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Résumé de l'article

Par des normes d'emploi minimales on entend les normes légalement établies qui s'appliquent à la plupart des employeurs et des employés et qui comprennent les salaires minimums, les heures de travail maximales, les heures supplémentaires et les conges payés. La réglementation sur les normes minimales en Ontario a été consolidée en 1968 par l'adoption de la Loi sur les normes d'emploi de l'Ontario. Bien que les normes minimales provinciales de la fin du 19e siècle et du début du 20e siècle aient été bien documentées, la réglementation des normes minimales pendant la période d'après-guerre n'a reçu que peu d'attention de la part des spécialistes. Cet article explore l'élaboration de la loi sur les normes de travail en Ontario de l'après-guerre jusqu'à la promulgation de la loi en 1968. Il prétend que les forces sociales, internes et externes, ont exercé des pressions sur l'État en vu du passage d'une loi exhaustive donnant une protection statutaire à la plupart des travailleuses et travailleurs les plus vulnérables de la province. Toutefois, les façons dont l'État avait négocié les tensions générés par les débats politiques sur la protection sociale des ouvriers non-syndiqués, même si elles minimisent l'interférence sur le marché, ont sapé sévèrement la capacité de la loi à protéger les «poches d'exploitation» auxquelles elle s'adressait. De plus, cette approche fondée sur des normes minimales a soutenu et reproduit des tendances à la segmentation par le genre et la race sur un marché du travail qui a été construit autour des relations normales de travail. Elle a finalement assuré une position secondaire aux travailleuses et aux travailleurs possédant le pouvoir de négociation le plus faible.

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Setting the Minimum: Ontario's Employment Standards in the Postwar Years, 1944-1968

Mark Thomas

IN 1965, AN ONTARIO DEPARTMENT OF LABOUR report entitled *Labour Standards and Poverty* stated that "[l]abour standards legislation attempts to deal with various aspects of poverty by raising wages, improving working conditions, and opening up employment opportunities.... [T]he legislation is widely accepted as necessary for the maintenance of minimum levels of living among low paid workers...."[1] The report was published as the Ontario provincial government was undertaking a thorough review of its existing minimum standards regime and contemplating the development of a comprehensive new labour standards code. By the mid-1960s, the government was facing growing pressure from the labour movement to enact stronger legislative protections for workers who did not have the benefit of unionization, and to legislate reduced working time in order to protect against the threat of unemployment created by technological innovation. The government was also aware that its existing approach to the regulation of minimum standards, which at that time included several separate pieces of legislation that set standards in the areas of hours of work, vacations with pay, minimum wages, and equal pay for equal work, was increasingly insufficient. The standards lagged behind those of other jurisdictions, and as indicated in departmental reports on both minimum wages and hours of work, there remained "pockets of exploitation" within the province's workforce that required stronger legislative protection. [2]

[1] Archives of Ontario (hereafter AO) RG 7-1, Ministry of Labour, Minister, Correspondence (hereafter MLMC), File 7-1-0-1178, box 37, *Labour Standards and Poverty in Ontario*, Ontario Department of Labour, 22 November 1965.
[2] AO MLMC, File 7-1-0-1181, box 37, Legislative Proposal Respecting *The Hours of Work and Vacations with Pay Act*; AO MLMC, File 7-1-0-1407.3, box 47, *The Labour Standards*

Mark Thomas, "Setting the Minimum: Ontario's Employment Standards in the Postwar Years, 1944-1968," *Labour/Le Travail*, 54 (Fall 2004), 49-82.

In 1968, the provincial government enacted the Ontario *Employment Standards Act*. The Act was an amalgamation of existing minimum standards legislation, along with some new standards, including a legislated overtime premium. But was the Act capable of dealing with "pockets of exploitation" and substantially improving the employment conditions of low-wage workers? While the Minister of Labour Dalton Bales expressed his concerns about the conditions of work of low-wage workers, he also cautioned in an address to the provincial legislature that "when it comes down to considering improvements in standards of employment, we must improve but also maintain a balance that will help us to keep industry and to attract new industries to the province."[3] In other words, the government's new labour code should not undermine economic prerogatives with the socially desirable goals of protecting vulnerable workers.

This article explores the development of Ontario's postwar minimum standards through to the enactment of the 1968 Ontario *Employment Standards Act*. The origins of provincial minimum standards in the late 19th and early 20th centuries have been well documented.[4] So too has the legislative framework of the postwar settlement that set the parameters for postwar industrial relations.[5] However, the development of minimum standards legislation has received relatively little scholarly attention.[6] A case study of Ontario's legislated standards provides the means to explore the ways in which the postwar state negotiated the tension between addressing "pockets of exploitation" and, as was stated in a federal Department of Labour report on minimum standards, "that which was economically practicable."[7] Conceived more broadly, how did the state regulate employment

Act, Background Memorandum, 25 January 1968, 2; AO MLMC, File 7-1-0-731, box 19, Statement by the Honorable H.L. Rowntree, Minister of Labour, on the Government's Minimum Wage Policy, 1-2.

[3]AO MLMC, File 7-1-0-1407.2, box 47, Notes for an Address by the Hon. Dalton Bales, Q.C., Minister of Labour for Ontario, During 2nd reading of: *The Employment Standards Act*, 1968, 31 May 1968.

[4]See Margaret E. McCallum, "Keeping Women in their Place: The Minimum Wage in Canada, 1910-25," *Labour/Le Travail*, 17 (Spring 1986), 29-56; Eric Tucker, "Making the Workplace 'Safe' in Capitalism: The Enforcement of Factory Legislation in Nineteenth-Century Ontario," *Labour/Le Travail*, 21 (Spring 1988), 45-85; Jane Ursel, *Private Lives, Public Policy: 100 Years of State Intervention in the Family* (Toronto 1992).

[5]For example, see Leo Panitch and Donald Swartz, *From Consent to Coercion: The Assault on Trade Union Freedoms* (Toronto 2003); Bob Russell, *Back to Work: Labour, State and Industrial Relations in Canada* (Scarborough 1990).

[6]Judy Fudge, "Reconceiving Employment Standards Legislation: Labour Law's Little Sister and the Feminization of Labour," *Journal of Law and Social Policy*, 7 (Spring 1991), 73-89; Roy J. Adams, "Employment Standards in Ontario: An Industrial Relations Systems Analysis," *Relations Industrielles/Industrial Relations*, 42 (Winter 1987), 46-64.

[7]Canada Department of Labour, "Minimum Standards Legislation and Economic Policy," *The Labour Gazette*, 67 (September 1967), 567.

conditions of non-unionized workers during the years of the postwar settlement and what were the social forces that shaped regulatory strategies? Further, given the explicitly gendered legacy of early minimum standards legislation, which was premised upon supporting gendered divisions of labour and male breadwinner norms, to what extent did the standards of the postwar period depart from this earlier approach? While postwar employment standards legislation contained formally gender-neutral standards and did not advance the explicitly gendered approach of early minimum standards, did it constitute a new regulatory approach that could counter longstanding gendered divisions in labour law and in the labour market?

The State, Labour Market Regulation, and Minimum Standards

This analysis of the regulation of postwar employment standards draws from longstanding debates within state theory and seeks to integrate several approaches to construct a conceptual framework that accounts for interrelationships between the state and external social forces, as well as institutional autonomy, and internal conflict. Few would argue that theoretical frameworks that present the state as either a purely autonomous social formation, or as a captive instrument of dominant classes, are able to capture the complexity of social, economic, and political relations between the state and external social forces, as well as social relations within the state itself. As it implies, the autonomous model posits that the state retains institutional autonomy from other sectors of society, including the economy. Conversely, the captive state model constructs a view of the state as an instrument of class rule that is used solely by the dominant class(es) to further their interests against the dominated class(es). While the autonomous model has been critiqued for overlooking the complex interrelationships that are formed between the state and other social institutions, relations, and practices, the captive state model is unable to conceptualize the existence of any form of autonomy between the institutions of the state and the dominant class(es).[8]

Relative autonomy models, for example, those developed by Ralph Miliband and Nicos Poulantzas, attempt to overcome some of these limitations by theorizing the ways in which the state is tied to capitalist interests, yet is able to maintain some degree of autonomy in the ways in which it supports and legitimates the basic principles of the capitalist system.[9] Relative autonomy models move state theory be-

[8]See Bob Jessop, *State Theory: Putting Capitalist States in their Place* (University Park, PA 1990), 25-47. See also, Andrew Yarmie, "The State and Employers' Associations in British Columbia: 1900-1932," *Labour/Le Travail*, 45 (Spring 2000), 53-59.

[9]Ralph Miliband, *The State in Capitalist Society: An Analysis of the Western System of Power* (London 1969); Nicos Poulantzas, *Political Power and Social Classes*, Trans. T. O'Hagan (London 1978). Miliband tied the operation of state power to the social composition of the state, arguing that those who hold leadership positions in the institutions of the state system, in other words, the "state elite," wield state power. According to this approach, in advanced capitalist societies, the members of the state elite are themselves members of the

yond the absolutist positions of the captive and autonomous models. Both have been critiqued, however, Miliband for not fully accounting for the various forms of articulation between the state and economic relations, and Poulantzas for at times denying the state any independence from the objective structures of the economic base.[10]

Bob Jessop's "strategic-relational" theory of the capitalist state provides the basis to develop a more nuanced approach to understanding the role of the state in capitalist society. Jessop argued that the capitalist state maintains the long-term interests of the dominant class(es) and secures the long-term conditions required for capital accumulation. But the captive state approach is rejected, as competing or conflicting interests may shape the actions of the state, and thereby produce contradictory actions and outcomes. Jessop's model situates the state in the context of its "wider social environment" by arguing that state interventions are shaped by the "changing balance of forces" both internal and external to the state.[11] While state interventions act in the long-term interests of capital, the specific nature of specific interventions (for example, labour market policies) are subject to the changing balance of social forces within and around the state. Due to its sensitivity to the influence of social forces, and its attention to contradiction and conflict even within the state, this approach provides a more useful starting point in theorizing the role of the state in regulating the labour market.

Theories of capitalist hegemony provide further insight into how the state may support the interests of private enterprise, while at the same time conceding some demands to subordinate social groups. Antonio Gramsci defined hegemony as "intellectual and moral leadership" that takes into account "the interests and tendencies of the groups over which hegemony is exercised" through compromises that do not ultimately threaten the rule of the dominant group.[12] Analyses of the role of hegemony in relation to the capitalist state provide a multidimensional framework through which to conceptualize the operation of state power, in particular in ensur-

middle and upper classes. Thus, the interests of the dominant classes are represented by the state because members of those classes hold state power. The state establishes some autonomy from business interests through a certain degree of variability in the specific political programs advanced by the parties and leaders who hold office. This autonomy is relative, however, as all state programs in the advanced capitalist nations nonetheless defend the basic principles of the capitalist system. In contrast, Poulantzas considered the question of the state's relative autonomy in more structuralist terms, arguing that while the state ensures the reproduction of capitalist relations of production and the interests of the dominant class, it maintains a degree of autonomy from the other "regional structures" of the capitalist mode of production, and is dominated only "in the last instance" by the economic level.

[10]See Jessop, *State Theory*, 25-47.

[11]Jessop, *State Theory*, 353. See pages 9-11 for a general overview of the "strategic-relational" approach.

