?

A Quebec non-profit organisation (NGO) described them thus:

They are the isolated and the fearful: those who are afraid of complaining. They are the excluded. We also note that it is those groups who do not work regular weeks who are the most vulnerable. People who work in agriculture, fisheries or fish-treatment, and caregivers are at the top of the lists. These are people who are difficult to reach. We don't see caregivers, as they work in private homes. We are simply too small to visit and meet vulnerable workers who live in rural areas or on distant shores. I would also mention the illegals (the "*sans-papiers*"). Employers know these people can be abused. It seems that it is the workers who work in the margins, or who work in areas where government is not evidently present, who are the most vulnerable.

An Ontario NGO pointed out that the "highest ratios of complaints in employment are in agriculture. They're in accommodation and food services. They're in retail/wholesale trade. They're in construction and in trucking. Some are in management and administrative support services. They're likely to be between 14 and 24 years of age with, with less than high school completion. They're likely to be working for a small business with less than 20 employees. They're likely to be part-time, non-permanent, with less than five years of job tenure. They're likely to be earning less than \$9.00 per hour."

Governments need to ensure that compliance measures are sufficient to ensure that vulnerable workers draw the tangible benefits of the rights which employment standards legislation provides them.

⁸ For a conceptual discussion of vulnerability in the labour market, see Saunders (2003).

4. Tools to Ensure Compliance with Regulatory Standards: Current Practices

Efforts to promote compliance with employment standards involve a number of stages of activity. They include:

- A. Promoting awareness: Actively informing employers and employees of their rights and responsibilities
- B. Efforts to respond to inquiries and resolve claims
- C. Detecting violations
- D. Financial incentives/penalties

In this section, we look at the array of current practices in each of these areas.

A. Promoting Awareness

i. Reaching Employers and New Entrants

Many people who participated in the interviews and in the Roundtable suggested that awareness initiatives (and compliance measures more generally) should be targeted to employers, since it is employers who are responsible for ensuring that the terms and conditions of employment meet the minimum standards in the law.

For example, a BC government official observed: “the key way to public understanding of employment standards is through employers. If they’re all abiding then it’s less important that employees know their rights if they’re not being violated.” While BC does provide education sessions for employees, they recognize that the onus is on employers to comply with the standards, not on the employee to request their basic entitlements.

Compliance starts with an awareness of what is acceptable behaviour. Employers have a responsibility to know the law and comply with it, but the standards can be complicated and/or confusing. Most people interviewed agreed that there are problems in awareness of the standards among both employers and employees. A Quebec NGO official observed of both groups: “Many are confused by the mix of laws; not sure of what they are, or of which government is responsible to deliver it.”

One business association representative observed: “People are looking at this legislation, and are concluding that they cannot apply these things. Government has to do a better job of explaining what it wants.” In particular, as several interviewees pointed out, this also means clearly explaining *changes* in legislation.

Regulations that are tailored to particular industries may add to the challenge of ensuring awareness of the standards. According to a BC official, rules have become “sector specific, so we have cases of a lot of individual regulations. We’ve got them for oil and gas, we’ve got them for logging, and we’ve got them for agriculture.”

As one business association representative noted: “We see regulatory systems that make it difficult for everybody, but people still avoid laws. Design regulation that allows the vast majority of employers to comply, and use your resources to focus on the genuinely bad employers.”

Moreover, there is a concern that government messages about standards are too often confused, too general, or not targeted sufficiently. A business association representative said: “There is an awareness of the principles. Many people think it is straightforward, but it has become more complex, so some people are not as aware as they think they are.”

A public servant in Oregon emphasized the lack of employer awareness of standards and the persuasive effect of government when violations are found: “We always enter into a dialogue with employers to determine whether or not a violation has actually occurred, and most employers will cooperate with us and come into compliance. It’s our experience that employers generally are willing to comply with the laws: a lot of time they just aren’t aware of them.”

There seems to be a consensus that dedicated human resource staff in larger companies are well aware of standards. However, there is concern that field-level managers are not always consistent in their application of company-mandated standards. Moreover, there is also a consensus that there are compliance problems among small businesses.

As one business association executive observed: “At the level of the large and mid-size companies their personnel departments - HR departments would be aware of the law and its requirements. When you get to the senior executive level CEO, COO, they probably don’t know a thing about it. They delegated it off – it is not a concern. Where the concern is, I think, is when you get to the operational level at the individual shop-floor level and again even in large organizations, I suspect you would find that many of the store managers do not know what the requirements are.”

Awareness is also an issue for newcomers to the labour market, be they young people taking up their first jobs, or people who are new to Canada, or new employers. Some provinces have made an effort to provide new employers with information about employment standards at the time they register their new businesses.

ii. Tools to Improve Awareness

What are the instruments that governments use to promote awareness of employment? Governments have made laudable attempts to “connect” with both employers and employees either directly, through media campaigns and by working through community groups. Information can be either broadcast (designed to reach the general public) or targeted to particular audiences (such as employers, new entrants, or particular sectors), or even tailored to a particular employer (“you need to know that your current practices are not in compliance; here is what you need to do...”).

Broadcast Messages

Broadcast messages can be a useful vehicle to disseminate information. Information on employment standards is already provided through posters; advertising in newspapers, radio, or television; flyers; billboards; and websites. Many participants at the roundtable in Ottawa argued that only “broadcasting” could change the culture so that abuses are widely seen as unacceptable.

As a former BC official noted: “On the employee side, advertising is the simple answer.” A business association executive had this to say: “I suspect that communication in some form to employees probably through a mass communication reminding them that if they have concerns they have an avenue to make complaints. I don’t know that it will lead to better use of their compliance tools. What it will do probably is increase the awareness of employee population and inform the employee so he will ask a few more questions when going to a new job.”

A number of stakeholders suggested that broadcast messages can have a sizeable impact when they are focused on a particular aspect of the law. An Ontario NGO said, “I always thought that spending some of the money on ads in buses and subways, even just capturing one single issue, was a really good way of reaching people that was not dependent on employer cooperation.”

Roundtable participants suggested that a key issue that could usefully be the focus of a broadcast media campaign is the definition of employee and employer, since this is critical to understanding who is covered by the law. For example, telling someone that they are an independent contractor does not necessarily mean they are no longer “employees” for the purposes of employment standards legislation: there are tests used to determine the real nature of the relationship. Similarly, in some cases, the use of an agency for temporary workers may mean the agency is the employer, but there are situations where the contracting firm may be found to be the employer. It is important that governments be clear about the definitions of employee and employer under the law, and that efforts be made to ensure that these definitions are widely understood.

Another area where clear, public messaging is important (and where some jurisdictions have been active) is that of public holidays, such as Canada Day and St. Jean Baptiste Day. A business association executive noted that the endless confusions over holidays, in particular holiday substitutions and holiday pay, could easily be resolved if governments gave a clear, broadcasted message of what the regulations were.

There was scepticism among those interviewed about the use of posters. A business association representative noted, “posters work, but only in a limited way. Some things just can’t be bullet-pointed.” A Quebec NGO officer agreed: Good employers will happily put up the poster. The ones that flout the law will not do it.

Targeted Information

In Alberta, Ontario, and Quebec, as in a number of other jurisdictions, a range of workshops, seminars, comprehensive website, and various publications have been produced to provide information about employment standards to various target audiences.

There has been particular emphasis on reaching employers, especially in sectors where there are indications of a relatively high-risk of non-compliance. As a Nova Scotia official observed, “we

haven't got the resources to create awareness in the full employee population, for instance. So we try to target...employer groups.”

Staff in the Quebec commission indicated that information is routinely sent out to employers about their responsibilities: “We meet them personally to ensure that they know their rights and responsibilities. We will publish material in their newsletters and organize workshops at their conferences.”

