PART 2   THE INTERNAL CHALLENGES

Chapter 2
The Employee–Employer Relationship
What Responsibilities Do Bosses Have to Their Employees?

Learning Objectives

After studying this chapter, you should be able to

1. Discuss the meaning and significance of employment and explain how it differs from other forms of work arrangements.
2. Explain the difference between the standard employment relationship and the nonstandard employment relationship and discuss trends in the use of both in Canada.
3. Identify and explain the main perspectives that shape debates in Canada about the appropriate role of markets, management, unions, and labour-related legislation.
4. Explain how we balance the interests of employers and employees when employment relationships are terminated in Canada.
5. Identify and explain the business responsibilities and opportunities within Canada’s diverse labour force environment, and explain mechanisms used to break down barriers to diversity within Canadian workplaces.

The ability to attract qualified workers and to extract maximum effort from them can be crucial to business success. However, navigating the labour relationship can be very difficult and is fraught with risks. The context in which the labour relationship operates is a highly complex one. Workers are usually interested in maximizing the income they receive from the sale of their labour, whereas businesses usually desire to maximize profit. These two objectives can clash, creating conflicts that can have negative effects on productivity and profits, as well as the economy and society more generally.

The government also has a keen interest in the outcomes from the sale of labour. Governments want to create an attractive business climate, yet they also have an interest in ensuring that workers are treated well and paid a level of compensation sufficient to provide for their families and fuel the economy through consumer purchases. In an effort to strike a balance between the “efficiency” concerns of business and the “equity” concerns of workers, the state plays an active role in the governance of the labour relationship by means of a complex web of rules and penalties.
In this chapter we will examine the labour relationship, with a particular emphasis on the perspectives that shape debates about how that relationship should be governed. Should businesses and workers be free to negotiate conditions of work, or should the government closely monitor and influence those conditions? What explains the high volume of government regulation targeting the labour relationship in Canada?

**THE BUSINESS WORLD**

**Is Working for Free Illegal?**

Would you work for free to gain work experience? Many Canadian students who are trying to secure a job in their chosen career would answer “yes.” Anya Oberdorf is one graduate who took two unpaid internships with different employers in the hopes of getting a full-time job in the publishing industry. While she gained valuable experience, she wasn’t offered a permanent role. “My experience has been really frustrating,” said the Toronto graduate. “I can’t afford a third internship, but I don’t want to sit around at home either.”

Certainly, students have bills to pay such as rent, groceries, and student loan payments. But how do you pay your bills when you can’t find a job?

A group of University of Toronto students have gone to Ontario’s Minister of Labour to end a growing practice of unpaid internships in Ontario and across the country. While the legal interpretation is more complex, an internship is generally referred to as on-the-job training with an employer to provide an individual with practical work experience. The University of Toronto Students’ Union (UTSU) argues that approximately 300,000 entry-level positions are being illegally misclassified as internships, trainee positions, or nonemployee work so that employers can avoid paying recent graduates for their hard work.

Indeed, very little is known about internships. The Ministry of Labour doesn’t regulate or keep statistics about interns or internship programs. “You won’t find the word ‘intern’ in our employment laws at all. It’s an industry term,” said David Doorey, employment law professor at York University. Many observers, however, agree that students working for free is nothing new. While volunteer work in nonprofit organizations has helped students gain experience, many lawyers argue internships are different.

While providing students with work experience is clearly beneficial, the increasing number of unpaid internships can have a negative effect on the economy. Unpaid work can drive wages down and lead to higher unemployment levels. Currently, graduates face an 18% unemployment rate—more than double the national average. Unpaid work also means interns cannot pay down their student debt, collect unemployment insurance, or contribute to the Canada Pension Plan. With an estimated 300,000 unpaid interns working in Canada, this also means less consumer spending. The problem is that students need work experience, but employers don’t always have the resources to hire them.

Proponents of internships argue that a bridge is needed between textbook knowledge and real-life experience, and internships help meet this missing component. While charitable institutions offer volunteer opportunities, this does not necessarily help students gain meaningful experience in their field of study.