[12]Antonio Gramsci, *Selections from the Prison Notebooks*, Trans. Q. Hoare and G.N. Smith (New York 1971), 57, 161.

ing the legitimation of capitalist relations of production by securing consent through public policies that are based, in part, on concessions to popular demands. This approach has been widely applied in analyses of postwar-era systems of labour law in industrialized economies, which have been described as "post-war political-economic settlements."[13] The specificities of such arrangements varied between national boundaries; however, the principles were similar: unions gained organizational stability, union members gained regular wage increases and stable employment, and employers were ensured "responsible" unionism through regular collective bargaining, which minimized workplace disruption.[14] The hegemonic character of postwar industrial relations is based upon interconnected compromises made by unions and employers that limit the capacity for unionized workers to challenge the capitalist order, but at the same time meet some of the demands of union members. Michael Burawoy argues that this form of state intervention constitutes an important component of a "hegemonic regime" as it seeks to secure workers' consent to capitalist control of production through forms of state intervention that provide social welfare, restrict management discretion, and allow for the bureaucratic regulation of the workplace through high levels of unionization.[15]

Returning to the question of employment standards, while the framework of capitalist hegemony is useful in the analysis of postwar labour relations, the dynamics of labour market regulation are somewhat different when viewed from the perspective of minimum standards. First, the concept of hegemony, with its dual components of coercion and consent, cannot be applied so easily to the regulation of minimum standards. Unorganized workers were not drawn into a web of industrial legality in the manner that organized labour was in the years of the postwar settlement. Second, the regulation of minimum standards was not established simply by groups of workers pushing the state for concessions, and the state responding in a partial or provisional manner. While this perspective on the state contributes to an analysis of dynamics of labour market regulation and union activism in the postwar years and, as will be shown, partly explains the approach of the labour movement to

[13]Richard Hyman, "Economic Restructuring, Market Liberalism and the Future of National Industrial Relations Systems," in R. Hyman and A. Ferner, eds., *New Frontiers in European Industrial Relations* (Oxford 1994), 5.

[14]Greg Albo and Chris Roberts, "European Industrial Relations: Impasse or Model?" in E. Meiksins Wood, P. Meiksins, and Michael Yates, eds., *Rising from the Ashes? Labour in the Age of 'Global' Capitalism* (New York 1998), 164-179; Aaron McCrorie, "PC 1003: Labour, Capital, and the State," in C. Gonick, P. Phillips, and J. Vorst, eds., *Labour Gains, Labour Pains: 50 Years of PC 1003* (Halifax 1995), 15-38; Paul Phillips, "Labour In the New Canadian Political Economy," in W. Clement, ed., *Understanding Canada: Building on the New Canadian Political Economy* (Montréal & Kingston 1997), 64-84; Russell, *Back To Work*.

[15]Michael Burawoy, *The Politics of Production: Factory Regimes Under Capitalism and Socialism* (London & New York 1985).

minimum standards legislation, this conceptual framework cannot on its own explain the role of the state in the regulation of minimum standards.

The limitations of this approach to understanding minimum standards are made further apparent when feminist theories of the state are considered. Feminist theorists critique Marxist and non-Marxist theories of the state for overlooking the ways in which the capitalist state is also a gendered set of institutions and relations.[16] With respect to labour market regulation, the state has been identified as a site involved in organizing the social relations not only of economic production, but also of social reproduction. For example, state intervention in the labour market through various forms of labour legislation has been identified as supporting gendered divisions of labour, and according male and female workers with different levels of social protections.[17] Feminist analyses of labour market regulation have demonstrated that postwar labour legislation constructed a gendered hegemony that excluded women workers. Further, gender has been identified as a central social relation in the regulation of contemporary employment standards legislation, earning such legislation the title "labour law's little sister."[18] Thus, an analysis of the regulation of minimum standards in the postwar years requires an analysis of their gendered character.

In addition to feminist perspectives on the state, labour market segmentation theory provides a useful analytic frame to understand gendered, as well as other social divisions within the labour market.[19] Segmentation theorists have sought to explore the ways in which divisions in capitalist labour markets are created by job characteristics, the social organization of work relations, the role of class struggle, the ascribed characteristics of workers, the sphere of reproduction, and the influ-

[16]For examples of feminist analyses of the Canadian state see Isabella Bakker and Katherine Scott, "From the Postwar to the Post-Liberal Keynesian Welfare State," in W. Clement, ed., *Understanding Canada*, 286-310; Wendy McKeen and Ann Porter, "Politics and Transformation: Welfare State Restructuring in Canada," in W. Clement and L. Vosko, eds., *Changing Canada: Political Economy as Transformation* (Montréal and Kingston 2003), 109-134; Ursel, *Private Lives, Public Policy.*

[17]Ann Forrest, "A View from Outside the Whale: The Treatment of Women and Unions in Industrial Relations," in L. Briskin and P. McDermott, eds., *Women Challenging Unions: Feminism, Democracy and Militancy* (Toronto 1993), 325-41; Judy Fudge, "The Gendered Dimension of Labour Law: Why Women Need Inclusive Unionism and Broader-based Bargaining," in L. Briskin and P. McDermott, eds., *Women Challenging Unions*, 231-48.

[18]Judy Fudge, *Labour Law's Little Sister: The Employment Standards Act and the Feminization of Labour* (Ottawa 1991).

[19]Labour market segmentation theories posit that capitalist labour markets are constructed through the intersection of social, institutional, economic, and technological forces, and that they are divided into sub-markets, each of which may regulate labour market actors in different ways. See Jamie Peck, *Work-Place: The Social Regulation of Labour Markets* (New York 1996).

ences of institutions such as the state and trade unions.[20] In particular, feminist political economists have drawn attention to the ways in which interconnections between institutions of labour regulation (the state, trade unions) and the relations of social reproduction create forms of gendered segmentation.[21] Using an intersectional approach, feminist political economy has sought to integrate anti-racist analyses into this framework as well, indicating that processes of racialization intersect with relations of class and gender to shape patterns of labour market regulation.[22]

Building upon the insights discussed above, the study of the regulation of minimum standards requires consideration of the ways in which the state contributes to the reproduction of capitalist relations of production, as well as contradictory and conflicting relations that may shape state interventions, including those that result from social forces external and internal to the state. As well, the gendered and racialized character of state interventions must be accounted for. Drawn together, these insights frame an analysis of the social relations of the regulation of minimum standards during the postwar years.

Early Origins of Ontario's Minimum Standards

Models of labour regulation are often rooted in historical patterns and relations.[23] Early minimum standards in Ontario, which date back to the late 19th and early 20th centuries, set the framework for future legislative strategies. During the late 19th century, labour and employment law in Canada was shaped by the principles of "liberal voluntarism" — minimal state regulation of the employment relationship, both with respect to unionization and minimum standards.[24] Most of the conditions of employment were left to individual employment contracts and the "free" operation of the labour market, as the state was largely unwilling to interfere with the business imperatives of the emerging industrial capitalist economy.[25] By the

[20]Judy Fudge and Eric Tucker, "Pluralism or Fragmentation? The Twentieth-Century Employment Law Regime in Canada," *Labour/Le Travail*, 46 (Fall 2000), 251-306.

[21]Judy Fudge and Leah Vosko, "Gender Paradoxes and the Rise of Contingent Work," in W. Clement and L. Vosko, eds., *Changing Canada*, 183-212.

[22]Daiva Stasiulis, "The Political Economy of Race, Ethnicity, and Migration," in W. Clement, ed., *Understanding Canada*, 141-171; Leah F. Vosko, "The Pasts (and Futures) of Feminist Political Economy in Canada: Reviving the Debate," *Studies in Political Economy*, 68 (Summer 2002), 55-83.

[23]P.K. Edwards, "A Comparison of National Regimes of Labor Regulation and the Problem of the Workplace," in P. Edwards, J. Belanger, and Larry Haiven, eds., *Workplace Industrial Relations and the Global Challenge* (Ithaca, NY 1994), 23-42.

[24]Judy Fudge and Eric Tucker, *Labour Before the Law: The Regulation of Workers' Collective Action in Canada, 1900-1948* (Don Mills 2001).

[25]Fudge and Tucker, "Pluralism or Fragmentation," 252. Prior to the 1880s, the *Lord's Day Act* was the only legislation governing what are today considered to be minimum employ-

early 20th century, legislated minimum standards were being developed as a means to protect the most "vulnerable" employees in a labour market. Understood through the Victorian, patriarchal ideals of the time, this referred to the growing numbers of women and children entering the growing industrial workforce.

The legislative foundations for Ontario's postwar minimum standards lay in the *Factories Act* of 1884 and the *Minimum Wage Act* of 1920.[26] Both reflected principles of minimal government interference in the regulation of the workplace, and the gendered norms of the patriarchal household headed by a male breadwinner. The Ontario *Factories Act* of 1884 set maximum hours of work at ten hours per day and 60 hours per week for women, girls (14-18), and boys (12-14), and made it illegal to employ boys under the age of 12 and girls under the age of 14.[27] The 1920 *Minimum Wage Act* established a provincial board to determine weekly minimum wages for most female employees, with the exception of domestic servants and farm workers.[28] In enacting protective legislation for women and children working in industrial workplaces, the state was responding to pressures from both organized labour and middle-class social reformers to improve the conditions of work experienced by these workers.[29]

The *Factories Act* and the *Minimum Wage Act* marked the inception of several central tendencies in the regulation of minimum standards. They signified a recog-

ment standards. Canada Department of Labour, "Sunday Shopping in Canada – Some of its Legal Aspects," *The Labour Gazette,* 2 (January 1902), 415.

[26]For a detailed discussion of the *Factories Act* see Tucker, "Keeping the Workplace Safe" and Lorna F. Hurl "Restricting Child Factory Labour in Late Nineteenth Century Ontario," *Labour/Le Travail*, 21 (Spring 1988), 87-121 For the *Minimum Wage Act* see McCallum, "Keeping Women in their Place." While the *Factories Act* was the first of its kind in Canada, by the time of the enactment of the *Minimum Wage Act*, the provinces of Alberta, Manitoba, British Columbia, Saskatchewan, and Quebec had all established some form of minimum wage legislation.

[27]Legislation similar to that of the *Factories Act* was extended to shops (1888), mines (1890), and bake shops (1895), Canada Department of Labour, "Legislation with Regard to Child and Female Labour in Canada," *The Labour Gazette*, 8 (March 1908), 1100-1120.

[28]Canada Department of Labour, "Minimum Wage Rates for Women in Ontario in 1928," *The Labour Gazette*, 29 (August 1929), 885-6; McCallum, "Keeping Women in their Place." In 1922, the Act was amended to permit the Board to establish a maximum number of hours to which the minimum weekly wage could be applied, and to establish overtime rates.