The State of Connecticut focused a few years ago on automobile dealerships. They worked with the association and conducted numerous seminars to bring down the number of complaints. They also put together a guidebook just for auto dealers.

Saskatchewan undertook a joint project with the Canadian Restaurant and Foodservices Association (CRFA) to raise awareness. The Quebec Labour Standards Commission (QLSC) focused information efforts on the provincial restaurant association and with bar operators to increase compliance. It has targeted one group even more closely, new employers in the garment industry. Working collaboratively with Ministries in the provincial government, the QLSC is alerted to new businesses being created and works to make representations as quickly as possible. The State of Oregon has also focused on the restaurant industry, providing tailored materials and seminars. Interestingly, the State official indicated: “It's usually frankly at their request rather than something we initiate.” Target industries are not necessarily those with high levels of complaints/claims. In Connecticut, for example, public servants noted that they did not receive many complaints from vulnerable (or indeed, illegal) workers in industries regarded as high-risk.

Many jurisdictions are keenly aware that agricultural workers are particularly vulnerable to abuses, but will not complain out of fear, or out of ignorance of accepted practices. A trade union observer said: “It's an immigrant community where the farm labour contractors are also East Indians; there is a kind of a code of silence within the community, which is very hard to break through.” As a BC government official noted, the vulnerability of these workers (arising from a fear of losing employment and more transient workforce, among other factors) makes them reluctant to complain. The same was true on the opposite coast. Governments are aware of the difficulty. As one Nova Scotia government official noted: “it's usually the very disadvantaged and the very vulnerable, those who need the service the most, who we sense are not always coming forward.”

In June 2002, the Quebec Labour Standards Commission began a campaign with the Fruit and Vegetable Distributors – organisations that tend to employ individuals who may not be aware of lawful practices. At the same time, the QLSC paid particular attention to agricultural workers, focusing especially on berry pickers. This was the result of amendments made to the provincial standards act.

In British Columbia, the government worked with the agricultural association to gain access to employers who were limiting visits to sites. “We have enlisted them in carrying that message back out to their members.” As another observer put it: “It's sort of peer pressure kind of stuff.” Indeed, the Province of British Columbia has actually signed memoranda of understanding with many associations to work cohesively on employment standards practices. As the BC staff said: “We're hoping that they are going to assist us in bringing forth the message to their own

members. We still do the actual enforcement work but we do joint education sessions with associations.”

Business associations can play a creative role in partnering with governments to deliver targeted messages. One business association representative observed that “We are trying to provide more information through our website. I think the advent of the Internet has helped some businesses to get to know about standards but they get to face them only when they are confronted with an issue. It is not something the typical small business would go and look for as a diligent thing to do.”

Governments and employment standards observers are aware that small businesses constitute an especially difficult target to reach, yet are likely to be the gravest offenders of the laws. As an NGO representative observed, “we see a history of small businesses knowing that they violate the law and saying: ‘Well we’re just three or four people, five or six people – this is the way for us to continue to do our business and being able to pay the rent.’”

To better assist small businesses to comply with the legislation, the New Zealand Ministry of Economic Development created a small business advisory group to respond to concerns about understanding employment obligations.

New entrants to the labour market, such as young people leaving school or recent immigrants are also sometimes targeted in efforts to improve awareness of employment standards. One Ontario NGO official noted that more work could be done to produce documents in key languages. “Community as well as ethnic newspapers are often desperate for material [in this area]”, it was observed. A Quebec NGO official was able to analyze the ethnic circumstances even more narrowly: their experience showed, for instance, that Latin-American workers are more likely to know their rights, while East-Asian groups were far less likely aware.

Another focus of targeted information should be immigrant employers. As NGO representatives indicated: “Many small companies are run by people from all over the world who have immigrated to Canada too, and sometimes there’s a real lack of awareness of what their obligations are as an employer.”

In Ontario, collaboration on awareness initiatives with business, labour, and non-governmental organizations working with vulnerable workers has been a key strategy. Ministry staff have contacted over one hundred stakeholder groups, including large employer associations, labour associations, legal clinics, and community groups, with the focus on “outreach and awareness.”

iii. Measuring Awareness

Quebec has alone made efforts to get a sense of whether employers know about new standards. For example, after it announced standards for psychological harassment, it launched a media campaign. To evaluate the effectiveness of the media campaign, it then commissioned an opinion poll asking Quebecers if they were aware of the new standards. “We got the message that they were aware of them.”

iv. Thoughts, Options, and Tools to Move Forward on Building Awareness

Observers are unanimous in considering the provision of information as an important tool that can raise awareness and encourage compliance. Some specific ideas that emerged from the interviews and Roundtable discussion are as follows.

Targeted Messages

- There is a broad consensus that targeting vulnerable groups of workers and particular industries with a message can also be valuable, as can messages geared to new entrants (youth and recent immigrants).
- The monthly PST statement of account and the provision of information on employment standards to accountants could be new vehicles for reaching employers with information.
- Staff at the Quebec Labour Standards Commission suggested a new audience for employment standards outreach initiatives: accountants. They sometimes provide payroll services to small business, and could be used to convey to clients issues regarding compliance with employment standards that are evident in payroll records.
- Partnering with school boards, unions, employer associations, and NGOs can be useful to governments, both as a way of using resources efficiently and, through the tailoring of messages by these organizations for their clients, reaching target groups more effectively.
- New information technologies should be explored. The Federal government's Biz-Pal initiative, for example, aims to make available to Canadian firms an interactive website that will guide them to the necessary permits, licenses, laws and by-laws that they must be aware of in order to conduct business. The inclusion of employment standards in such a mechanism could serve to promote compliance with these standards.

Broadcast Messages

- Broadcast messages that are focused on a single issue are seen as having an important impact. A sustained broadcasting campaign, co-sponsored by governments, industry and labour, could be highly effective in discouraging abuses. These could be focused on such issues as the definition of employee/employer, public holidays, overtime pay, etc.
- Use of community newspapers may be effective in reaching vulnerable workers.
- Use of advertising in the Yellow Pages, where employers and employees consistently turn to find information, could be considered.
- Messages regarding employment standards should be posted in all government offices providing employment services and both private and public job-search websites.
- More attention could be paid to ensuring that broadcast messages are followed up with awareness efforts focused on high-risk groups or industries.
- Efforts in broadcasting should be measured for effectiveness, and results shared among governments in Canada.

It should be noted that success through awareness campaigns is linked to other aspects of the overall compliance strategy. For example, if employers are to take messages about compliance seriously, they need to perceive that there are penalties for serious violations, an issue that is discussed in a later section of this report. Also, to the extent that information campaigns enhance awareness, they are likely to lead to an increase in inquiries and complaints, until a culture of compliance is established. As one government official noted: “We do some awareness raising and we will do a whole lot more of it as we develop our own compliance strategy, but in the meantime, we have to respond to complaints.” This suggests that there needs to be a willingness to invest in new, though potentially transitional, resources in the course of establishing a culture of compliance. (There is more discussion of that below, too.)

B. Efforts to Respond to Inquiries and Resolve Claims

At the heart of the administration of employment standards in Canada are the processes to respond to inquiries about alleged violations and to resolve claims, one at a time. Although, as we have noted, resolving claims efficiently and effectively is not the same as achieving compliance, it remains an important objective.

One business association director observed: “Most employees are pretty sophisticated about their rights in this day and age. If they have a problem, many of them will complain, which is why the government has such a backlog.” However, data indicate that most complaints come only when the complainant is no longer employed by the employer, presumably because of concern about the risk of job loss.

The focus on the individual complaint is time-consuming and expensive. It involves tailoring advice (and, sometimes, persuasion) one-on-one with an allegedly wronged employee or an employer, and following up with adjudicative processes where necessary.