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2 Oved, 2013.
Lauren Friese, founder of TalentEgg, a website that helps students find jobs, believes that students should be careful when accusing an employer of illegal activity, especially since students benefit from these programs: “Without internships—whether they’re paid or unpaid . . . there is absolutely no way for those young people to get the experience they need to find that first meaningful career.”  

Provincial labour laws vary across the country, making the issue even more complex. Moreover, internships are not well-defined or regulated, leading to legal loopholes that allow employers to take advantage of students who are desperate to find meaningful work.

HootSuite, a Vancouver social media company, was recently criticized over its internship practices because it did not comply with British Columbia’s Employment Standards Act. In British Columbia, the law defines internship and practicum differently. An internship is “on-the-job training offered by an employer to provide a person with practical experience.” A practicum, on the other hand, involves a formal education process and does not have to be paid.

Ryan Holmes, Hootsuite’s CEO, quickly responded to the growing online complaints: “Recently, I learned about some concerns that a few of our internship job postings may not be in compliance with the local laws,” Holmes wrote. “I appreciate those who have taken the time to bring this to our attention and we will immediately review this internally . . . When we created the internship program, I believed we were doing the right thing by offering the opportunity for young people to add experience to their resume and join a Vancouver success story.”

Certainly, the practice of internships is growing at a time when many employers are also increasingly hiring temporary and contract workers in Canada because of increasing costs and other competitive pressures. A report by the Law Commission of Ontario indicated that existing laws do not adequately protect unpaid workers.

The U of T student group contends that the province’s Employment Standards Act (ESA) “disfranchises students, trainees, interns, and young workers by either partially or completely exempting them from employment standard protections.” According to Gisele Rivet from the Ministry of Labour, there are a lot of loopholes in labour laws that employers can work with. Many workers that are classified as people in an apprenticeship, a training program, or a co-op are not legally “employees” under Ontario labour law. Other provinces have similar issues.

Today, there is no clear definition of a legal or illegal intern. “I can’t say whether it’s a lawful situation. We have to look at the facts of the situation. We’d have to have somebody investigate . . . to determine whether the general rules apply or an exemption or special rule applies,” Rivet stated.

So what’s the current law in Ontario? While there are no specific laws regulating “interns,” in 2011 the Ontario Ministry of Labour issued a fact sheet with six conditions addressing when a worker could be excluded from subsection 1(2) of the ESA:

1. The training is similar to that which is given in a vocational school.
2. The training is for the benefit of the individual.

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5   Hager, 2013.
6   Freeman, 2013.
3. The person providing the training derives little, if any, benefit from the activity of the individual while he or she is being trained.

4. The individual does not displace employees of the person providing the training.

5. The individual is not accorded a right to become an employee of the person providing the training.

6. The individual is advised that he or she will receive no remuneration for the time that he or she spends in the training.  

“IT may be time for governments to consider introducing a permit system,” says Doorey. “This would allow the government to verify that internships are not being used as a method to obtain free labour.” Nav Bhandal, a labour and employment lawyer, says it is difficult to interpret what the law means since there are few cases of student interns suing for wages. Furthermore, students who need work experience and a job reference for future employment don’t want to file complaints.  

8   Oved, 2013.

THE LABOUR ENVIRONMENT AND CANADIAN SOCIETY

In modern industrial societies, most people depend on income from the sale of their labour to survive. As demonstrated in the discussion of internships in The Business World vignette, work is also a central means by which wealth is distributed in a capitalist economy. It is also an important aspect of personal self-identity and self-worth in many societies—our jobs help define who we are and how others perceive us. For these reasons, the way in which a society manages the labour relationship tells us a lot about that society’s values and beliefs.

The nature of work varies over time and space. The labour environment in Canada differs from those in many economically developing countries and from those that existed a generation ago. For example, as we will discuss later in this chapter, Canada’s labour force is substantially more diverse than in the past. This creates both challenges and opportunities for Canadian businesses and also for Canadian policymakers, whose job it is to develop policies that will promote efficient business and job growth while also protecting workers and promoting the sustainable distribution of wealth necessary for a healthy society and economy. The range of options policymakers perceive as sensible to create or maintain this complex balance is influenced by their perspective on work and the role of markets and government regulation of business. We will discuss these various perspectives below.