[29]As early as 1881, the first Canadian local of the Knights of Labor called for the abolition of employment of children under fourteen years of age in factories, as did the Trades and Labor Congress at its founding convention in 1883. Hurl "Restricting Child Factory Labour in Late Nineteenth Century Ontario."; Robert McIntosh, "Sweated Labour: Female Needleworkers in Industrializing Canada," *Labour/Le Travail*, 32 (Fall 1993), 105-38. Social reformers sought to protect women and children from the threats posed by the industrial workplace to both their physical health and morality, and in particular to protect women's role in the process of social reproduction. Tucker, "Making the Workplace Safe"; Ursel, *Private Lives, Public Policy.*

nition on the part of the state that it should have a role to play in establishing basic minimum standards for workers who could be defined as the most "vulnerable" and the least likely to have union representation. However, this pattern of state intervention simultaneously attempted to minimize the impact of legislated standards on employer power. In describing the impact of the Factories Act, legal historian Eric Tucker states that it sought to regulate class conflict "through relatively minor legislative concessions that were administered compatibly with the industrial capitalist order."[30] In other words, while the state accepted a role in regulating workplace standards, this role was very much circumscribed by the imperatives of capitalist profitability.[31] The *Minimum Wage Act* constructed a similar model, characterized by exemptions, ineffective enforcement, and an individualized complaints-based process, with the effect that did not significantly alter the power dynamics of the workplaces of industrial capitalism.[32]

The class dynamics of these Acts cannot be separated from their gendered character. By regulating the hours of work for women on the basis of concerns related to social reproduction, the *Factories Act* accepted and promoted a gendered division of labour that existed within both the emerging industrial economy and the labour organizations of the time, and that was premised on the ideals of the patriarchal family. Women were not considered to be permanent members of the labour force. They required protective legislation not only because they were not likely to benefit from union membership, but also in order to protect their role in the process of social reproduction. In the area of minimum wages, the state accepted the need for a women's minimum wage because of the predominance of women in low-wage industries, and the low levels of women's unionization. Low wages for women workers could undermine the social norm of the male breadwinner. But women's minimum wages did not need to approximate male wages as it was assumed that women were not sole-supporters of dependents; rather, they were assumed to be earning a supplemental income, or holding a temporary position.[33] As Bob Russell notes, minimum wages were "designed only to cover the 'transitory anomalies' (that is, temporary, single female wage earners), which fell outside the

[30]Tucker, "Making the Workplace Safe," 83-4.

[31]For example, the *Factories Act* contained "loop-holes" and exemptions that allowed employers to circumvent the restrictions on hours of work, as well as significant enforcement problems. See Hurl, "Restricting Child Factory Labour," and Tucker, "Making the Workplace Safe."

[32]As well, the Minimum Wage Board showed a tendency to be more cooperative with employers than with labour representatives, first in a reluctance to prosecute employers who violated the Act and, second, by developing wage rates primarily in consultation with employers. See McCallum, "Keeping Women in their Place," and McIntosh, "Sweated Labour."

[33]Canada Department of Labour, "Recent Developments in Canadian Labour Legislation," *The Labour Gazette*, 24 (July 1924), 556.

scope of the patriarchal household."[34] The racialized dimensions to the Act were also apparent in the explicit exclusion of domestic workers, a common form of employment for black women.[35] The intersection of these social relations through early minimum standards legislation ensured that minimum standards had minimal impact on employer power, and simultaneously reinforced gendered and racialized segmentation within the labour market.

Aside from specific legislation, another central aspect of the regulation of minimum standards that was established prior to the post-World War II period was that of provincial jurisdiction over minimum standards legislation for most workers. In order to resolve jurisdictional disputes over the regulation of working time, in 1925 the Supreme Court of Canada confirmed that the regulation of hours of work fell within provincial jurisdiction, with the exception of "servants of the Dominion Government" or "those parts of Canada which are not within the boundaries of the province."[36] Jurisdictional tensions between the federal and provincial governments over labour standards re-emerged in the late 1930s. A 1937 report of the Royal Commission on Dominion-Provincial Relations highlighted the lack of uniformity in standards between the provinces, and recommended that the federal government be given jurisdiction to set standards for minimum wages, maximum hours, and minimum age of employment.[37] The commission also argued that the implementation of international conventions, which were developed through the International Labour Organization (ILO), could also promote uniformity of labour

[34]Bob Russell, "A Fair or a Minimum Wage? Women Workers, the State, and the Origins in Wage Regulation in Western Canada," *Labour/Le Travail*, 28 (Fall 1991), 59-88.

[35]Dione Brand, *No Burden To Carry: Narratives of Black Working Women in Ontario, 1920s to 1950s* (Toronto 1991).

[36]Canada Department of Labour, "Labour Measures At Late Session of Parliament of Canada," *The Labour Gazette*, 24 (July 1924), 574-82. This decision led Prime Minister Mackenzie King to advocate for uniform labour laws across the provinces, since "if there is not uniformity it very often happens that the particular province that has higher standards in labour ultimately loses in consequence of the lower standards that exist in other provinces." Canada Department of Labour, "Notes on Current Matters of Industrial Interest — Benefit of Uniform Labour Laws," *The Labour Gazette*, 26 (April 1926), 305.

[37]Canada Department of Labour, "Royal Commission on Dominion-Provincial Relations: Recommendations Concerning Unemployment Insurance, Labour Legislation, etc. — Demarcation of Jurisdiction in Social Services," *The Labour Gazette*, 40 (June 1940), 545-554. The mandate of the commission was to "re-examine the economic and financial basis of Confederation and the distribution of legislative powers in the light of the economic and social developments of the last 70 years." The commission made wide-ranging recommendations in the areas of unemployment insurance, employment services, provincial welfare, old age pensions, health insurance, worker's compensation, and labour legislation.

[38]Canada Department of Labour, "Royal Commission on Dominion-Provincial Relations," 551. The federal government had ratified conventions regarding the eight-hour day, weekly rest periods, and minimum wage-fixing machinery in 1935. See Allan J. Torobin, "The La-

standards.[38] However, a 1937 Privy Council Decision, which confirmed that legislation to implement any ILO convention was to be left to the appropriate jurisdiction (federal or provincial), once again confirmed provincial jurisdiction over minimum standards.[39]

The Depression Era: Fair Wages, the ISA, and a Male Minimum Wage

The years of the Great Depression prompted both the federal and provincial governments to consider social and economic policy reforms to dampen the effects of free market capitalism. Following the failure of Prime Minister R.B. Bennett's proposed New Deal policies, the reforms process took place primarily at the level of the provinces and municipalities.[40] Ontario was no exception, as the province, led by Mitch Hepburn's Liberal government, sought to address growing concerns about a "sweatshop crisis" characterized by increasing hours of work and declining wages.[41] Yet, while new regulatory strategies emerged during the years of the Great Depression, intervention remained highly provisional. As labour historian Bryan Palmer notes, "the interwar years are noteworthy as ones in which the state failed to integrate itself into the emerging Fordist regime of accumulation" that developed in this period.[42] Further, lobbying by national and provincial labour bodies failed to produce a Canadian version of the *Wagner Act* at either the federal or provincial levels.[43] In terms of the regulation of minimum standards, the minimal and explicitly gendered framework of the early 20th century remained intact.

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bour Program and the International Labour Organization: Looking Back, Looking Ahead," *Workplace Gazette: An Industrial Relations Quarterly*, 3 (Winter 2000), 85-91. However, the ILO conventions ratified by the federal government had no legal power within the provinces, as labour legislation fell under provincial jurisdiction. The primary significance of the ILO standards for Canadian workers was that such standards provided an international principle against which to measure Canadian standards when Canadian labour organizations sought to pressure provincial governments for improvements to minimum standards legislation.

[39]Torobin, "The Labour Program and the International Labour Organization." Between 1938 and 1959, ten of the eleven conventions ratified by the federal government covered matters of federal jurisdiction.

[40]Marcus Klee, "Fighting the Sweatshop in Depression Ontario: Capital, Labour and the Industrial Standards Act," *Labour / Le Travail*, 45 (Spring 2000), 14-15.

[41]Klee notes that some within the business community also favoured some form of state regulation to "protect them from the dangers of the free market" during this period. Klee, "Fighting the Sweatshop in Depression Ontario," 14-15.

[42]Bryan D. Palmer, *Working Class Experience: Rethinking the History of Canadian Labour, 1800 - 1991* (Toronto 1992), 260.

[43]See Craig Heron, *The Canadian Labour Movement: A Short History* (Toronto 1996); Norman Penner, *From Protest to Power: Social Democracy in Canada 1900 – Present* (Toronto 1992), 66.

The years of the Depression are significant nonetheless, as while comprehensive minimum standards for male and female workers were not forthcoming, it was becoming apparent that a shift away from this formally gendered framework was emerging. For example, following a model established by the federal government,[44] "fair wages" and the eight hour day were established for workers employed on Ontario government construction contracts.[45] This model was not extended to the private sector, however. In the private sector, an alternative to legislated general minimum standards came in the form of the *Industrial Standards Act* (ISA) of 1935. The provincial government did not set minimum standards through the ISA; rather, the legislation simply established a process though which employers and employees could negotiate industry-wide standards. According to Arthur Roebuck, the Ontario Minister of Labour at the time, "[w]ere the Government to attempt to legislate for industry by a general minimum wage or to set the hours that men can work in an arbitrary way, it would not be successful and it would probably do more harm that good."[46] By 1937, only 65,000 of the province's 650,000 non-agricultural wage labourers were covered by standards negotiated through the Act and 80 per cent of the ISA schedules were in industries that had been previously unionized.[47] As the development and enforcement of ISA standards was dependent upon the efforts of employers and workers, the legislation offered little to workers who were not organized into trade unions.[48] Though formally gender neutral, neither fair wages legislation, nor the ISA addressed the general inadequacies of existing minimum standards legislation, or offered a comprehensive minimum standards framework for non-unionized workers in the province.

A third option explored in this period was the male minimum wage. Following a 1926 resolution in federal parliament by J.S. Woodsworth calling for a male minimum wage, organized labour took up the call for provincial legislatures to pass legislation to provide for a minimum wage for all male workers, "such minima to be not less than that set out in the *Labour Gazette* as necessary to maintain a family in a

[44]The eight-hour day was legislated for workers under federal jurisdiction in 1930 with the *Fair Wages and Eight-Hour Day Act*. In 1935, this was replaced with the *Fair Wages and Hours of Labour Act*, which established the eight-hour day and 44-hour week for federal employees. Geoffrey Brennan, "Minimum Wages and Working Time During the Last Century," *Workplace Gazette – Centennial Issue*, 3 (Ottawa 2000), 61-73.

[45]AO MLMC, File 7-1-0-69, box 2, The *Fair Wages and Eight-Hour Day Act*, 1934, 2nd Draft. The 1934 Fair Wages and Eight Hour Day Act applied to contracts of all departments of the Public Service, the Hydro Electric Power Commission, and all other provincial commissions "and like bodies."

[46]AO MLMC, File 7-1-0-154, box 5, Report of a Conference Between Members of the Canadian Manufacturers' Association and Hon. A.W. Roebuck, K.C., Minister of Labour for the Province of Ontario, 30 January 1935.

[47]AO MLMC, File 7-1-0-130, box 4, Memorandum, Re: Minimum Wage, 26 February 1937; Fudge and Tucker, *Labour Before the Law*.