By and large, Ministries of Labour or Labour Standards Commissions are structured so as to deal with individuals. There are a number of mechanisms designed to help resolve issues raised.

i. Call Centres

Employees who believe they may not be receiving their entitlements may call a centre and receive information on their rights and possibly receive advice on how to proceed in making a complaint. This is not without problems. As an NGO staffer has observed: “We’ve had some awfully bad experience from people calling the Labour Board where the people answer ... or the Ministry of Labour, people answering are not really equipped to deal with sometimes the kind of questions they’re getting.” However, most government officials report that such services are working well. For example, a Quebec Labour Standards Commission staffer noted that: “We must give a high priority to the Information Services. It is the main door to the QLSC for both employers and employees for questions or to lodge a grievance. In the case of an uncomplicated complaint and as the situation permits, the Commission will try to strike a quick resolution by appealing to the employer directly within 48 hours. This intervention is made by front line staff – typically the same staff that responds to inquiries. Of the 17,034 complaints recorded by the QLSC in 2003-04, 1,244 were managed by front-line staff. The overwhelming proportion (14,280) required an investigation.”

ii. Self-Help Kits

Employees may also be provided with a self-help kit that gives them tools to resolve the issue with their employer, and government officials report that this tool has helped resolve many issues efficiently.

iii. Follow-up by an Enforcement Officer

Sometimes, employees will need to follow-up with an employment standards enforcement official, who may contact the employer and notify it of the alleged infraction, and attempt to resolve the difference through mediation or persuasion. The mediation process can pose some difficult issues, since there are risks that employees may feel pressured into accepting less than what they are owed. This issue is discussed further in a later section of this draft report.

In New Zealand, in the words of a public servant: “If it is established that money is owed to the employee, the inspector will then write a letter to the employer inviting them to pay the arrears or tell the inspector why they do not agree with the finding. The inspector will then look at how to proceed from there. Ninety-five per cent of the time an inspector will not need to use any of the enforcement tools to obtain compliance.”

In British Columbia, it is estimated that about 75 percent of complaints are resolved at the education or mediation stage.

However, it is important to recall that many workers who are covered by employment standards laws are unlikely to complain about an employer’s failure to adhere to these laws. This is particularly the case for workers who are low paid and lack representation.

People who are union members typically have access to a grievance procedure that allows them to bring forward concerns about failure to comply with the collective agreement without as much fear of reprisal. However, unionization rates in the private sector have been on the decline, so the role of government officials in protecting vulnerable workers has become all the more important.

There are also efficiency concerns related to a complaint-based model, as most claims arise only after the employment relationship has ended (because, as noted above, of the worker’s reluctance to jeopardize an existing job). This leaves investigators with the time-consuming and cumbersome task of seeking facts about events that may have taken place months earlier.⁹ In the next sections of this report, we discuss active measures designed to improve compliance over time and (eventually) reduce the need to respond to complaints.

iv. Thoughts, Options and Tools to Move Forward on Resolving Claims

- Call centres are useful and as a front-line mechanism for providing information to individuals and responding to concerns.

⁹ Typically, this phenomenon is limited by rules that specify a maximum time after the non-compliance event for filing a complaint. This mitigates the problem of investigation well after the fact, but also denies protection to some vulnerable workers who need it.

- Some jurisdictions accept anonymous complaints. However, anonymity can only be protected in larger workplaces and where any resulting investigation extends beyond the individual complainant.
- Mediation can be over-used. If the monies owed to the employee are sizeable, a mediated settlement might not be appropriate.

C. Detecting Violations

A fundamental problem in compliance with labour standards is how to detect violations when many employees are reluctant to complain. (This also connects to issues in measuring compliance.) One approach is to audit employer records without waiting for a complaint. Government officials cannot be in every workplace, so this approach requires a strategy that maximizes the effect with a limited amount of resources.

i. Workplace Audits

People interviewed reported two types of audit strategies, not mutually exclusive. One is still triggered by the complaints process, but involves going beyond the individual complainant or the specific violation alleged. In Saskatchewan, for example, if there is clear evidence of abuse or non-compliance, workplace audits will take place not only to deal with the complaint, but to detect a wider range of infractions. Similarly, in Quebec, the Commission has adopted an “*approche entreprise*” program whereby one pecuniary complaint will trigger a broad review of the employer. Based on the employer’s history and its degree of cooperation, actions can range from an advisory to a full audit of the business.

Alberta audits past offenders without waiting for a new complaint. Staff complete one-on-one site visits of particular employers who are targeted because of their past complaint record, and level of cooperativeness. But there are limits to the capacity. Each year, between 300 and 700 employers will be scrutinized based, on a two-year track record and a calculation of the yearly average number of complaints. These employers are then tracked for one year following the inspection, after which a report is compiled to assess the effectiveness of the initiative. In Ontario high-risk employers are identified using complaint rates, and site visits are organized.

In Connecticut, a monthly report is issued that reveals if there has been an increase in complaints or violations in any given industry. “We will try to focus some education efforts in that area or also do some additional enforcement.” Officials indicated that the State conducts close to 5,000 limited audits and another 1,000 to 2,000 full audits. They found that only a few are completely in compliance with all the various statutes and regulations.

ii. Random Audits

A second strategy involves identifying high-risk sectors and undertaking random audits of workplaces in these sectors. Risks can be identified partly on the basis of past claim intensity. However, targeting based on complaint (claims) data is arguably inadequate, since we have seen that complaints may be a poor indicator of compliance issues, given the understandable reluctance of many workers to complain. Targeting should also consider indicators of where workers are likely to be vulnerable. Indicators of vulnerability that can be used include low pay rates, lack of

representation, and/or a high percentage of the workforce that are young people or recent immigrants.

Random audits can serve a dual purpose. If coupled with significant penalties for serious violations, they become a signal to employers about the importance of compliance – that violators can be caught and penalized even if employees do not complain. They also provide a measure of compliance with the standards that can be tracked over time. (Doing this for all standards may be too costly, but there is a strong case for at least identifying key standards, and checking and tracking compliance with them using random audits in high-risk sectors.)

An Ontario official described their new risk assessment process: “This new approach makes use of information such as claims history data, repeat offenders, input from stakeholders and the experience of program staff.” An inspection protocol was developed and over 2,300 inspections were conducted in targeted industries (retail, business management, restaurant and tavern, and the garment sector for 2004-5). Of these inspections, 200 random inspections were undertaken in the restaurant sector to establish a compliance benchmark in this sector. Ontario plans to undertake repeat random inspections each year to measure the impact of enforcement and awareness measures in improving compliance in a targeted industry.

Oregon also does random auditing of records and surprise visits to determine to what extent employers are in compliance. In British Columbia, inspectors have focused on agriculture and done site inspections and audits. (BC has also mandated direct deposit of wages of this sector to help ensure that wages are properly paid.)

iii. Identifying High-risk Employers

The problem of recidivism is important. The Quebec Labour Standards Commission examined its files in 2003 and concluded that approximately 175 (out of an estimated 244,000) employers were recidivist. They concluded that these employers consume 25 percent of the Commission’s budget. As one staffer put it, “they do know the standards, but they flaunt it.”

Part of the first strategy mentioned above (using complaints to trigger broader or follow-up audits) can involve sharing of information across different departments of government that are involved in regulating the workplace, in order to help identify high-risk workplaces.

NGO officials that we interviewed point out that there could be an advantage in collaboration among ministries and departments which are involved in enforcing different standards in the workplace. In other words, whether it’s for employment standards or occupational health and safety or other provincial legislation, or even municipal building permit inspection, if there is any serious evidence of non-compliance on a regulatory standard, that information ought to be shared with other bodies charged with the enforcement of regulatory standards.

The QLSC created an excellent partnership with the Ministry for Citizen Relations (MRCI) especially on the subject of domestics. They also have a good relationship with the MRQ, the Quebec Ministry of Revenue. There is an agreement to exchange general information on all employers in the province.