First, we need to understand what we mean by work and employment in the Canadian context.

Distinguishing Work and Employment

Since the 20th century, the dominant model of organizing work has been employment. Employment is a form of work in which a person (an employee) is dependent on and mostly subservient to an employer. In an employment relationship, the employer is assumed to have control over the methods of production, the unilateral authority to decide what and

**employment contract** A contract that defines the terms and conditions of a contractual relationship between an employer and an employee. The contract may include reference to services to be performed, working hours, compensation, and other work-related obligations of the employer and the employee.

**employee** A person hired by an employer to perform work according to the terms of an employment contract.

**independent contractors** Independent contractors or the self-employed provide labour services in exchange for compensation. They run their own businesses rather than serving as an employee for another organization or person.

**partners** Individuals who share part ownership in a business. There can be two or more partners in a partnership.

**temporary placement organizations** A business that helps match workers looking for jobs with businesses that require temporary help. Also called an employment agency.

**volunteers** An unpaid individual who performs services for an organization voluntarily. A volunteer is not an employee under the law.

**intern** A worker who receives on-the-job training at a workplace. The internship may or may not be a formal requirement of an educational program and can be paid or unpaid. Whether an intern is considered an “employee” and is therefore entitled to legal entitlements available to employees in Canada, such as a minimum wage, depends on how a province’s employment standards laws define an employee. Some unpaid internships are unlawful, while others are not.

how much to produce, and the right to direct when, where, and how the employee is required to perform his or her job. The employment relationship is governed by an **employment contract**, which may set out specific rules, obligations, and rights applicable to the employer and employee and is usually enforceable in a court of law, just like other contracts are. At the core of the employment relationship is a basic exchange: employees sell their labour in exchange for compensation, usually in the form of wages and perhaps benefits of some sort. Employment can be full-time or part-time and indefinite in duration or for a fixed period of time—for example, it can last 50 years, or a few hours.

The **Employment Contract** However, employment is just one of many ways that work can be organized. There are many people who work but who are not employed. For example, **independent contractors** or the self-employed are not “employees.” They still provide labour services in exchange for compensation, but they are running their own business rather than serving as an employee for another business or person. Some people are **partners** in a business rather than employees. Partners also sell their labour, but they are part owners of the business and not its employees. Partners and independent contractors earn revenues, not wages. Others obtain work through **temporary placement organizations**, which assign them to work for some other business. Whether these “temp” workers are employees, and if they are who employs them, can be complex questions to answer. Others are categorized as unpaid **volunteers** or **interns** to distinguish their situation from employment. See the discussion in Talking Business 2.1.

Whether a work arrangement is characterized as employment or as some other form of business arrangement has significant implications in Canada. That is because many legal rights and entitlements are tied to the existence of an employment relationship. For example, Canadian governments have enacted a considerable amount of legislation to regulate employment based on the theory that employees require government protection because of their vulnerability to the employer. Employment standards legislation is one example. It entitles employees to a minimum wage, overtime pay, mandatory time off and holiday pay, and notice of termination among other benefits. None of these entitlements apply unless the arrangement is characterized as employment. Similarly, human rights laws prohibit discrimination in employment relationships, and access to unemployment insurance, public pension schemes, and workers’ compensation benefits are often contingent upon a worker having been employed for a period of time prior to making their claim for benefits. Tax systems also treat employees and nonemployees differently—nonemployees can deduct business expenses from their taxable income, whereas employees cannot.

From a business perspective, there may be advantages to using workers who are not employees of the business. A business that uses independent contractors or temporary placement workers may avoid employment standards laws or the requirement to pay insurance premiums to workers’ compensation systems, for instance. An employer must usually provide their employees with notice of termination in Canada before they can end an employment relationship. By not **employing** workers, businesses can avoid this potentially costly requirement and adjust more quickly and with less cost to economic downturns.