[48]Klee, "Fighting the Sweatshop in Depression Ontario," 48.

decent standard of living, the wage to be based on an eight-hour day."[49] Employers' associations, such as the Toronto Board of Trade, the Retail Merchant's Association, and the Ontario Restaurant Owners' Association, all wrote to Deputy Minister of Labour J.F. Marsh to indicate their support for a male minimum wage in hopes that it would increase consumer spending power and combat competitive pressures that, without a legislated minimum, continued to drive wages to lower and lower levels.[50] However, employer support for the male minimum was premised upon the assumption that minimum wage legislation would not become Fair Wages legislation. Employers also sought assurances that any hours regulations would only establish the maximum number of hours to which the weekly minimum wage could be applied, rather than constitute absolute weekly hours maximums.[51]

By 1937, 438,500 of the 650,000 non-agricultural wage labourers in the province were male workers with no wage protection. Many were married, with dependents, and had an average wage of less than $12.50 per week, which was the rate set by the Minimum Wage Board for a single women working in the city of Toronto. Further, the provincial government noted that these workers "have no degree of bargaining power with their employers, because there is an ample supply of labour of this type at the present time and there is no prospect that this reservoir will be drained in the future."[52] In light of the growing concern over low male wages,

[49]Canada Department of Labour, "Labour Subjects at Recent Session of Dominion Parliament," *The Labour Gazette*, 26 (July 1926), 651-5. But while it adapted convention resolutions that called for a male minimum wage, organized labour continued to hold concerns that a male minimum wage could also become a maximum wage. Instead of a male minimum wage, the province enacted legislation that would provide workers with "the legal right to organize into a Trade Union of their own choosing." AO MLMC, File 7-1-0-130, box 4, Letter, Toronto District Labor Council; Canada Department of Labour, "Ontario Executive of Trades and Labour Congress Presents Legislative Program to Provincial Government," *The Labour Gazette*, 35 (February 1935), 160-1; Canada Department of Labour, "Trades and Labour Congress of Canada – Summary of the Proceedings of the 42nd Annual Convention," *The Labour Gazette*, 26 (October 1926), 971-2.

[50]AO MLMC, File 7-1-0-130, box 4, Memorandum, Re: Minimum Wage, 26 February 1937; AO MLMC, File 7-1-0-130, box 4, Letter, From The Board of Trade of the City of Toronto, 17 March 1937; AO R.G. 7-14, Ministry of Labour, Legislation and Regulation Files (hereafter MLLR), File 7-14-0-130, box 3, Letter, From Canadian Manufacturers' Association, To J.F. Marsh, Deputy Minister of Labour, 13 March 1937; Mayors of Ontario municipalities also called upon the provincial government to enact a male minimum wage.

[51]When it became clear that minimum wage legislation would not be used to establish absolute hours restrictions, the CMA too expressed tentative support for a legislated male minimum wage. AO MLMC, File 7-1-0-154, box 5, Report of the Executive Committee of the Toronto Branch of the Canadian Manufacturers' Association to the Annual Meeting of the Branch, Toronto, 28 April 1938.

[52]AO MLMC, File 7-1-0-130, box 4, Memorandum, Re: Minimum Wage, 26 February 1937.

and in response to growing public support for a male minimum wage, a new *Minimum Wage Act* was implemented in 1937. The new Industry and Labour Board created by the Act was empowered to set minimum wage rates for both men and women, and to set rates across either industries or regional zones.[53] David Croll, Minister of Labour, stated that the government's position was that the legislation was not intended to establish minimum rates in highly unionized industries, but rather to improve the living standards "of those who have found it impossible to bargain collectively or to organize for the purpose of improving their wages and working conditions."[54] However, while the Board was able to set minimum wages for men, it issued only one order to that effect. For most male workers outside those on government contracts, the new Act was of little consequence.

In the development of early minimum standards legislation, from the *Factories Act* of the late 19th century to the amended *Minimum Wage Act* of 1937, the state slowly responded to concerns from organized labour and social reformers by attempting to ameliorate some of the harshest conditions of industrial employment. However, state interventions in the regulation of minimum standards generally remained well within the boundaries of the principles of voluntarism. Any shift away from voluntarism was provisional, applying only to specific categories of workers, often included explicitly gendered regulations, and did little to alter the secondary status of non-organized workers. Workers without unions were left to rely on only a patchwork of employment laws to establish minimum conditions for their employment. Further, existing legislation was primarily designated for women workers, who were presumed to be unorganizable, and this legislation was premised upon highly gendered conceptions of what should constitute women's employment norms. These patterns of segmentation within both the labour market and state policies comprised the antecedent to the minimum standards legislation that was introduced in the postwar years.

Setting The Postwar Minimum

The 1944 Ontario Speech from the Throne indicated that the provincial government planned substantial changes to labour and employment legislation. New legislation would include a general limitation on hours of work, an annual holiday with pay, and the adoption of the wartime labour relations legislation.[55] This commitment was made in a context of growing labour unrest, the emergence of the federal

[53]Canada Department of Labour, "Notes on Current Matters of Industrial Interest — Ontario Bill Provides Minimum Wages for Men," *The Labour Gazette*, 37 (March 1937), 264.
[54]AO MLMC, File 7-1-0-130, box 4, Letter, David Croll, Minister of Labour to Toronto District Labour Council, 22 March 1937.
[55]Canada Department of Labour, "Notes on Current Matters of Industrial Interest – Ontario Bill Provides Minimum Wages for Men," *The Labour Gazette*, 37 (March 1937), 264.

welfare state, and the regulation of the former by the later through the labour relations legislation of the postwar settlement.

The Canadian welfare state developed as a result of a range of social pressures, including labour unrest and the socialist-oriented policies of the Co-operative Commonwealth Federation (CCF), and was also influenced by the legacy of the Depression years, all of which encouraged the adoption of a Keynesian approach to social and economic policy.[56] At the federal level, the Mackenzie King government announced a commitment to a number of measures of social security reform in the early 1940s. The liberal welfare state that developed in Canada during the postwar period was premised upon a general policy commitment to promote full male employment, and to provide social security for Canadian citizens, within the context of an economic system of private enterprise.[57] From this framework evolved policies and funding for unemployment insurance, family allowances, welfare and social assistance, old age pensions, job creation and job training programs, and public health care. As implied by the liberal welfare state model, the implementation of Keynesianism in Canada was limited in all of these areas, as the policy program of the postwar federal government was designed to ensure a political and economic climate that respected the private interests of capital.[58]

Following the war, business leaders sought to ensure that the state did not undertake excessive levels of intervention. A 1943 Canadian Manufacturers' Association (CMA) brief to the Special Senate Committee on Economic Re-Establishment and Social Security stressed the need to "encourage individual initiative, effort, and thrift, as opposed to the various forms of completely planned economy under State control."[59] Postwar planning should be the responsibility of individual private firms, and private industry should be given priority to determine postwar employment. Governments should only become involved with emergency or first-aid programs. The CMA also warned against both the continuation of wartime methods of central planning and government cooperation with organized labour in postwar policy development.[60] The business community was particularly concerned with organized labour's involvement in the construction of postwar labour legislation, specifically a national labour code. Business leaders, and organizations such as the

[56]Heron, *The Canadian Labour Movement*; Stephen McBride and John Shields, *Dismantling a Nation: The Transition to Corporate Rule in Canada* (Halifax 1997).

[57]For typology of welfare state models that developed during the postwar period see Gosta Esping-Andersen, *The Three Worlds of Welfare Capitalism* (Princeton 1990).

[58]Peter S. McInnis, *Harnessing Labour Confrontation: Shaping the Postwar Settlement in Canada, 1943-1950* (Toronto 2002). See also McBride and Shields, *Dismantling a Nation*, Chapter Two.

[59]Canadian Manufacturers' Association, *The War and After: Plans, Organization and Work of the Canadian Manufacturers' Association in Connection with the War and in Preparation for Conditions after the War* (Toronto 1944).

[60]McInnis, *Harnessing Labour Confrontation.*

CMA, were primarily concerned with ensuring that postwar labour relations legislation would guarantee that unions would be made to act "responsibly."

Organized labour's policy vision for postwar reconstruction included a national labour code, the legal enshrinement of collective bargaining rights, full employment, and wage programs geared towards poverty elimination.[61] The postwar policy programs of the Ontario federations of both the newly formed Canadian Congress of Labour (CCL) and the Trades and Labour Congress (TLC) included demands for a 40-hour work week in order to increase employment opportunities and workers' leisure time.[62] Other policy demands included time and a half for overtime over 40 hours, two weeks paid vacation, payment for statutory holidays, and an increase to the minimum wage rates. As well, by the early 1940s, both the TLC and the CCL expressed support for the principle of equal pay for equal work.[63]

When the strike wave of the mid-1940s hit, it was over issues such as union security, wages, and the 40-hour work week. It was organized at the level of the workplace, although there were political connections through relations with the CCF.[64] The state's response was the postwar labour legislation that instituted the regime of industrial pluralism and secured the process of collective bargaining as the primary means through which organized workers could improve their workplace standards.[65] The 1948 federal collective bargaining legislation embodied in the *Industrial Disputes and Investigation Act* provided a model for the provinces, as provincial jurisdiction over labour relations returned in the late 1940s.[66]

The implementation of this legislation facilitated the unionization of the mass production industries, with their largely male, blue-collar workforce.[67] This process further channelled union activities towards seeking improvements to workplace standards through collective bargaining, and did little to encourage the unionization of the secondary labour market. The effect of this was to further ingrain divisions between the working conditions of unionized workers and those in the secondary sector, who relied upon minimum standards legislation. As labour historian Peter McInnis, notes, "[i]mplicit with the attainment of official recogni-

[61]McInnis, *Harnessing Labour Confrontation.*

[62]Canada Department of Labour, "Legislative Proposals of Labour Organizations," *The Labour Gazette*, 49 (May 1949), 552-75.

[63]Canada Department of Labour, "Dominion Legislative Proposals of Canadian Congress of Labour," *The Labour Gazette*, 42 (March 1942), 291-95; Canada Department of Labour, "Annual Convention of the Trades and Labour Congress of Canada," *The Labour Gazette*, 42 (September 1942), 1040-44.

[64]McInnis, *Harnessing Labour Confrontation.*

[65]See Fudge and Tucker, *Labour Before the Law,* 3-4 for a definition of the legal regime of "industrial pluralism."

[66]See Fudge and Tucker, "Pluralism or Fragmentation," 275-79, for a discussion of legislative developments in the area of labour relations during this period.

[67]Fudge, "The Gendered Dimension of Labour Law."

tion was the reality that many working-class Canadians would be excluded from the advantages won through private contractual arrangement."[68]

While the emerging labour relations framework took shape in the context of both labour militancy and the development of the welfare state, as indicated in its 1944 Throne Speech, the Ontario provincial government was also developing new minimum standards legislation. In the summer of 1944, the province introduced the *Hours of Work and Vacations with Pay Act* (HWVPA), which not only reduced hours of work standards to eight per day and 48 per week, but, as it applied to both male and female employees in industrial undertakings, also ended the explicitly gendered nature of the regulation of working time. The Act also introduced the right to refuse overtime and an annual paid vacation of one week per year.[69] A memo to the Ontario Legislative Assembly indicated that these standards were established at levels that were considered to reflect the prevailing industrial conditions at the time, as "the effect of this legislation has been to make permanent for everyone working in industry in Ontario the basic conditions which generally prevailed."[70] Further, the maximum hours provisions were introduced to "spread employment over a greater number of employees and also to prohibit an employer from requiring his employees to work excessive hours."[71]

While expanding the scope of minimum standards, the provincial government also intended to respect the imperatives of private enterprise. Even though large industrialists were primarily intent on preventing organized labour from securing increased power through new labour relations legislation, they also pressured the state to exercise caution with improvements to minimum standards legislation. In response to the *Hours of Work and Vacations with Pay Act*, the Hamilton-Brantford branch of the CMA called upon the government to delay the changes until the end of the war out of fear that reduced hours of work would exacerbate labour shortages.[72] When the legislation was enacted, in addition to exempting all war-time industries, a number of other exceptions and special provisions were built into the Act, ensur-

[68]McInnis, *Harnessing Labour Confrontation*, 185.