The Quebec Commission also piloted a few regional initiatives in the Estrie and Outaouais regions where Emploi-Quebec, the Quebec Employment Standards Commission, and the Ministry of Revenue exchanged general information on employers.

Government officials in other jurisdictions have also expressed interest in moving in this direction. However, some noted that privacy laws can make such information sharing difficult.

iv. Thoughts, Options and Tools to move Forward on Detecting Illegal Behaviour

Conducting Workplace Audits in Response to a Complaint

Conducting broad workplace audits in response to complaints can be important in detecting the full scope of violations. This can be expensive, but ought to at least be considered when complaints occur in high-risk sectors, since the probability of wider violations may be high.

Random Audits

Random audits in high-risk sectors can contribute to detection and deterrence in a cost effective manner. If it becomes known that employers in these sectors are being audited, and violators penalized, this can help establish a culture of compliance.

Multi-inspectorate Inspections

This tool has not been extensively used in enforcing compliance with employment standards. It involves inspection collaboratively undertaken by a range of inspectorates. There are two forms to such practices. The first form is that of formal cooperation between inspectorates, where each equally owns the inspection. This form entails new manuals and procedures to which everyone involved in the inspection process subscribes. In such a case, all partners sign the final report.

Secondly, there is an informal cooperation, entailing a hosted, multi-inspectorate approach, where one inspectorate carries out its usual inspection while inviting collaboration from other inspectorates. In such a case, all partners operate by the host's inspection procedures, and the final report acknowledges the contribution of the visiting inspectorates though the host authorizes it.

Such practices provide more comprehensive inspections, as well as more precisely tailored ones. Multi-inspectorate approaches also may provide beneficial learning opportunities for the inspectorates, from the close working with their partners. However, the advantages and benefits of multi-inspection can be lost when inspectorates are operating with conflicting performance criteria (Mordant, 2000).

D. Financial Incentives/Penalties

Governments often use financial incentives to affect behaviour. These can be 'positive incentives', such as grants or tax benefits to foster desired behaviour. They can also include financial penalties for behaviour that violates legal standards.

i. Incentives

Positive incentives are not a widely used practice in the area of employment standards in Canada. Possibilities here include grants to support awareness efforts. For example, New Zealand created a fund for such initiatives that has been oversubscribed every year. Another possibility would be to provide, in cooperation with industry and labour, some form of recognition to employers who consistently meet (or exceed) all standards.

ii. Penalties

More common is the use of penalties, which can involve administrative fees, monetary penalties assessed by employment standards enforcement officials, tickets, or prosecutions leading to potentially large fines or imprisonment. However, the practice in Canada seems complex and not well communicated. A survey of websites in Canada shows that information about fines and penalties is sketchy at best. Information provided in response to our questionnaires indicated that there is a wide range of fine levels in place across Canadian jurisdictions. For example, in some provinces, conviction of an offence leads to a maximum penalty of a few thousand dollars. In at least one jurisdiction, it can lead to a fine for an individual of up to \$50,000 (and/or up to 12 months in jail) or a fine for a corporation of up to \$100,000 for a first offence.

Of most concern is that penalties seem to be rarely imposed. If the employer complies voluntarily, or the matter is resolved through mediation, there is no levy. Where a penalty *is* imposed, it is often very small.

Some of the people we interviewed observed that there is no real cost on the employer for breaking the law. One noted that fines “didn’t have a significant consequence, and for some, it was simply a cost of doing business ... it’s far cheaper to pay \$150 than it is to comply; by not paying wages, businesses can save a lot of money.” According to a provincial official, “there is no evidence to suggest that current penalties are a deterrent.”

If a violation just leads to the employer having to pay what was owed all along (or a small additional penalty), one might argue that there is a financial incentive not to comply, since non-compliance might never be detected, and, if it is, the consequences for the employer are likely to be minor.

A Quebec NGO argued that “the fines should be raised dramatically, and the money should be invested in the employment commission. It’s fair, and it makes the people who are guilty pay for the extra expenses. A higher fine is more likely to raise compliance.”

Some jurisdictions have recognized that it is useful to have multiple tools for imposing penalties, escalating with the severity of the infraction. Ontario has a toolkit that includes an administrative fee of 10 percent when an order to pay is issued, notices of contravention that bring penalties of up to \$1,000 per employee affected, \$300 tickets for certain violations such as failure to keep records, and prosecutions that allow for penalties for corporations of up to \$100,000 for a first conviction (and the possibility of \$50,000 fines and/or imprisonment for individuals convicted under the legislation). Ontario indicated that prosecutions are now being used more than in the past. Since July 2004, with the implementation of the revised prosecution policy, there have been over 220 prosecutions commenced, compared to only 18 prosecutions in the past five years.

Obtaining compliance with an order to pay wages owed (plus any administrative fee or penalty) can itself be difficult. The rate of recovery from employers of wages owed varies markedly across jurisdictions. Some Roundtable participants spoke of employers who go out of business with wages unpaid, only to reappear shortly thereafter under a different company name. Some jurisdictions have the ability to hold corporate directors liable for employment standards violations when an employer defaults on a compliance order. This seems to be a necessary tool. In Oregon, a provision exists whereby the department of labour can get a court order requiring misbehaving employers to post a bond that will cover six months of wages. A failure to provide the bond will empower the state to deny the business the right of employment.

iii. Publicizing the Identities of Serious Offenders

Some jurisdictions have adopted **regulatory disclosure** provisions and publish information about major offenders as part of their effort to deter non-compliance. In Connecticut, for example, the government will issue a press release in major cases (even if there was no prosecution). Alberta makes information public about employers convicted of offences under its *Employment Standards Code*. Ontario has recently enacted a provision allowing the publication of information about employers who are convicted of an offence under its legislation.

In Oregon, if an employer has intentionally failed to comply with the law, the State can publish that employer's name on a list of employers disqualified from receiving a public contract for up to three years.

iv. Thoughts, Options and Tools to Move Forward on Incentives and Penalties

- Penalties need to be imposed for serious violations of employment standards.
- Governments should be making information about penalties, including fine levels, readily and clearly available. Governments should also commit to a process of sharing information on incentives and penalties with each other on a regular basis.
- Governments should commit to a process of regularly revising fines, tickets, and penalties. Many are adopting an approach that involves higher fine levels for repeat offenders.
- Efforts should be made to measure the effectiveness of incentives/penalties.

5. Measuring Performance

How is the performance of government in administering employment standards measured? As noted earlier in this report, the focus tends to be on the complaints process: how many claims are avoided through information or mediation, and how quickly claims are resolved.

For example, the federal Labour Program is currently creating a Performance Indicator to measure the percentages of voluntary compliance with complaints found to be justified.

BC measures complaint volumes and the number of complaints that resulted in a determination finding a violation.

In Alberta, the proposed performance measure for 2005/06 will be the percentage of employers whose employment practices did not result in complaints being registered with Employment Standards. In 2003-04, the measure of compliance was the number of complaints filed as a percentage of Alberta's eligible workforce.

In Nova Scotia, inputs and outputs are measured: numbers of complaints, inquiries, awareness sessions and turn-around times are tracked.

Ontario's performance measures include resolving complaints expeditiously. They want to see decisions rendered on 80 percent of claims within 90 business days of their receipt, excluding bankruptcies and insolvencies.

Oregon has adopted performance measurements based on how long it takes to process certain types of claims and investigations. Oregon tracks the amounts of wages collected and the numbers of violations that have been determined.