On the other hand, there may be business benefits associated with the employment relationship as well. According to human resource management literature, employers can maximize worker effectiveness by designing workplace reward systems that recognize and promote loyalty and commitment. One way to do this is to promise workers job security while granting them good pay and benefits. Employers can benefit from having long-service

Part 2 The Internal Challenges
Chapter 2 The Employee–Employer Relationship

Are unpaid interns illegal in Canada? The answer is surprisingly complicated, because governments are trying to balance a variety of competing policy interests.

On the one hand, employers could easily exploit a law that permitted them to simply call people interns and thereby avoid employment standards laws. Also, unpaid interns could replace real jobs, which is not good for the economy.

On the other hand, the state wants young people to gain work experience, and some employers who would not otherwise provide workers with experience to develop skills might allow interns to gain some experience by hanging around the workplace if they don’t have to pay them. Therefore, the state is trying to write a law that protects against the first two “bad” aspects of internships while permitting the third “good” aspect. Try writing a law that does that!

You have to start with the question of whether the interns are “employees” under the employment standards legislation, since only “employees” are covered by the Employment Standards Act (ESA). Section 3(5) of the Ontario ESA excludes from the Act, “an individual who performs work under a program approved by a college of applied arts and technology or a university.” So that’s easy: if the internship is part of a higher education co-op program, then the Act does not apply.

Then things get more complicated. The Ontario ESA defines an “employee” (in section 1(1)) as follows:

“employee” includes,

a. a person . . . who performs work for an employer for wages,
b. a person who supplies services to an employer for wages,
c. a person who receives training from a person who is an employer, as set out in subsection (2) . . .

Subsection (2) then says (with my comments added):

(2) For the purposes of clause (c) of the definition of “employee” in subsection (1), an individual receiving training from a person who is an employer is an employee of that person if the skill in which the individual is being trained is a skill used by the person’s employees, unless all of the following conditions are met (note that all of these conditions must be met):

1. The training is similar to that which is given in a vocational school.

TALKING BUSINESS 2.1

Are Unpaid Interns “Employees”?

What do you think a “vocational” school means? Well, it almost certainly does NOT include getting coffee, answering phones, and running errands for some idiot who thinks an “intern” means “personal slave.” Do you know any colleges that teach “coffee making” or “errand running”?"

2. The training is for the benefit of the individual.

3. The person providing the training derives little, if any, benefit from the activity of the individual while he or she is being trained.

4. The individual does not displace employees of the person providing the training.

5. The individual is not accorded a right to become an employee of the person providing the training.

6. The individual is advised that he or she will receive no remuneration for the time that he or she spends in training.

As you can see, whether or not an “intern” is an “employee” under the Ontario ESA depends on all of the circumstances as applied to these criteria. The rules would (continued)
certainly make someone an “employee” if they are retained to do valuable work for the employer that but for the “intern” would have to be done by either an employee or some other paid independent contractor. The law is intended to exclude from ESA protection only real, legitimate training programs designed to educate the intern. The employer is supposed to be doing a social service by exposing the worker to the “real” workplace. It is not supposed to be a system in which employers can get cheap or free labour.

I suspect there are a lot of employees in Canada being improperly called “interns” by their employers. Are you one of them?


What Is an Employee?

What distinguishes an employee from an independent contractor? This is a legal question, and it is answered by courts and administrative tribunals tasked with interpreting employment-related statutes. Factors that are considered in deciding whether someone is an employee or an independent contractor include the following:

- **Degree of control:** Independent contractors can usually determine the hours they work and the manner in which the work is performed, and can usually hire other people to perform the work. An employee, on the other hand, is usually told when and how to do the work and is subject to supervision of some sort.

- **Degree of economic risk:** An independent contractor assumes the risk of nonpayment of bills by customers, loss of customers, as well as the potential benefit of profits. An employee is usually paid their wages even if a customer does not pay their bills (the risk of nonpayment is the employers'), but they also do not usually share directly in profits.

- **Degree to which the worker performs an essential service for an organization:** A person who performs an integral task for an organization is more likely to be perceived as an employee than someone who performs a task that is peripheral to the organization’s business. For example, a chemist is more likely to be perceived as an employee of a chemical company than a person retained to mow the company’s grass once a month.

- **Degree to which the organization provides the necessary tools:** Independent contractors are more likely to own their own tools, whereas employees are more likely to have the tools provided to them by their employer.