[69]Canada Department of Labour, "Labour Legislation in Ontario and Saskatchewan in 1944," *The Labour Gazette*, 44 (July 1944); Canada Department of Labour, "Recent Regulations under Dominion and Provincial Legislation," *The Labour Gazette*, 44 (September 1944), 1177-81.

[70]AO MLLR, File 7-14-0-90, box 3, Ontario Legislative Assembly, 14 February 1951, 3. In the early 1940s, approximately 40 per cent of male employees and 50 per cent of female employees in Ontario worked 48 hours per week or less. A one week annual vacation with pay was a generally accepted standard. AO MLLR, File 7-14-0-93, box 3, An *Act Respecting Hour of Work and Vacations with Pay in Industrial Undertakings*, August 1944.

[71]AO MLMC, File 7-1-0-854, The Hours of Work and Vacations with Pay Act, 1964.

[72]Canadian Manufacturers' Association, "Annual Meetings of Divisions and Provincial and City Branches," *Industrial Canada*, 45 (June 1944).

ing that employers could exceed the new hours standards.[73] Writing four decades later, the Ontario Task Force on Hours of Work and Overtime described the contradictory nature of the Act, stating "the greater stringency of the vastly extended coverage and the more stringent maximums at eight hours per day and 48 per week were offset, in part at least, by greater flexibility through extensive exemptions and by downplaying the eight hour-per-day maximum where longer hours were the custom."[74] Exemptions and exceptions to ensure "flexibility" — better understood as relief from the legislated standards — were both a legacy of past minimum standards legislation and a central feature of the state's approach to minimum standards for the remainder of the 20th century.

In the years to follow, this approach to minimum standards received strong criticism from organized labour. For example, the Ontario Federation of Labour complained that employers were able to "almost willy-nilly get permits to exceed the maximum."[75] The Industry and Labour Board focused most of its enforcement attention to the weekly, rather than the daily maximum, resulting in complaints from unions that daily maximums were exceeded without employee consent.[76] The ease with which permits were granted, combined with weak enforcement practices and a lack of reinstatement provisions for workers who were fired for refusing to work overtime, drastically reduced the impact of the maximum hours regulations.

The regulation of minimum wages was restructured in the immediate postwar years as well. In 1947, all minimum wage orders established through the *Minimum Wage Act* were revoked. The province was divided into three zones, based on population size, and new orders were issued on a regional zones basis.[77] General minimum weekly wages based on a 48-hour work week were set for women workers in each of these zones. If a worker worked fewer hours in a week, the weekly wages were to be pro-rated. While the 1937 *Minimum Wage Act* allowed the Industry and Labour Board to set minimum wage rates for men, the new orders continued to leave men's rates unregulated.[78]

[73]AO MLLR, File 7-14-0-93, box 3, Regulations Under The *Hours of Work and Vacations With Pay Act*, 1944, 6 July 1944.

[74]Ontario Ministry of Labour, *Working Times: The Report of the Ontario Task Force on Hours of Work and Overtime* (Toronto 1987), 25.

[75]Canada Department of Labour, "Annual Conventions of the Ontario and Quebec Federation of Labour," *The Labour Gazette*, 68 (February 1968), 78.

[76]AO MLMC, File 7-1-0-447, box 10, Memorandum to all Members of Cabinet Committee, T.M. Eberlee, 1961.

[77]The three zones were as follows: Zone One — Toronto, Hamilton, Windsor, Ottawa, London, and surrounding municipalities; Zone Two — municipalities with populations of 3000 and over; and Zone Three — municipalities with populations under 3000. AO MLLR, File 7-14-0-130, box 3, The *Minimum Wage Act*, Order No. 2 made by the Industry and Labour Board under the Act, 1947.

[78]Frank Whittingham, *Minimum Wages in Ontario: Analysis and Measurement Problems* (Kingston 1970).

While the system of industrial pluralism constructed a hegemonic approach to relations between employers, unions, and the state,[79] the segmented nature of this hegemony becomes evident when viewed in relation to postwar employment standards legislation. The labour relations legislation of the postwar settlement secured the means by which unionized workers could improve their standards (through compulsory collective bargaining), while non-unionized workers relied upon minimum standards for statutory protection.[80] Further, while the regulation of minimum standards took on a more generalized character, the broader policy approach developing within the postwar system of labour market regulation remained premised upon the designation of minimum standards as legislation primarily applicable to those workers in supplemental and/or transitory forms of employment. As Judy Fudge and Leah Vosko suggest, the implications of this segmented approach to postwar labour market regulation were profound. It contributed to the normalization of the Standard Employment Relationship (full-time, continuous employment) within the unionized mass production industries, providing these workers with full-time, stable, well-paying jobs, and thereby entrenching a distinct pattern of segmentation between primary and secondary labour markets.[81] Employment relationships within the secondary labour market, those regulated by minimum standards, were characterized by job insecurity, part-time hours, low-pay, and little opportunity for advancement. The segmented nature of labour market regulation supported this segmented labour market structure.

The primary beneficiaries of industrial pluralism were largely white, male, blue-collar workers.[82] Many workers, particularly women, as well as many workers of colour, including the growing numbers of non-British immigrant workers, did not secure unionization as a result of the postwar settlement.[83] These workers were left with minimum standards legislation, which did not construct standards comparable to those negotiated through collective bargaining,[84] to set the basic

[79]See Panitch and Swartz, *Consent to Coercion*, Chapter 2.

[80]Judy Fudge and Leah F. Vosko, "Gender, Segmentation and the Standard Employment Relationship in Canadian Labour Law, Legislation and Policy," *Economic and Industrial Democracy*, 22 (May 2001), 271-310.

[81]Fudge and Vosko, "Gender, Segmentation and the Standard Employment Relationship."

[82]Women workers in the public sector would benefit from the legislation once public sector workplaces began to unionize. Fudge and Vosko, "Gender, Segmentation and the Standard Employment Relationship"; Alan Sears, "The 'Lean' State and Capitalist Restructuring: Towards a Theoretical Account," *Studies in Political Economy*, 59 (Summer 1999), 91-114.

[83]Bryan Palmer notes that over two million immigrants arrived in Canada between the years of 1946 and 1961, and that these new Canadians accounted for a significant portion of labour market growth during this period. Further, many were from eastern and southern Europe, rather than of British origin, and were predominantly employed in low-wage labour. See Palmer, *Working Class Experience*, 305-7. See also Fudge and Tucker, "Pluralism or Fragmentation," 280-81.

[84]Heron, *The Canadian Labour Movement*, 78.

standards in their workplaces. Further, despite the acknowledgment that women workers were particularly reliant on minimum standards legislation,[85] the state's postwar legislative strategy was not premised on the need to create standards to make up for gendered differences in working conditions; thus, this segmented approach to labour market regulation continued to support male breadwinner norms.[86] The new legislation replaced the explicitly gendered application of minimum standards (to women workers) with a more general provision of a "safety net" for those with "limited bargaining power."[87] But due to connections to the aforementioned patterns of labour market segmentation, minimum standards legislation took on an implicitly gendered character. Further, while minimum standards legislation had never held explicitly racialized provisions, due to the marginalization of many racialized groups within the labour market, and hence their reliance on minimum standards, the regulation of minimum standards remained racialized as well.

As McInnis argues, the framework of industrial pluralism directed unions towards collective bargaining, thus further entrenching this segmented approach to labour market regulation. Organized labour's response to these tendencies was not homogenous, however. In the years immediately following the enactment of the HWVPA, organized labour engaged in intense debates over the merits of general minimum standards legislation. Older, craft-based unions were in favour of improving workplace standards through collective bargaining, while the newer industrial unions were open to the use of a combination of legislative and workplace strategies.[88] At its annual convention in 1947, the Trades and Labour Congress resolved to follow a plan of action based on "the securing of concessions asked for by direct negotiation rather than legislation."[89] Conversely, at the CCL annual convention in 1947, delegates called for uniformity of labour legislation across the country and the adoption of ILO conventions, both of which should be accomplished through regular federal and provincial conferences. Further, the CCL's traditional demand of the eight-hour day and the 40-hour work week was to be achieved through the combination of both legislation and collective bargaining.

This debate played out at the provincial level. At the annual meeting of the Ontario Provincial Federation of Labour (AFL-TLC) in 1951, delegates expressed concern over "too much legislation." One delegate typified this sentiment, stating that

[85]For example, a 1960 federal Department of Labour report recognized that, where women workers were concerned, "[t]he conditions of work that are offered may be largely determined by the legal minimum standard." Canada Department of Labour, "Legislation Affecting Women's Work," *The Labour Gazette*, 60 (July 1960), 672-74.

[86]Fudge and Vosko, "Gender, Segmentation and the Standard Employment Relationship."

[87]Ontario, *Working Times*, 26.

[88]AO MLLR, File 7-14-0-90, box 3, *Globe and Mail*, "Labour Delegates Clash on Official Coddling," 13 January 1951.

[89]Canada Department of Labour, "Conventions of Labour Organizations," *The Labour Gazette*, 47 (November 1947), 1574.

"[t]his business of trying to legislate improvements just shows the lack of intestinal fortitude on the part of some unions and their failure to fight for what they want."[90] Another delegate feared that unions were "drifting altogether too far into the field of asking the government to do everything for them." These sentiments were reflected in a recommendation of non-concurrence on a resolution calling for a legislated five-day, 40 hour work week for motormen and conductors. Union officials expressed opposition to minimum wages for male workers as, based on the experience of women workers, it was feared that the legislated minimum would become the maximum wage rate for the industry. Moreover, union officials asserted that legislation would be of little value without unions present to enforce legislated standards, and advocated unionization to improve the wages of non-unionized men, rather than look to the state for protection.[91]

The Ontario provincial government was aware of these tensions within organized labour, and exploited this lack of consensus over the merits of minimum standards when defending its opposition to improvements to existing legislation. In 1951, the CCF presented bills that were intended to reduce maximum hours of work from 48 to 40, preserve the eight hour day with no reduction in take home pay, establish an overtime premium at time-and-a-half, and provide two weeks of paid vacation with vacation pay at 4 per cent of a worker's annual salary.[92] In response, the Minister of Labour expressed the government's opposition to the bills, stating "I think that the members of this House will agree that the proposals contained in the various Bills offered by the members opposite to amend the *Hours of Work and Vacations with Pay Act* are the type which members of the Ontario Provincial Federation of Labour think should be left to collective bargaining."[93]

The provincial government also used small business opposition to improvements in minimum standards legislation as a rationale to resist the same proposals. In opposing the CCF amendments, the Minister of Labour stated "there are many small businesses and many employers who employ one or two employees would could not sustain the burdens which this type of legislation seeks to impose."[94]

Elements within the labour movement that supported the further development of minimum standards legislation, combined with the general militancy of the 1940s, contributed to the increased social pressure placed on the state to improve

[90]AO MLLR, File 7-14-0-90, box 3, *Globe and Mail*, "Labour Delegates Clash on Official Coddling," 13 January 1951.

[91]These sentiments were also expressed in debates over the question of equal pay for women workers at the end of the 1950s. While some unionists favored equal pay legislation, others saw the unionization of women workers and the securing of equal pay through collective bargaining as a more effective solution. Canada Department of Labour, "Equal Pay for Equal Work," *The Labour Gazette*, 59 (September 1959), 903-5.