However, there is a danger in measures that focus on the complaints process or that measure what is easily measurable. As one provincial public servant indicated, the numbers of complaints are not an indication of compliance overall. They more accurately reflect awareness of, and access to, a dispute resolution service. NGO officials we interviewed suggested that a large percentage of employers are not in full compliance with the standards. NGOs also pointed out dangers in the mediation process: vulnerable workers may be pressured into "making a deal" rather insisting on full payment of what is owed to them.

Ontario is moving towards measuring compliance rather than just the efficiency of the claims process. A compliance benchmark will be established for a targeted sector (e.g., restaurants and taverns) based on the results of the random workplace audits conducted in that sector.

Quebec has also made an effort to measure compliance outcomes. The Employment Standards Commission hired a polling firm to conduct a poll among 4,000 non-unionized individuals in the fall of 2004 who would be protected by the employment standards. They asked the respondents basic questions about wages, hours of work, overtime, holidays etc and asked them how they had been treated. Based on the survey results, staff at the Commission was able to determine whether there had been infractions.

The federal Labour Program is working with Statistics Canada to develop an extensive survey of federal jurisdiction employers to get a sense of their business practices.

Some jurisdictions also measure “customer service”, which is challenging in the context of a service that is, in large part, about enforcing the law. New Brunswick provides a public service guarantee. They conduct a survey with the employers and employees they have been in contact with during the previous quarter and ask them about their satisfaction with the processing of the complaint. The Quebec Commission has also issued a “Déclaration de service aux citoyens” every year since 2002.

i. Thoughts, Options and Tools to Move Forward on Measuring Performance

- Governments should work together to create an ongoing program of evaluation and research in employment standards. In-house researchers, economists and policy advisors could devise research projects to be conducted on their behalf by external researchers. Projects could look at areas that would identify good practice, assess the impact of particular policies or regulations, or examine emerging trends.
- The research should be disseminated as widely as possible so as to foster a community of researchers.

6. Conclusion: A New Mix of Government Tools

In this section, we reflect on the information and ideas gathered in the interviews, the questionnaire replies, the literature reviewed, and the discussion at the Roundtable to identify a mix of instruments that appear to be promising in their potential to foster compliance with employment standards efficiently and effectively.

Facilitating Awareness

There is a rich array of tools in use in the jurisdictions we studied to promote awareness with employment standards. These range from media campaigns to interactive websites to outreach seminars. It is also an area where partnerships between government and other organizations (business, labour, NGOs) can serve both efficiency (making good use of limited resources) and effectiveness (reaching the target) objectives. Governments cannot really partner in the investigation and enforcement process, but they can certainly use partnerships creatively in promoting awareness. Governments may also want to consider national campaigns on key standards, tailored as necessary in each jurisdiction, but coordinated in terms of the general messages and the timing of the campaign. They may also wish to consider providing messages to the public about why compliance with employment standards is important.

Awareness measures can also be targeted, both in terms of the audience and the message. Regarding the former, the interviews suggest the importance of targeting new entrants to the labour market (youth in school, new immigrants, new employers) and to high-risk sectors. Regarding the latter, they suggest that broad media campaigns focus on one critical issue at a time. The issue of the definition of employer and employee is one that seems worthy of special attention.

Some of the more innovative initiatives include the following:

- In Connecticut, an interactive website has been created where complaint forms are online. One can download the form and then sign it and mail it in.
- New Zealand provides an online employment agreement builder, an online paid parental leave calculator, and is developing software related to Holidays Act compliance. New Zealand also created a self-audit tool for businesses so they can identify what their most important employment relations and health and safety issues are. They also provide a support service designed for small businesses.
- The Quebec Labour Standards Commission uses a system of “agent multiplicateurs”: individuals trained by the Commission who intervene at the community level (employment offices, school boards) to educate people on the broad outlines of employment standards.
- Ontario’s Ministry of Labour is partnering with the Ministry of Consumer and Business Services to reach new employers. Information on employment standards will be provided through the communications tool called Ontario Business Connects. The Ontario Ministry of Labour also works with the Ministry of Economic Development and

Trade to give regular seminars for new immigrant entrepreneurs setting up businesses in the province.

- The Government of Canada Labour Standards Operations also recently completed a five year Road Transport Initiative Program, to promote awareness of the standards in a sector that is responsible for a high proportion of complaints. This included providing information to students at driving schools.

As mentioned on page 13, the monthly PST statement of account, and the provision of information on employment standards to accountants, could be new vehicles for reaching employers with information.

Industry groups are very welcoming of the potential collaboration with government on awareness issues. Business associations are ready to do some of the government's outreach work. The Canadian Manufacturers and Exporters, for example, uses its newsletters to update members on changes in the legislation. As a business association executive indicated: "Business may be more inclined to believe government if their professional association is involved."

NGOs are also willing partners in awareness initiatives, but they require help with the costs involved. One NGO suggested that they could provide more information, disseminate it more widely, and translate it into more languages. They could also convene focus groups to see how people experience the processes of dealing with a claim.

The Complaints Process

Most jurisdictions in Canada seem to have had success in reducing the backlog of claims through such measures as call centres, self-help kits, and mediation. As noted above, processing inquiries and claims expeditiously is a valid objective, and these instruments are therefore useful parts of a government's toolkit.

However, as some NGOs pointed out, some of these tools – particularly self-help kits and mediation – can be overused. For example, for workers who do not have much power in their relationship with their employer, mediation can mean agreeing to settle for much less than what they are entitled to. In cases of small claims, a mediated outcome may still be better for all concerned than a long, drawn-out process leading to adjudication. But in cases where the monies at stake are sizeable from the point of view of the employee, mediation might not be the right instrument.

In addition, given the understandable reluctance of some employees to complain while they still have a job, it may be appropriate to allow complaints to be made anonymously. Some jurisdictions have moved in this direction. However, there are practical limits to the utility of anonymous complaints. If it is a small workplace and/or the issue remains confined to one individual, it is difficult – in some cases, impossible – to protect anonymity as the case proceeds. The tool can be useful in a larger workplace where it triggers a broader investigation.

Detecting Violations/Active Audits/Measuring Compliance

We have noted above that achieving compliance must go beyond responding to individual complaints. At least in high-risk sectors, complaints ought to trigger a broader inspection of the workplace. There should also be follow-up audits of employers found to seriously violate the law, without waiting for new complaints.

Most importantly, there is a strong argument that governments should conduct random audits of workplaces in high-risk sectors. Many jurisdictions in Canada have done this to some extent in the past, but find it difficult to find the resources to sustain it. Certainly, government inspectors cannot be everywhere. But governments can and should at least identify the highest risk sectors (through processes outlined in section 4C, above), conduct random audits in those sectors, and publicize the fact that they are doing so. In the words of Malcolm Sparrow, what is needed is to “pick important problems and fix them” (Sparrow, 2000).

Efforts to conduct random audits in the past have sometimes been undermined by the diversion of resources planned for that activity back into responding to claims, since the speed of resolving claims is what receives the most public attention. Accordingly, it may be advisable to establish teams whose responsibility is only to conduct random audits.

It also seems clear that it would be desirable for employers who have been found to violate other workplace standards (such as health and safety or building inspections) to have their payroll records audited for possible employment standards violations. Similarly, violations of employment standards could trigger other investigations, including compliance with tax laws. If privacy laws pose a hurdle, then legislative change in this area could be considered.

Penalties

Penalties for violations of employment standards are important for their deterrent value. The key lesson here is that while education and persuasion may be appropriate for minor offences (and an effective awareness campaign may avoid many minor offences), there should be real penalties for serious violations, even if the employer agrees to pay. Otherwise, as a number of people whom we interviewed noted, the incentive will be for some employers to deliberately not comply, knowing that the worst that can happen is that they have to pay what was owed to begin with. Indeed, the prospect of a compromise settlement reached through mediation can mean that even if a complaint is registered, the amount paid might be less than what full compliance would entail.