A court or tribunal may consider one or more of these factors in determining whether someone is an employee or not. At its core is a basic question: Does the worker look more like a person who is in business for herself or for someone else?

The fact that a contract might say that a person is “not an employee” will not be binding on a court or tribunal. Courts look past that contract language and consider the above factors. Why do you think this is so? The answer is that courts are concerned about workers who acquire knowledge and skills in the performance of their jobs. The employment relationship may be more likely to foster worker commitment than a model in which workers answer to another employer or work for themselves. Businesses need to weigh these factors when deciding whether to arrange their labour force needs by using employees or retaining independent contractors or businesses to perform the work needed.
being taken advantage of by employers. Courts know that employers most often write work contracts, and workers often just sign on the dotted line. If employers could just include a sentence in every contract saying that the worker is “not an employee,” then it would be very easy to avoid all of the rules and laws that are designed to protect employees because of their economic vulnerability. Whether these laws are actually necessary to protect employees, and whether they help or harm businesses, the economy, and society, are issues that have been debated for as long as people have been paid to perform work.

From Standard to Nonstandard Employment Relationships

The period from approximately the 1930s to the 1980s was the golden age for the employment relationship in Canada. During that period, the standard employment relationship (SER) dominated the economic landscape. The SER is characterized by regular, full-time hours at a single employer, often spanning an entire working career. Employees working under an SER receive periodic pay raises and their employers usually provide health benefits and pension plans. The SER functions in the shadow of an extensive array of government regulation that guides the relationship and is underpinned by a strong social security net that provides protection to employees whose employment ends for one reason or another. For example, an employee who is laid off due to lack of work is entitled to unemployment insurance benefits, and an employee injured at work is entitled to workers’ compensation benefits. Unemployment and workers’ compensation benefits are funded by mandatory employer contributions.

Since the 1980s, however, the SER has been disintegrating as the dominant form of work. Large segments of the working population in Canada today work under arrangements that are frequently described as nonstandard employment (NSE). NSE is less stable and is characterized by part-time, temporary, or variable working hours; lower pay; fewer employer-provided benefits; shorter job tenure; and no access to collective bargaining. A 2009 study of Canadian labour standards found that NSE accounts for about 32% of the Canadian workforce. Many of these workers are young, recent entrants into the labour force. This trend toward NSE means that young people graduating from university today are far less likely to experience the sort of stable, predictable employment patterns that were the norm for earlier generations.

Many other workers are being characterized as independent contractors, sometimes at their own request, but often at the behest of businesses seeking to benefit from the financial savings and legal flexibility associated with eliminating “employees.” The shift from standard employment to “self-employment” is a major contributor to growing income inequality in Canada, since self-employed workers tend to be lower paid, have fewer employer-paid benefits, less job security, and are not entitled to the many social protections (unemployment insurance, workers’ compensation) or guarantees (minimum wage, overtime pay, paid holidays) available only to people who are or were “employees.”

Workers employed under NSE arrangements and low-income workers who are treated as independent contractors are often described as vulnerable or precarious workers. They live on the cusp of poverty and are unable to save or plan for the future because their source of income is always on the verge of disappearing.

Perspectives on Work and Government Policy

Whether this shift toward NSE and “self-employment” is cause for concern is a matter of substantial debate. Certainly businesses can benefit in terms of lower labour costs and greater managerial flexibility. That can help profitability, which in turn could make Canada...
an attractive place for corporations to invest. However, the OECD has noted that the growth in NSE and self-employment is also a significant cause of growing income inequality in Canada.\(^9\) Some workers benefit from this shift, but it appears that many more do not.

This points to a familiar problem in labour policy debates. Practices and policies that may benefit employers and businesses are not always good for workers, the economy, or society more generally. High profits and dividends are almost always treated as positives in business literature. But if they are derived from poor treatment of workers, including low wages, few health benefits, and dangerous working conditions, then are high profits and dividends benefiting society?