[92]AO MLLR, File 7-14-0-90, box 3, Ontario Legislative Assembly, 14 February 1951.

[93]AO MLLR, File 7-14-0-90, box 3, Ontario Legislative Assembly, 14 February 1951, 3-4.

[94]AO MLLR, File 7-14-0-90, box 3, Ontario Legislative Assembly, 14 February 1951, 4.

the existing minimum standards legislation. Overall, however, the lack of strong, coordinated pressure limited the potential for legislative gains.[95] The effect of the divisions within organized labour was to reinforce the strategy of collective bargaining of unionized workers as the primary means through which working conditions would be improved. Due to the bias of existing labour relations legislation towards large, industrial workplaces with predominantly male employment, this contributed directly to the aforementioned patterns of segmentation within the labour market.

While standards in the areas of hours of work and minimum wages had long-standing legislative roots, another key component of the postwar minimum standards regime — equal pay for male and female workers — was not developed until after the war. Prior to World War II, there was no general legislation against women workers receiving wages below the level of male workers when performing the same work.[96] Following the war, and in the context of dramatic increases in women's participation in the labour market,[97] pressure on the state to address the disparity of wages between women and men workers escalated. This wage gap drew the attention of women's organizations such as the National Council of Women and the Federation of Business and Professional Women's Clubs. These organizations called on the state to enact equal pay legislation in order to address the moral and economic injustice of the lack of equal pay for equal work. Within the labour movement, women activists pushed for legislative action not only for equal pay, but also for equal opportunity of employment.[98] Male unionists were also willing to support the principle of pay equity, partly fearing that lower wages for women could undermine both male employment (through the replacement of men with women), and "the wage rates and standards won by the trade unions over a long period of time."[99]

[95]Fudge and Tucker, "Pluralism or Fragmentation?" 282.

[96]Canada Department of Labour, "Equal Pay for Equal Work," *The Labour Gazette*, 59 (September 1959), 903-5.

[97]Between 1941 and 1971, women's labour force participation rate doubled from 20 to 40 per cent. However, this was not uniform across the labour market. Building on early patterns of gendered segmentation, this participation was characterized by a concentration of women in specific occupations (secretarial, service, health) that were associated with women's "natural" abilities (caring, cleaning, cooking). Pat Armstrong and Hugh Armstrong, *The Double Ghetto: Canadian Women and their Segregated Work* (Toronto 1994). Moreover, at this point women's rates of unionization remained low relative to that of men.

[98]Canada Department of Labour, "The 12th Annual Convention of the Canadian Congress of Labour," *The Labour Gazette*, 52 (October 1952), 1312-28.

[99]Canada Department of Labour, "Equal Pay for Equal Work," *The Labour Gazette*, 59 (September 1959), 904. Along with pressuring for legislation, unions also attempted to secure equal pay through collective bargaining, although at the time equal pay provisions were "not frequent."

Ontario was the first Canadian province to enact equal pay legislation. In 1951, the provincial government passed the *Fair Remuneration to Female Employees Act*, which came into effect on 1 January 1952. The Act was designed to "ensure that a woman who is doing the same job as a man is paid at the same wage rate."[100] Employers were prohibited from discriminating between male and female employees by paying a lower rate to a woman for "the same work in the same establishment."[101] By the end of the decade, equal pay laws covered approximately 67 per cent of women in the Canadian labour force.[102]

The Act was immediately criticized, as it applied only to the same work, and therefore did not take into account work of equal value. Employers were able to continue to pay differential wages to men and women workers through practices of occupational segregation.[103] The CCF attempted, with no success, to expand the Act to cover work of "comparative character or on comparable operations or where comparable skills are involved." A report produced by the federal government at the end of the decade found that the practice of paying women less than men for the same work remained widespread, in part due to the assumption of the need to maintain a male breadwinner wage.[104] As well, a complaints process that placed the onus on the individual worker to report a violation held the clear potential to act as a deterrence to the registering of complaints. The Act could certainly be seen as a "cautious and narrow solution to women's demands."[105]

From the mid-1940s through the 1950s, the regulation of minimum standards shifted from an explicit orientation towards protecting women workers to a general commitment to constructing a set of standards for all vulnerable (non-unionized) workers, male and female. Employment standards legislation sought to promote a degree of decommodification through general minimum standards that provided these workers some protection from market forces; however, as Judy Fudge and

[100]Canada Department of Labour, "Equal Pay Legislation in Canada," *The Labour Gazette*, 58 (Ottawa 1958), 1227-29.

[101]Canada Department of Labour, "Notes of Current Interest — Fair Employment Practices and Equal Pay Bills in Ontario," *The Labour Gazette*, 51 (April 1951), 443; AO MLMC, File 7-1-0-447, box 10, Memorandum to all Members of Cabinet Committee, T.M. Eberlee, 1961.

[102]During the 1950s, similar legislation was enacted in Saskatchewan, British Columbia, Manitoba, Nova Scotia, Alberta, and at the federal level. For a discussion of the various provisions of these acts see Canada Department of Labour, "Labour Legislation of the Past Decade — III," *The Labour Gazette*, 61 (February 1961), 140-44.

[103]Fudge and Tucker, "Pluralism or Fragmentation," 281-82.

[104]Canada Department of Labour, "Equal Pay for Equal Work," 903-5.

[105]See Joan Sangster, "Women Workers, Employment Policy and the State: The Establishment of the Ontario Women's Bureau, 1963-1970," *Labour/Le Travail*, 36 (Fall 1995), 133. For a detailed analysis of pay equity legislation, see Jan Kainer, *Cashing In On Pay Equity? Supermarket Restructuring and Gender Equality* (Toronto 2002).

Eric Tucker note, "[m]inimum entitlement could not depart too markedly from market norms."[106] While the postwar state sought to buffer the effects of the market, as in the pre-World War II years, the manner in which minimum standards were regulated ensured that employers had some "flexibility" to exceed the legally established minimums. Further, while explicitly gendered standards were replaced with this formally gender neutral framework, the standards remained implicitly gendered. Joan Sangster describes Ontario's postwar employment and welfare policies as grounded in a "dichotomous understanding of women (occasional workers) and men (permanent workers)."[107] This gendered conception of employment certainly persisted through the transition of employment standards from protective legislation explicitly designated for women workers to general minimum standards legislation designed for all vulnerable (non-unionized) workers, primarily through the parallel dichotomy created between minimum standards and labour relations legislation, and the ways in which this segmented regulatory framework shaped the social organization of the labour market. In addition, the hegemonic character of postwar labour relations legislation drew organized labour further away from those outside the bounds of industrial pluralism. The lack of a strong, unified labour movement organizing around demands for improved minimum standards legislation further reinforced the state's segmented approach to labour market regulation.

The Ontario Employment Standards Act, 1968

The final phase in the development of Ontario's postwar minimum standards regime took place in the 1960s, amidst a social context of growing labour unrest, in particular from young workers and militant and unionized elements within public sector workforces. As well the federal government had embarked on a nation wide "war on poverty," which included strategies to re-regulate minimum standards. As stated by the federal Task Force on Industrial Relations, which was struck in response to labour militancy, labour standards legislation may be "part of an anti-poverty program to ensure workers a minimum standard of living without being exploited by having to work unduly long hours."[108] Within the provincial gov-

[106]Fudge and Tucker, "Pluralism or Fragmentation?" 277.

[107]Sangster, "Women Workers, Employment Policy and the State," 131.

[108]H.D. Woods, *Canadian Industrial Relations: The Report of the Task Force on Labour Relations* (Ottawa 1968), 35. The Task Force recommended that future labour standards legislation include minimum wages set at levels "consistent with a minimum standard of living," the establishment of a "uniform living wage" across the country, the extension of wage rates established through collective bargaining across entire industries, and the introduction of premium pay for hours worked over 40. See 202-4. For an overview of labour militancy in the 1960s, see Heron, *The Canadian Labour Movement*, 92-8, and Palmer *Working Class Experience*, 320-5. For a discussion of the "war on poverty" see Palmer, *Working Class Experience*, 276, 337. See Fudge and Tucker, "Pluralism or Fragmentation?" 283-89 for general developments in labour and employment law in the context of this heightened militancy.

ernment itself, Ministry of Labour officials were increasingly aware of the inadequacy of existing minimum standards legislation, and of the need to develop a new solution to the continued economic marginalization of low wage workers in the province, as "a portion of the labour force had difficulty in maintaining even a subsistence standard of living."[109] Thus, by the mid-1960s, the Ontario Department of Labour was in the process of developing a comprehensive labour standards code that would bring together existing legislation in the areas of minimum wages, hours of work, and equal pay.[110]

While a coming shift was taking shape, internal debates within the government over the minimum wage indicate that there was no clear consensus. In 1960, a provincial government committee was appointed to explore the possibility of creating a legislated male minimum wage.[111] In a memorandum to the Minister of Labour, the Industry and Labour Board expressed concern that the introduction of a male minimum wage could create economic and political problems within the province. There were the competing concerns that an increased minimum wage could generate unemployment, while at the same time a minimum wage rate that was too low would generate further criticism from opponents.[112] After several meetings between December 1960 and February 1961, the committee concluded that a legislated weekly minimum wage for men was not necessary because the existing *Minimum Wage Act* permitted the establishment of male minimum wage rates through minimum wage orders. While the possibility of an hourly minimum was assessed, the committee concluded that it could not recommend a minimum wage for men without further study.

Nonetheless, the general concern within the government over the economic marginalization of low wage workers, combined with union pressure for a general minimum wage, pushed forward a new approach to the regulation of minimum wages.[113] In disagreement with the minimum wage committee, the Ontario Minister of Labour took the position that a male minimum wage of $1.00 per hour would be both politically and economically feasible, even in the event of some short-term unemployment.[114] The practice of setting a minimum wage for only women work-

[109]AO MLMC, File 7-1-0-1178, box 37, *Labour Standards and Poverty in Ontario*, Ontario Department of Labour, 22 November 1965, 5.

[110]AO MLMC, File 7-1-0-1182, box 37, Memorandum, to H.L. Rowntree, Minister of Labour, Re: Proposed Provincial Labour Code, 17 October 1966.

[111]AO MLMC, File 7-1-0-447, box 10, Memorandum Re: Meetings of Cabinet Committee Appointed to Consider a Minimum Wage for Men, 1961.

[112]AO MLMC, File 7-1-0-475, box 11, Memorandum, Minimum Wage for Men, Industry and Labour Board, 1961.

[113]AO MLMC, File 7-1-0-731, box 19, Statement by the Honorable H.L. Rowntree, Minister of Labour, on the Government's Minimum Wage Policy, 1-2.

[114]AO MLMC, File 7-1-0-447, box 10, Memorandum to all Members of Cabinet Committee, T.M. Eberlee, 1961, 2

ers was finally abandoned in 1963 with a general rate phased in across each of the existing minimum wage zones.[115] A general minimum wage of $1.00 for male and female workers in the province ($1.25 for construction workers) was reached across the province on 27 December 1965.[116] This new minimum wage legislation followed the pattern set by other postwar minimum standards legislation by constructing a minimum social safety net, in part a response to increased pressure from organized labour.[117] At the same time, the phase-in approach was meant to take into account concern raised within the business community, which had indicated cautious support so long as the rates did not increase to the point where they could have a detrimental impact upon marginal industries that employed large numbers of unskilled labourers.[118] Further, its gendered character was apparent in the fact that the majority of workers who were affected by the new minimum were women.[119]

The lack of consensus within the government over the specifics of the minimum wage paled in comparison to the tensions that developed between the province and the federal Department of Labour over the issue of general labour standards. These tensions were apparent in the reactions of provincial officials to the development of the *Canada Labour (Standards) Code*, itself a product of the social context of labour militancy and the "war on poverty." The Code was implemented in July 1965, and set labour standards for all industries under federal jurisdiction, including an eight hour day and 40 hour week, with an overtime rate of time-and-a-half for hours over 40.[120] Both employers and the Ontario provincial government voiced opposition to the Code. Employers, particularly those in the trucking industry, feared that the hours of work restrictions could have a detrimen-

[115]Ursel, *Private Lives, Public Policy*.