The approach that Ontario has recently adopted seems to hold promise: a range of instruments to deal with violations, from administrative monetary penalties, to tickets, to prosecution in the case of serious violations. Several jurisdictions have recognized the potential deterrent value of the publicizing the identity of serious offenders. All jurisdictions should make information about the rules on penalties readily and clearly available to employers and the public.

The ability to hold corporate directors liable for employment standards violations seems to be a necessary tool, to enhance the ability of governments to recover the funds owed to employees. Oregon’s ability to require the posting of a bond is also worth emulating in Canada.

Training of Enforcement Staff

One issue not raised in the interviews that seems worth mentioning here is the need to ensure that the instruments available to enforcement officials are consistently applied. This means that training programs must be provided, especially for new officers or when new tools have been developed.

Measuring Compliance

The use of random audits, advocated above to enhance detection of violations of the law, also would allow governments to generate a measure of compliance with the standards that can be tracked over time. It may be costly to attempt this for all standards. However, governments should at least identify the key standards and track compliance with them. It is beyond the scope of this paper to specify which standards are most important to audit and track. This is an area where cooperation among the various jurisdictions in Canada would be useful.

Surveys of employees can also provide useful information about compliance, but just measuring how quickly complaints are resolved or how many are voluntarily settled is clearly inadequate to assessing the extent of compliance with the law.

Conclusion

Our review of the literature, the questionnaire replies provided by governments, and, in particular, the interviews with officials from governments (in Canada and elsewhere), business associations, labour groups, and NGOs working directly with vulnerable workers suggest that a mix of tools holds promise for promoting compliance with employment standards. They include:

- Partnering with business organizations, labour, school boards, and NGOs on awareness initiatives (recognizing that NGOs will need help with the resources required);
- Providing broad awareness campaigns on key standards, and targeted awareness initiatives focussed on high-risk sectors, youth, and recent immigrants;
- Allowing complaints to be made anonymously (as a potential trigger to a broad workplace investigation), and using mediation judiciously;
- Conducting broad workplace audits when complaints occur in high-risk sectors or in workplaces with a poor previous record of compliance;
- Sharing information about non-compliant workplaces across regulatory agencies;
- Conducting random audits in key sectors, and using the information generated to track compliance over time;
- Providing a range of tools to apply penalties, and ensuring that penalties are applied in the case of serious offences; and
- Training enforcement staff to ensure consistent procedures.

Promoting compliance with employment standards is an important task of government. Moving in these directions will likely require some temporary increase in resources, since more active measures (such as random audits in high-risk sectors) will uncover violations that had not been previously detected. However, partnerships on awareness initiatives can help keep costs down. Most importantly, once a culture of compliance is established, the rate of violations should decline, so that the additional resources may be needed only in the process of transition to a new context in which everyone understands what the standards are and that they need to be taken seriously.

Addendum: Codes of Good Practice and “Hot Cargo” Laws

There is another instrument for promoting compliance with minimum standards of employment that was not part of our interview protocol but is discussed in the academic literature: the use of voluntary codes of good practice.

NGOs and other activists have worked to bring attention to the conditions of vulnerable workers globally on the part of the affluent consumers who buy the products made by these workers. Surveys show a high propensity today for consumers in the industrialized, developed world to express strong ethical convictions on the need, and their own willingness, to exercise their consumer-power against corporations and brands that fail to meet appropriate labour standards.¹⁰ On the other hand, others (such as Liubicic, 1998) argue that, because these initiatives are market-based devices that treat humane workplace conditions as private goods for which some consumers are willing to pay a premium, their benefits will be limited to small segments of workers, and complicated by the difficulties in monitoring compliance.

Addressing the Supply Chain Issue

As we noted in Section 2 of this report, many goods are produced through complex supply chains that can involve layers of contractors and sub-contractors. David Weil (2004) argues that the move to just-in-time production creates an opportunity to enhance compliance with standards through provisions like the US Department of Labor’s “hot cargo” provision in the apparel industry.

Section 15(a) of the US Fair Labor Standards Act (FLSA) makes it unlawful for any person “to transport, offer for transport, ship, deliver, or sell in commerce...any goods” the production of which violated the terms of the FLSA. Weil observes that the move to “lean retailing” means that this provision has the potential to have a lot of impact.

Traditional retailers sought to adjust the supply of products at their stores to match customer demand by having experienced buyers make good, educated guesses about consumers’ preference. As the number of different products carried by retailers grew, so too did the costs of guessing incorrectly. Consistently balancing supply and demand across a growing diversity of products came to require something more than prescient buyers.

Lean retailing takes advantage of information technologies, automation, industry standards, and management innovations to more closely align orders from suppliers with real-time sales data. This system reduces the need for retailers to stockpile large inventories of a growing range of products, thereby reducing their risk of stock-outs, markdowns, and inventory carrying costs. The companies that have adopted lean retailing principles now dominate major retail segments.

In contrast to traditional retailing’s infrequent large bulk shipments between apparel manufacturers and retailers, lean retailers require frequent shipments made on the basis of ongoing replenishment orders placed by the retailer. These

¹⁰ See O’Rourke (2003), p.5 and Fung (2003), p. 55.

orders are based on real-time sales information collected at the retailer's registers via bar code scanning. Stock keeping unit-level sales data are then aggregated centrally and used to generate orders to suppliers, usually on a weekly basis for each store.

The lean retailer collects information from its stores on sales of particular products at the style, size, and color level, compiling that information at the end of the week – usually on Sunday night after weekend sales are known. It then transmits an electronic order to the appropriate supplier on the same night. On Monday or Tuesday, the supplier ships the ordered products in cartons that can be electronically scanned at the retailer's distribution center...

Lean retailing performance standards provide the benchmark for competition in the retail-apparel-textile channel. Retailers operating with the systems described above require frequent replenishment of a growing percentage of their products and demand that shipments meet standards of delivery times, order completeness, and accuracy. Lean retailers also require suppliers to adopt standards regarding product bar codes, electronic or web-based data exchange, and shipment container markings that allow the retailers to rapidly process incoming orders...

This move to lean retailing puts entirely new pressures on manufactures. They must respond promptly and effectively to constant flow through supply chain channels. Disruptions of this flow due to manufacturer's error can be extremely costly to retailers and lead retailers to impose penalties, cancel orders or even abrogate contracts completely. The cost to manufacturers in the breakdown of a smooth flow through supply-chain channels therefore can be immense, and even financially devastating.

It is this new time-sensitive process of lean retailing that allows the U.S. regulator, by means of a resuscitation of the FLSA's "hot cargo" provision, to make an innovative regulatory intervention. The apparel industry has long been particularly susceptible to abuse of labour standards because of the high level of sub-contracting out to jobbers running small sweatshops or even networks of home workers. In the past, manufacturers could hide their poor labour practices behind these jobbers, while themselves meeting FLSA standards. The jobbers were difficult to monitor due to weak information, and the long industry time lines meant that even goods seized under the "hot cargo" provision, while a significant inconvenience, could be liberated through remediation before constituting a devastating commercial disruption.

The new context of lean retailing changes all this, as the channels of supply-chains now have become highly sensitive to even very brief disruption. The Department of Labor now wields a new and highly credible enforcement tool. By exercising the "hot cargo" provision the regulator can indirectly cost the manufacturer a severe penalty through its relationship, or loss thereof, with key, large retailers. Consequently, the credible threat of enforcing the "hot cargo" provision, and creating such penalty conditions, constitutes a powerful incentive for manufacturers to exercise regulatory supervision of all their suppliers. The gains of turning a blind eye to labour standards abuses by a supplier must be weighed against the prospect of losing one's contract with The Gap or some comparable retailer. Any manufacturer that fails to make the maximum effort, through contractual clauses, and rigorous follow-up monitoring efforts, to eliminate potential abuse of labour standards is playing with fire, and gambling with its economic fortunes.