Consider an example involving Walmart, the world’s most profitable corporation. According to the Fortune 500 rank of American corporations, Walmart’s 2010 profits were US$14.3 billion. However, Walmart has also found itself on the losing end of numerous legal actions alleging illegal treatment of employees, such as stealing wages from workers and denying legally mandated breaks and rests. In Canada, Walmart has been found in violation of labour laws in its attempt to stop employees from exercising their legal right to join unions.

Do the illegal actions by Walmart against its employees taint its impressive record of big profits? Should governments impose more or less rules on business to influence how workers are treated? If they impose more rules, will this make the climate less friendly for businesses, causing them to hire fewer workers?

How to balance the interests of business in maximizing profits and shareholder dividends, on the one hand, with the interests of workers in securing a decent level of income and security, on the other hand, has been a subject of debate since the beginning of large-scale economic activity. These debates have been informed by a variety of perspectives that vary on such fundamental issues as

- the role and effectiveness of markets
- the role of bargaining power in the employment relationship
- the role of management, and the human resources function in particular
- the role of unions and collective bargaining

The range of responses to work-related issues that is deemed prudent depends on which of these perspectives dominates in a society at any particular moment in time. Four perspectives in particular have shaped debates about the governance of work in Canada: the neoclassical, managerial, industrial pluralist, and critical perspectives.

**Neoclassical Perspective**

The neoclassical perspective argues that competitive markets are the best means of organizing complex economies and societies. The forces of supply and demand, if left to operate freely with limited state interference, will ensure optimal assignment of skills and expertise throughout the economy as well as the fairest distribution of wealth.

**competitive markets** Markets in which there are a sufficient number of participants competing for the same goods, services, and customers. Market forces tend to fix prices at a point where the supply of a good or service equals the demand for that good or service.

**neoclassical perspective** One view of how the economy should function. It contends that competitive markets are the best means of organizing complex economies and societies. The forces of supply and demand, if left to operate freely with limited government interference, will ensure optimal assignment of skills and expertise throughout the economy as well as the fairest distribution of wealth.

optimal assignment of skills and expertise throughout the economy as well as the fairest distribution of wealth. This is because people and businesses are motivated by self-interest. Therefore, they will make decisions that maximize their personal interests and avoid situations that do not. Provided people have adequate information to recognize what is in their best interests and are free to make choices, the invisible hand of the market will guide actors toward economic and social prosperity. Neoclassicists assume that labour markets are perfectly competitive, or close to it, and therefore believe that if they left undisturbed by government intervention and unions they will produce the optimal market outcomes.

Adam Smith used the “invisible hand” metaphor in his book The Wealth of Nations, published in 1776. Smith argued that, by pursuing their own self-interest, individuals “are led by an invisible hand” to promote the greater public interest, even if that is not their intention. Modern-day adherents to the neoclassical perspective share Smith’s recipe for governments: The state should focus on ensuring a legal system is in place to protect property rights, enforce contracts, and prohibit anti-competitive practices, but otherwise should keep taxes low and government administration and regulation to a minimum.

Neoclassicists perceive the labour relationship as simply another form of free exchange between informed and free actors. Therefore, Canadian governments—indeed, governments around the world—are misguided in their attempts to “protect workers” through regulation such as minimum wages, overtime pay, human rights laws, health and safety rules, and laws that permit or even encourage unionization and collective bargaining. Neoclassicists argue that none of these laws are necessary to protect workers, and in fact they do more harm than good.

To see why, consider the example of the minimum wage. Imagine that an employer offers an employee $4 per hour and that the employee is prepared to accept that wage rate. However, the government passes a minimum wage law prohibiting employers from paying less than $10.25 per hour (which is the minimum wage in Ontario in 2013). The Neoclassicist position is that this law will have negative effects on the economy that will ultimately harm low-wage workers. By artificially raising the wage rate above the “market rate” ($4 per hour in our example), the minimum wage law will cause employers to hire fewer workers, to replace workers with machinery, or to pack up and move the work to another location that does not have a minimum wage. If none of these options is available, the employer will pass on the additional costs to consumers in higher product prices, and if that is not possible the company may be forced into bankruptcy or close down altogether. In any case, the economy suffers, and the harm will be felt most by the low-wage workers who the minimum wage laws were intended to help.