[116]AO MLMC, File 7-1-0-1189, box 37, Circular #24, The *Minimum Wage Act*, Labour Standards Branch, Department of Labour, 1 March 1966. See also, Whittington, *Minimum Wages in Ontario*.

[117]By the early 1960s, the OFL was calling for a general minimum wage of $1.25 for male and female workers. AO MLMC, File 7-1-0-730, box 19, Legislative Proposals, 1963, To the Prime Minister and Other Members of the Government of Ontario, Submitted by Ontario Federation of Labour CLC, 22 February 1963.

[118]AO MLMC, File 7-1-0-653, box 16, Report of the Ontario Division Executive Committee to the 44th Annual Meeting of the Ontario Division, the Canadian Manufacturers' Association, 2 May 1963.

[119]AO MLMC, File 7-1-0-897, box 25, Poverty in Ontario 1965, Ontario Federation of Labour, 1964. At the time there were over 132,000 workers who were receiving wages below $1.00 per hour. The vast majority (over 100,000) was in services and trade, and over half were women.

[120]The standards within the Code also included a minimum wage of $1.25 per hour for both men and women, two weeks of paid vacation per year, and eight statutory holidays for workers in the federal jurisdiction. Canada Department of Labour, *Canada Labour (Standards) Code*, *The Labour Gazette*, 64 (December 1964), 1058-63; Human Resources Development Canada, *Workplace Gazette – Centennial Issue*, 3 (Winter 2000).

tal impact on work scheduling.[121] Ontario Minister of Labour H.L. Rowntree agreed, arguing that the federal labour code could create an unequal level of competition, as some companies in grey area jurisdictions (trucking and highway transport) were covered by the federal code, while others remained under provincial jurisdiction with different hours of work regulations. In a more general sense, the new code was criticized in a memo produced by the Ontario Department of Labour for taking a "leading edge" approach to legislated standards by exceeding standards set through collective bargaining. This leading edge approach was very different than the approach favored by the province of Ontario, where "labour standards are established by Governments as floor levels to prevent exploitation," and were not to constitute an alternative to collective bargaining.[122]

The Ontario government was particularly concerned about the federal government's desire to promote a harmonization of labour standards across the provinces. It made clear that such an initiative would not be supported in Ontario. In a letter to Ottawa, Ontario Labour Minister H.L. Rowntree stated that "it is unrealistic to expect all economic regions across Canada to be capable of supporting a minimum wage of $1.25 or a 40-hour week or many other of the Code's provisions."[123]

The new federal code was met with mixed reactions from the Canadian Labour Congress, which offered qualified support for the new standards.[124] Within Ontario, however, the Ontario Federation of Labour used the standards set by the federal labour code as a rationale to push for improvements to provincial labour standards legislation. The OFL's strategy reflected a growing conviction within the labour movement that unionization and collective bargaining needed to be supplemented with legislative action. This was particularly the case in light of the increasing economic shift towards a service economy, as these jobs were "the hardest to organize and are the lowest paid."[125] The new federal Code, combined with the broader "war on poverty," provided the organization with an opportunity to push for stronger provincial standards. Specifically, the OFL called on the province to

[121] AO MLMC, File 7-1-0-992, box 30, Notes for Statement by Hon. Allan J. MacEachen, Minister of Labour on resumption of debate in the House of Commons on Bill C-126, The *Canada Labour (Standards) Code*, 16 February 1965.

[122] AO MLMC, File 7-1-0-992, box 30, Bill C-126 — *Canada Labour Standards Code*, (produced by Ontario Department of Labour), 11 February 1965, 2.

[123] AO MLMC, File 7-1-0-992, box 30, Letter, To W.M. McIntyre, Deputy Minister, Department of the Prime Minister, From H.L. Rowntree, Minister of Labour, 28 April 1965.

[124] According to the Canadian Labour Congress, the Code's minimum wage of $1.25 per hour was too low. But while the new labour code was not perfect, it "seems at least to meet the CLC's longtime demand for a minimum wage, maximum hours of work, and other working standards legislation" Canada Department of Labour, "Annual Briefs to Government," *The Labour Gazette*, 65 (April 1965), 318-25.

[125] AO MLMC, File 7-1-0-1322, box 43, Ontario Federation of Labour Legislative Proposals to the Prime Minister and Other Members of the Government of Ontario, 1967.

match the federal hours of work standards of 40 hours per week and the overtime rate of time-and-one-half, as these standards greatly exceeded the existing provincial standards of the 48-hour work week with no overtime premium. In the words of the Federation, "[s]urely the highly industrial province of Ontario should at least conform to the Federal standards."[126] The OFL argued that reduced work time, through legislation, could create employment opportunities for larger numbers of workers, and that an increase to the minimum wage from $1.00 to $2.00 per hour was a necessary first step to the reduction of poverty rates in the province.

Women's organizations supported further improvements to the legislated standards as well. The Congress of Canadian Women called for an increase in the minimum wage from $1.00 to $2.00 per hour at its 1967 Annual Convention. Such a raise was needed to reflect the realities of women's wage labour in the 1960s. Paid employment was not a temporary phase in a woman's life, as many women workers remained in the labour force until retirement, and the existing minimum wage rate was insufficient to meet the needs of women who were the "sole breadwinners" of their families.[127] The Business and Professional Women's Clubs in Ontario called for amendments to the equal pay legislation through the 1960s, as women were receiving as little as 75 per cent of the salary paid to men for comparable work.[128]

In direct contrast to these positions, both large and small employers expressed a preference for standards to be set through workplace-level bargaining.[129] The CMA pressured for exemptions for employers with unionized workforces so that minimum standards legislation would not directly impact upon collective bargaining. In response to potential changes to the regulation of hours of work, small businesses sought greater flexibility in the scheduling of hours of work, and opposed proposals for a required half-hour break after five hours of work. Such legislation, it was claimed, would "create a very definite hardship" on workers employed in continuous shift operations, as well as on consumers and entire industries. Instead of legislated standards, "mutually satisfactory working conditions" that are negotiated between employers and employees were deemed more appropriate as they are "more conducive to good labour relations than legislated working conditions."[130]

[126]AO MLMC, File 7-1-0-1322, box 43, Submission of the Ontario Federation of Labour to Hon. Dalton Bales, Minister of Labour, January 1967.

[127]AO MLMC, File 7-1-0-1435, box 49, Brief on Women's Minimum Wage Rates, Submitted by The Congress of Canadian Women, 28 February 1968.

[128]Specifically, they proposed that the legislation be amended to cover "work of a comparable character done in the same establishment." AO MLMC, File 7-1-0-1181, box 37, Report on Proposed Amendments to the Ontario Human Rights Code.

[129]AO MLMC, File 7-1-0-1532.3, box 54, Summary of Representations Made by Associations in regard to the *Employment Standards Act 1968*, 1969.

[130]AO MLMC, File 7-1-0-872, box 24, Letter, From Building Products Ltd., To Hon. H.L. Rowntree, Minister of Labour, 9 March 1964.

Within the provincial government, the prevailing ideology regarding the role of minimum standards was tied to the goal to provide protection against exploitation in the labour market in order to address poverty. Minimum standards were necessary due to differences in bargaining power between organized and unorganized workers. A government report on *Labour Standards and Poverty in Ontario* suggested that, as "a portion of the labour force had difficulty in maintaining even a subsistence standard of living," minimum labour standards could play an important role in addressing the poverty that may result from low wages, long hours, and unfair competition.[131] For example, a 1968 memorandum indicated that the role of the minimum wage was "to ensure that employees with little or no bargaining power are paid an hourly rate that gives them sufficient income to obtain the necessities of life."[132] In the area of hours of work, despite the legislated maximum of 48 hours, the province was aware that between thirteen and sixteen per cent of workers were working hours in excess of the maximum,[133] creating pockets of exploitation in relation to existing community standards. The province was also aware that its legislated hours standards exceeded both the ILO conventions, and legislated maximums in many other jurisdictions (British Columbia, Alberta, Saskatchewan, Manitoba, and federal jurisdictions in Canada and the United States).[134] These concerns within the government not only created internal support for a new labour code, but also created a political space for those outside the state pushing for better standards, such as the OFL.

Yet, the same report on *Labour Standards and Poverty in Ontario* indicated that these considerations were to be accomplished without creating undue hardships for employers.[135] A subsequent memorandum in 1968 echoed this sentiment, stating that minimum wages themselves were not considered to be a means to eliminate poverty; rather they were to provide a "socially and economically acceptable" floor.[136] Consistent with previous minimum standards initiatives, any new mini-

[131]AO MLMC, File 7-1-0-1178, box 37, *Labour Standards and Poverty in Ontario*, Ontario Department of Labour, 22 November 1965, 5.

[132]AO MLMC, File 7-1-0-1407.1, box 47, Minimum Wage Regulations, 1968.

[133]By the mid-1960s, the hours of work for most workers in the province were well below 48, with the majority working a standard work week of 40 hours or less. AO MLMC, File 7-1-0-1407.3, box 47, *Labour Standards Act*, 1968, Background Memorandum, 25 January 1968.

[134]Ontario was one of the weakest jurisdictions in North America in providing holiday pay or overtime pay. By that time, other provincial jurisdictions, including Manitoba, Saskatchewan, Alberta, and British Columbia had two weeks of paid vacation, as compared to one in Ontario. AO MLMC, File 7-1-0-447, box 10, Memorandum to all Members of Cabinet Committee, T.M. Eberlee, 1961.

[135]AO MLMC, File 7-1-0-1178, box 37, *Labour Standards and Poverty in Ontario*, Ontario Department of Labour, 22 November 1965.

[136]AO MLMC, File 7-1-0-1407.3, box 47, The *Labour Standards Act*, Background Memorandum, 25 January 1968.

mum standards legislation should not be used to develop leading edge standards that would exceed standards negotiated through collective bargaining. For example, in response to an OFL demand to increase paid vacation to two weeks per year in 1968, the Minister of Labour Dalton Bales recommended against this to the Ontario Cabinet. Given that many collective agreements did not yet have two weeks paid vacation, "[i]f unions can't get two weeks after one year via collective bargaining, the law is going to be rather hard on the economies of some employers if it imposes the requirements."[137] Further, the province was certainly not prepared to follow the federal standard of the 40-hour work week. In response to business concerns over the possibility of a legislated 40-hour work week in 1965, E.G. Gibb, a Department of Labour official, stated it was "doubtful if any amendment along this line would be introduced by the Government at this Session."[138] A memorandum in 1968 clarified this position, stating "to limit hours to 40 would not only hobble industry, but would also limit workers' opportunities to earn overtime pay, which would reduce their incomes."[139] Thus, while the *Canada Labour Code* provided a model in terms of its comprehensive approach to labour standards, provincial opposition to the levels of the standards within the code indicated that the Ontario government intended to maintain provincial autonomy in developing its own code,[140] and that while efforts would be made to address poverty through minimum standards improvements, these efforts would be delimited by the province's interpretation of its economic interests.