This is a fascinating regulatory innovation that joins the current trend to private corporate regulation with a compelling public driven incentive. It does not rely upon corporate volunteerism and cooperation, nor is it reliant upon an ethically dissatisfied consuming public. As Weil notes, too, it is not restricted to the apparel industry, but can be used in any industries that rely upon time-sensitive supply-chains. Food, computers and home-building products are among the other industries he cites as susceptible to this kind of regulation.

However, Weil offers a sobering warning that won't be entirely unexpected: this kind of channel-disruptive regulation is decreasingly effective as the extent of the regulatee reaches out beyond the boundaries of the regulator's formal jurisdiction. In other words, we cannot wish away globalization.

Appendix 1

Questionnaire for Government Officials on Measures Used to Obtain Compliance with Statutory Employment Standards

1) Definitions

- How do you define compliance?

2) Measuring compliance

- How do you measure compliance with statutory employment standards?
- Do you have baseline data on compliance?
 - How do you establish baseline compliance?
 - Are your baseline compliance data publicly available?
 - How often do you measure/track compliance in relation to the baseline? How big a sample do you use?
- If you do regularly measure compliance, what are the trends in your data? Do they differ by sector or location?

3) Complaint data (claims under employment standards legislation)

- How many complaints (of standards violations) have you received in each of the past 10 years?
- How quickly are complaints resolved on average? How many complaints take more than (3 months, 6months, a year) to resolve?
- Do you track complaints with documentation as to what action was taken?
- Do you monitor the type of complaints to determine if your actions were successful?

4) Initiatives to obtain compliance

General

- What are the instruments/methods that you use to obtain compliance with employment standards?
- Which of these methods have been introduced within the past five years?
- What initiatives have been the most successful? What is the evidence of success?
- Have you changed the way you measure compliance as a result of initiatives to improve compliance?

Use of Risk-based Targeting

- Is there targeting of high-risk sectors, geographic areas, or individual employers for active audits?
 - How are the targets identified? Is there a formal risk identification process?
 - Is there evidence of improved compliance as a result of such targeting?

Resolution of Complaints

- How are complaints resolved under your legislation?
 - e.g., settlement process, mediation, arbitration, orders to pay wages, other orders, tickets? How many claims are resolved by use of each tool?
- Do you return to a site to determine if compliance at that site has improved as a result of government intervention? If so, what percentage do you revisit and how do you measure success?

Information Dissemination/Transparency

- What methods are used to make employers and employees aware of their rights and responsibilities?
- Is information on serious or repeat offenders made public? What type of information is made public? How? Have you measured the effectiveness of this strategy? Does this strategy involve issues related to privacy legislation, and, if so, how have you addressed them?

Penalties

- What penalties are in place for companies who violate employment standards? For those who fail to comply with orders (administrative or judicial) to pay employees what they are due? What evidence is there that these penalties are a deterrent?

Appendix 2

Interview Questions for Government Officials

1) Program objectives

- What are the objectives of the employment standards program?
- How does raising compliance relate to these objectives?

2) Measuring compliance

- What are the advantages and disadvantages of the method(s) your jurisdiction currently uses to measure compliance?
- What alternative measures would you like to see put in place? Why?
- Do you measure employers' and employees' awareness of their statutory rights and responsibilities? If so, how? If not, why not?

3) Initiatives to obtain compliance

General

- What motivated the introduction of recent compliance initiatives?
- What factors have contributed to the success of recent initiatives?
- Do you evaluate these initiatives? If so, how? If not, why not?
- What initiatives have not worked out well? Why?

Partnerships

- Have you partnered with other government departments in any of your recent compliance initiatives? If so, how? (Is there, for example, information sharing, joint enforcement?)
- Have you partnered with the private sector? How? (Do you engage problem sectors in the development of your compliance strategy?)
- Have you partnered with municipal governments and/or community organizations? How? (Do you engage community groups in the development of your compliance strategy?)
- How effective have these partnerships been?

Resolution of Complaints

- What have you found to be the most effective methods of resolving complaints?
 - What are the major factors, if any, inhibiting expedited resolution of claims?

Information Dissemination/Transparency

- What major factors, if any, have delayed or inhibited the use of publishing information on repeat offenders?

4) Desired changes

- What new initiatives would you like to see put in place to improve compliance? Why?
- What are the barriers to moving forward with such initiatives? How might they be overcome?
- How could greater compliance be achieved without substantially increasing the resources of the department/agency (but allowing for transitional investments)?
- Would you like to see any changes in how initiatives are evaluated? If so, what would those changes be?

Appendix 3

Interview Questions for Business Organizations

1) Awareness

- How aware are employers in your industry of their rights and responsibilities in relation to employment standards laws?
- How do they obtain information about these responsibilities? What do they do to ensure that they understand the laws correctly? Is the industry association active in these areas? In what ways?
- What might be done to improve awareness of employers regarding their rights and responsibilities with respect to employment standards? What communication tools would be most effective in promoting awareness in your industry, e.g., internet, fact sheets, employers guide etc?
- Would business organizations in your industry be prepared to partner with government in promoting awareness? If yes, in what ways?

2) Compliance issues

- How would you rate the level of compliance by employers in your industry/association?
- What is the impact of non-compliance (inside or outside of your industry/association) on the employers who comply?
- How effective is enforcement by the ministry/agency responsible?
- What are the barriers to compliance by employers in your industry association?
- Has your organization partnered with government officials in the development and/or implementation of compliance strategies? If so, how? If not, would your organization be interested in such partnerships? On what terms?

3) Advice on ways to improve compliance

- What advice for government do you have on how best to achieve compliance with employment standards? How could greater compliance be achieved without substantially increasing the resources of the government department/agency (but allowing for the possibility of transitional investments – that is, temporary increases in expenditure that are not built into the base budget)?
- Are there ways that your organization could promote compliance? What measures might you put in place? What barriers might need to be overcome?

Appendix 4

Questions for Labour Groups and NGOs

1) Awareness

- How aware are vulnerable workers of their rights under employment standards laws? How do you know?
- What are the characteristics of the most vulnerable workers? Are they concentrated in identifiable disadvantaged groups (for example, women, visible minorities, recent immigrants, disabled people)? (For any of the questions in this interview, let us know if particular groups have special needs that require special attention.)
- How do workers obtain information about their rights? (Is the union/NGO active in this regard? If so, how?)
- What might be done to improve awareness of employers' responsibilities and workers' rights? What communication tools would be most effective in improving awareness, e.g., internet, fact sheets, employers' guide etc?
- What activities do you undertake to improve awareness
- What role could your organization play in increasing the awareness of vulnerable workers under employment standards laws?

2) Compliance issues

- Do you think that compliance with employment standards is adequate? If so, why? If not, why not?
- Can you give examples of consequences for individuals when compliance is inadequate?
- How effective are the government's efforts at enforcement? Please give examples.
- Are there recent initiatives that look promising?
- Has your organization partnered with government officials in the development and/or implementation of compliance strategies? If so, how? If not, would your organization be interested in such partnerships? On what terms?
- What are the barriers to achieving compliance with employment standards laws?

3) Advice on ways to improve compliance

- What advice for government do you have on how best to achieve compliance with employment standards? How could greater compliance be achieved without substantially increasing the resources of the government department/agency (but allowing for transitional investments)?
- Is there more that your organization could do to promote awareness, compliance and improve the effectiveness of enforcement measures? What measures might you put in place? What barriers might need to be overcome?
- Would your organization be willing to form a partnership with government in promoting compliance? What strategies/mechanisms would promote such a partnership?