Ontario's own comprehensive labour standards code — the Ontario *Employment Standards Act* (ESA) — was enacted in 1968 and came into effect on 1 January 1969.[141] At the time, there were some 2,800,000 employees in the province, with approximately 728,000 organized in trade unions. The legislation was primarily designed for those without collective agreements, particularly those in low-income

[137]AO MLMC, File 7-1-0-1385.1, box 46, Memorandum to: W.M. McIntyre, Esq., Secretary of the Cabinet, Parliament Buildings, From Dalton Bales, Minister of Labour, 25 March 1968.

[138]AO MLMC, File 7-1-0-1021, box 31, "Longer Hours Unlikely for Lumber Dealers," *The Globe and Mail*, 27 March 1965; AO MLMC, File 7-1-0-1021, box 31, Memorandum, From E.G. Gibb, Re: Globe and Mail Article, 29 March 1965.

[139]AO MLMC, File 7-1-0-1407.2, box 47, Memorandum Re: Employment Standards Act.

[140]A major change that was considered was the introduction of an overtime premium rate. This was considered preferable to the existing permits system as it would discourage excess hours of work and provide protection for workers against unpaid overtime, while still permitting the scheduling of extra hours. AO MLMC, File 7-1-0-1156, box 36, Memorandum, To Hon. H.L. Rowntree, Minister of Labour, From T.M. Eberlee, Deputy Minister, 21 October 1966.

[141]AO MLMC, File 7-1-0-1407.1, box 47, *Employment Standards Act*, 1968, 1969. The Act received Cabinet approval on 13 May 1968. It was given First Reading on 27 May and received Royal Assent on 13 June.

employment.[142] A Ministry of Labour notice to employers and employees in the province described the ESA as a means to "safeguard workers against exploitation and to protect employers against unfair competition based on lower standards."[143] Consistent with the previously existing approach to minimum standards, the ESA was designed to provide socially acceptable minimum standards without impeding business interests in the province. The principles of minimum standards, as indicated in a summary report in the 1967 *Labour Gazette*, were already well established: "The social and economic implications of minimum standards are inter-related, and must be largely determined by that which is economically practicable."[144]

The ESA established standards for minimum wages, hours of work, overtime, vacations with pay, and equal pay for equal work for most workers in the province. The general minimum wage was increased to $1.30 for all workers covered by the Act (the construction rate was increased to $1.55). Hours of work maximums remained at eight hours per day and 48 hours per week, with an overtime premium rate of time-and-one-half for work over 48 hours. Holiday pay was set at time-and-a-half for seven statutory holidays.[145] An annual paid vacation of two weeks was to be compensated at a rate of four per cent of a worker's annual salary. As well, the Act established a new process for the collection of unpaid wages up to $1,000, and incorporated the equal pay legislation into its framework.[146]

As with previous minimum standards legislation, the Act included exemptions and special provisions designed to provide employers with the capacity to operate outside its standards.[147] For example, R.M Warren, Executive Director of Manpower Services described the overtime provisions as a "flexible deterrent to excessively long hours."[148] The overtime premium was to provide a deterrent, while flexibility was gained through the possibility to average overtime hours over multiple weeks, subject to the Director's approval. Further, the right to refuse overtime

[142]AO MLMC, File 7-1-0-1407.2, box 47, Bales' New Labour Code Includes 1½ overtime pay, Ontario Department of Labour Information Release, 27 May 1968.

[143]AO MLMC, File 7-1-0-1532.1, box 54, Notice to Employers and Employees, 1969.

[144]Canada Department of Labour, "Minimum Standards Legislation and Economic Policy," *The Labour Gazette*, 67 (September 1967), 567.

[145]These were New Year's Day, Good Friday, Victoria Day, Dominion Day, Labour Day, Thanksgiving Day, and Christmas Day.

[146]Ontario, *Working Times*; Canada Department of Labour, "News Briefs – Ontario Ups Minimum Wage, Passes New Standards Act," *The Labour Gazette*, 69 (January 1969), 27.

[147]Canada Department of Labour, "Recent Regulations Under Provincial Legislation," *The Labour Gazette*, 69 (February 1969), 108-10; Canada Department of Labour, "Labour Legislation in 1968-69," *The Labour Gazette*, 69 (December 1969), 736-45. For example, different hours of work maximums were established for certain industries.

[148]AO MLMC, File 7-1-0-1533.1, box 54, Memorandum, From R.M. Warren, Executive Director, Manpower Services, 3 February 1969. Canada Department of Labour, "Labour Standards Legislation in 1967-68," *The Labour Gazette*, 69 (January 1969), 19-24.

did not apply in cases where an employer had established a normal work day in excess of eight hours in a work week of 48 hours or less. Hours in excess of the weekly maximum were permitted through a permits system, which was administered by the Director, to a maximum of 100 hours of overtime per year.

Organized labour was highly critical of the new legislation, stating that "[t]he new minimums will do very little to help the unorganized workers participate in the prosperity they help to create."[149] The 48-hour work week was unrealistic as industry standards were moving towards a 40-hour work week. The minimum wage levels, which were well below the poverty line established by the Economic Council of Canada for a family of four in 1969, were widely criticized by organized labour, the provincial New Democratic Party, and in the print media.[150]

Despite the flexibilities contained in the Act, employer associations also registered a number of concerns in the first year of the its implementation.[151] While the Canadian Manufacturers' Association was consulted prior to the Act receiving Royal Assent, the Association wrote to Labour Minister Dalton Bales to inform him of their perception that the concerns of employers had not been addressed in the drafting of the regulations.[152] At their Annual General Meeting in 1969, the association submitted that the ESA created many practical problems for employers.[153] Along with other employer associations, the CMA's position at the time was that the Act should not apply to an employer with a collective agreement, as it undermined the process of free collective bargaining. The Ontario Chamber of Commerce requested that employees in service industries be exempted from holiday pay provisions as "there is little justification for providing legislative authority which requires that such continuous operations as hospitals, hotels and communications enterprises should be required to pay above normal rates for maintaining normal service."[154] Employers continued to favour (individual and collective) workplace bargaining over legislated standards.[155]

[149]AO MLMC, File 7-1-0-1581, Legislative Proposals to the Government of Ontario, 1969, 1. AO MLMC, File 1505.1, box 53, Legislative Proposals to the Government of Ontario, 1969, Submitted by – Ontario Federation of Labour.

[150]AO MLMC, File 7-1-0-1532.2, box 54, "The Minimum Wage Must be a Living Wage," *Toronto Daily Star*, 10 July 1969; AO MLMC, File 7-1-0-1533.1, box 54, "Employment Standards Act Comes Under Fire as Well," *The Oshawa Times*, 18 October 1968.

[151]AO MLMC, File 7-1-0-1532.3, box 54, Summary of Representations Made by Associations in regard to the Employment Standards Act 1968, 1969.

[152]AO MLMC, File 7-1-0-1407.1, box 47, Letter, to Honorable Dalton Bales, Minister of Labour, 23 August 1968.

[153]AO MLMC, File 7-1-0-1506, box 53, Industry '69 — Shaping the '70s, Canadian Manufacturers' Association 98th Annual General Meeting, June 1969, 30; AO MLMC, File 7-1-0-1408.2, Letter, To Hon. D. A. Bales, 13 September 1968.

[154]AO MLMC, File 7-1-0-1408.2, Letter, To Hon. D. A. Bales, 13 September 1968.

[155]In a letter to Dalton Bales, the Ontario Chamber of Commerce stated that "union representatives are quite capable of protecting the best interests of their members concerning

The government's response to its critics of the minimum wage levels is illustrative of its perception of the role of the minimum wage specifically, and of minimum standards more generally. In response to claims that the minimum wage was too low, the government stated that the minimum wage levels were assumed to be a general floor below which wage rates cannot go, rather than a fair or living wage. This floor was assumed to have income raising potential, as increases to the minimum rates would lead to general increases in wage rates across the province.[156] In addition, the minimum wage was itself only part of a package of income-raising devices that included collective bargaining, the *Industrial Standards Act*, fair wage schedules for government contracts, and premium pay for overtime and statutory holidays.[157] But the standards also had to take business interests into account. The government was not prepared to meet demands from the OFL and NDP for a minimum wage of $2.25 per hour. A memorandum to the Minister of Labour suggested that this rate "probably would have too heavy an impact on low-wage industries."[158] Further, it was not considered reasonable for the government to set the minimum wage at a level that would ensure an income above the poverty line, as employees' family responsibilities and marital status were not to be considered in the determination of wage rates. Finally, competitive pressures required that the minimum wage be kept at a level in line with economic realities, lest companies decide to relocate to lower-wage jurisdictions. Thus, while the state exhibited some autonomy from the business community in setting minimum standards, that autonomy was clearly delimited by the prerogative to support private enterprise by minimizing the impact of the legislated minimums.

Conclusion

In the postwar years, collective bargaining and unionization provided some groups of workers with the means to secure stable incomes, benefits, and job security. Workers of the secondary labour market were accorded a secondary form of legislative workplace protections through minimum standards. In Ontario, government officials accepted the need for some minimum level of legislative protection for non-unionized workers. However, the policy framework that was adopted was clearly constrained by the state's support for private enterprise, for example,

wages, hours of work, overtime and vacations." AO MLMC, File 7-1-0-1408.2, Letter, To Hon. D. A. Bales, 13 September 1968.

[156]AO MLMC, File 7-1-0-1407.1, box 47, Notes on Minimum Wage and Employment Standards Policy.

[157]To indicate the significance of the increase to $1.30, the government argued that at the time there were 150,000 workers who received a raise with the implementation of the ESA. AO MLMC, File 7-1-0-1505.1, box 53, Memorandum to Hon. J.P. Robarts, From Dalton Bales, Minister of Labour, 18 March 1969.

[158]AO MLMC, File 7-1-0-1581, Memorandum to the Minister Re: OFL Brief, 19 March 1969.

through the low level of the standards, and the various special provisions that allowed employers to circumvent the legislation.

The explicitly gendered legacy of Ontario's early minimum standards legislation continued to shape the regulation of minimum standards in the postwar years. While postwar minimum standards legislation, including the 1968 Ontario *Employment Standards Act*, was free of the explicitly gendered provisions of early minimum standards legislation, it nonetheless constructed a highly gendered set of standards as it remained premised upon the norms of the male breadwinner model, and was much more likely to apply to women workers. This approach to minimum standards supported and reproduced patterns of not only gendered, but also racialized segmentation, as workers of colour and recent immigrant workers of largely non-British origins were also more likely to be reliant on the legislated standards, which were clearly set below conditions that were established by collective bargaining. The state's approach to minimum standards thereby ensured standards of a secondary status for workers with the least bargaining power, and thus reinforced and reproduced patterns of segmentation within a labour market that was built around the norm of the Standard Employment Relationship. Thus, in the postwar years, the regulation of minimum standards took on a broader scope than it had previously held. However, due to the ways in which the state negotiated the tensions associated with providing social protection for vulnerable workers, while at the same time minimizing interference in the market, the capacity for Ontario's postwar minimum standards to provide protection for the "pockets of exploitation" they were intended for was severely compromised.

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