References

- Betcherman, G. and G. Lowe. 1997. *The Future of Work in Canada: A Synthesis Report*. Ottawa: Canadian Policy Research Networks.
- Chaykowski, R. P. 2005. *Non-standard Work and Economic Vulnerability*. Ottawa: Canadian Policy Research Networks.
- Fung, A. 2003. "Deliberative democracy and international labour standards," *Governance: An International Journal of Policy, Administration, and Institutions*, 16(1).
- Haufler, Virginia 2001. *A Public Role for the Private Sector: Industry Self-Regulation in a Global Economy*. Washington, DC: Carnegie Endowment for International Peace, 55-56.
- Liubicic, R. J. 1998. "Corporate codes of conduct and product labeling schemes: The limits and possibilities of promoting international labor rights through private initiatives," *Law and Policy in International Business*, 30(1), 111-58.
- Mordaunt, E. 2000. "The emergence of multi-inspectorate inspections: 'Going it alone is not an option,'" *Public Administration*, 78(4), 751-769.
- Morissette, R. and A. Johnson. 2005. "Are Good Jobs Disappearing in Canada?" Analytical Studies Branch Research Paper No. 239, Statistics Canada.
- Morissette, R and Picot, G. 2005. "Low-Paid Work and Economically Vulnerable Families Over the Last two Decades." Analytical Studies Branch Research Paper, Statistics Canada.
- O'Rourke, D. 2003. "Outsourcing regulation: Analyzing nongovernmental systems of labor standards and monitoring," *Policy Studies Journal*, 31(1).
- Saunders, R. 2003. *Defining Vulnerability in the Labour Market*. Ottawa: Canadian Policy Research Networks.
- Sparrow, M. 2000. *The Regulatory Craft*. Washington: The Brookings Institution.
- Tsogas, G. 2001. *Labor Regulation in a Global Economy*. Armonk, New York: M.E. Sharpe.
- Vallée, G. 2005. *Towards Enhancing the Employment Conditions of Vulnerable Workers: A Public Policy Perspective*. Ottawa: Canadian Policy Research Networks
- Vosko, L., C. Cranford and N. Zukewich. 2003. "Precarious Jobs? A New Typology of Employment," *Perspectives on Labour and Income*, 15(4),16-26.
- Weil, D. 2004. "Regulating noncompliance to labor standards: New tools for an old problem – The misuses of government." Available at: http://www.findarticles.com/p/articles/i_m1093/is_1_82352370/print. Accessed August 20, 2004.

Our Support

Funding for this project was provided by:

- Human Resources and Skills Development Canada
- Law Commission of Canada
- Province of British Columbia - Ministry of Skills Development and Labour
- Province of Nova Scotia - Department of Environment and Labour
- Province of New Brunswick - Department of Training and Employment Development
- Province of Ontario - Ministry of Labour
- Province du Québec: Commission des normes du travail
- Province of Saskatchewan - Ministry of Labour

Donations:

BCE Inc.
BMO Financial Group
COGECO Inc.
Maclab Enterprises
Ontario Municipal Employees Retirement System
Power Corporation of Canada
Scotiabank

Members of the Board of Directors, Campaign Committee and management team
Many *e-network* subscribers and friends of CPRN

Project Funding:

Corporations:

Bell Canada
Business Development Bank of Canada
CIBC
DVA Navion
Ekos Research Associates Inc.
Holding O.C.B. Inc.
Home Depot Canada
Ketchum Canada Inc.
RBC Financial Group
SNC-Lavalin Group Inc.
TD Bank Financial Group

Federal Government Departments, Agencies and Commissions:

Canada Mortgage and Housing Corporation
Canadian Heritage
Citizenship and Immigration Canada
Health Canada
Human Resources Development Canada
Human Resources Skills Development Canada

Indian and Northern Affairs Canada
Industry Canada
International Development Research Centre
Law Commission of Canada
Parks Canada
Privy Council Office
Social Development Canada
Statistics Canada
Treasury Board of Canada, Secretariat

Provincial Governments:

Alberta

- Human Resources and Employment

British Columbia

- Ministries of Health

- Ministry of Children and Family Development

- Office of the Deputy Minister to the Premier

Manitoba

- Department of Family Services and Housing

Ontario

- Association of Colleges of Applied Arts and Technology of Ontario (ACAATO)

- Ministry of Community and Social Services

- Ministry of Finance Pre-budget Consultation

- Ministry of Health

- Ministry of Training, College and Universities (MCTU)

Saskatchewan

- Department of Community Resources and Employment

Municipal Governments:

City of Toronto

Foundations:

The Atkinson Charitable Foundation

The Bertelsmann Foundation

Canada Millennium Scholarship Foundation

Canadian Health Services Research Foundation

The Change Foundation

The Hospital for Sick Children Foundation

R. Howard Webster Foundation

J. W. McConnell Family Foundation

The Muttart Foundation

The Neptis Foundation

RBC Foundation

Associations and Other Organizations:

AFP Foundation for Philanthropy – Canada
AFP Calgary Chapter
AFP International
AFP Toronto Chapter
Association of Fundraising Professionals (AFP)
Canadian Institute of Planners
Canadian Labour and Business Centre
Canadian Labour Congress
Canadian Medical Association
Canadian Population Health Initiative
Canadian Public Health Association
Coalition of National Voluntary Organizations
College of Physicians and Surgeons of Ontario
Conference Board of Canada
The Learning Partnership
National Voluntary Organizations
Nuclear Waste Management Organization
United Way of Canada
Université de Montréal
University of Toronto (Faculty of Law)

Other:

Liberal Caucus Research Bureau

The New Directions Series

The Institute of Public Administration of Canada (IPAC) has, for many years, sponsored issue-oriented working groups of public servants and academics to find practical solutions to emerging issues. The Institute assembles groups of experts working on public-sector reform and public policy to discuss, compare, analyse, document and advance the understanding of critical issues and themes. While these reports are published in the language in which they were written, the executive summary is provided in the other official language.

The projects continue to explore a wide range of issues. In its continuing commitment to exploration and exchange, IPAC launched this series. Publications in this collection highlight critical findings and analysis from our action-oriented research activities. Besides advancing the understanding of current best practices, this work also serves to advance the understanding of what these initiatives mean with respect to the broader concerns of public-sector reform. These reports are available free of charge to IPAC members. Orders can be placed by contacting the IPAC national office in Toronto (www.ipac.ca).

Other Reports in the Series/ Déjà parus dans la collection

1. *Management and Performance Measurement in the Jewellery Industry: A Golden Opportunity?* By Ann Rauhala.
2. *Performance Management: Linking Results to Public Debate.* By John English and Evert Lindquist.
3. *From Controlling to Collaborating: When Governments Want to be Partners.* By Jim Armstrong and Donald G. Lenihan.
4. *Improved Reporting to Parliament.* By Jim Thomas.
5. *Crossing Boundaries: Privacy, Policy, and Information Technology.* By Harvey Schachter.
6. *Collaborative Government: Is There a Canadian Way?* Edited by Susan Delacourt and Donald G. Lenihan.
7. *Business Planning in Canadian Public Administration.* Edited by Luc Bernier and Evan H. Potter.
8. *Making Government the Best Place to Work: Building Commitment,* by Monica Belcourt and Simon Taggar.
9. *To Better Serve Canadians: How Technology is Changing the Relationship Between Members of Parliament and Public Servants,* by Jonathan Malloy.
10. *Service North of 60,* by Frances Abele and Katherine Graham.
11. *“Always Better”:* *Continuously Innovative Public Sector Organizations in Canada,* by Peter Buker
12. *Competitive Cities, Healthy Communities: Charting Collaboration,* Patrice A. Dutil
13. *Making Connections: Municipal Governance Priorities Today,* edited by Michael McConkey and Patrice Dutil
14. *Reinventing Service: Processes and Prospects for Municipal Alternative Service Delivery,* by Toby Fyfel, Michael McConkey and Patrice Dutil