Neoclassicists are also not concerned about working conditions being too low in the absence of worker protection legislation. They believe that the invisible hand of the market will ensure this does not happen. A business that offers less than the market wage rate will be unable to attract or retain qualified workers, and therefore will either have to raise their offer to attract workers or will be driven out of business. Since workers are assumed by neoclassicists to be knowledgeable about other job possibilities and to be free and mobile—able to move from job to job as better opportunities arise—market forces will ensure that wages and working conditions remain close to that point at which labour supply equals labour demand (the equilibrium market rate). Any attempt by governments to intervene in this process of free bargaining by employers and workers will disturb these market-clearing processes, producing harmful effects.
managerial perspective
A perspective associated with the human resource management school. Managerialists believe that employees and employers share a common goal of maximizing productivity and profits, so there need not be conflict between them. As long as employers treat employees decently, the employees will work hard in the employer’s interests.

industrial pluralist perspective
A perspective that emphasizes the imbalance of power between workers and employers and the value to society and economies of striking a reasonable balance between the efficiency concerns of employers and the equity concerns of workers. Pluralists believe that unions and collective bargaining are beneficial to society and the economy because they give workers “voice” and ensure a fairer distribution of wealth throughout society than a system in which workers bargain employment contracts with employers on their own.

bargaining power
The amount of power workers have to determine their conditions of employment with their employer, such as wages, hours, training, vacation time, health and safety measures, and other factors.

Managerial Perspective
The managerial perspective is closely related to modern human resource management. It shares a belief with the neoclassical perspective that government intervention in the governance of work and employment should be minimal. However, managerialists put their faith in enlightened management practices rather than in the “invisible hand” of the marketplace. They argue that employers and employees, businesses and workers, share a common interest: They both want the business to be successful. Managerialists argue that workers who are treated decently and with respect will be the most productive workers, and that the most successful businesses will be those that provide good wages, benefits, and good working conditions. Therefore, businesses will look out for employees’ concerns because it is in their economic interests to do so.

In the managerialist perspective, employment standards and employment regulation should be kept to a minimum since these laws inject rigidity into the work relationship and impose unnecessary costs on employers. If laws are necessary to deal with the worst types of employers—those who do not perceive the wisdom in treating workers decently—the legal standards should be set at a low level and be flexible enough to not punish “good” employers. Unions and collective bargaining are an unnecessary impediment to managerial prerogative and flexibility in the managerialist perspective, and should not be promoted by governments. Since it is in the interest of management to treat workers fairly, there is no need for workers to look to unions for protection. Indeed, managerialists argue that the decision of workers to support unionization reflects a failure of management to address employee needs through progressive human resource management policies (see Exhibit 2.1).

Industrial Pluralist Perspective
The industrial pluralist perspective views the work relationship very differently than both neoclassicists and managerialists. They emphasize the imbalance of power between workers and employers and the value to society and economies of striking a reasonable balance between the efficiency concerns of employers and the equity concerns of workers. For the pluralist, the relationship between a business/employer and a worker/employee involves the bearer of power on the one hand, and subordination on the other hand. In most cases, workers lack the necessary bargaining power to engage in

Exhibit 2.1 Would you like a union with that coffee?

In recent years there has been increasing interest in unionization among coffee shops such as Starbucks and others. Like most businesses, Starbucks would prefer to avoid unionization of its employees. In the United States controversy erupted over the firing of a New York Starbucks employee in 2011 allegedly because she had attempted to join a union (Industrial Workers of the World). In Canada, workers at several Starbucks outlets were represented by the Canadian Auto Workers for a period of time. However, the union’s drive to organize the chain stalled and by 2007, all of the unionized stores had become “decertified”.

Traditionally, the restaurant and food services industry has been among the most challenging sectors to unionize. The low level of union penetration of the food-service sector is due to a number of factors including the fact that this is a highly competitive industry, and employers believe unionization will pose a threat to their profits. In addition, the labour force is typically part-time, with high turnover and so many of these workers don’t have enough commitment to the job to tolerate any tensions that arise over efforts to start a union. As workers stay in their jobs longer it will become increasingly important for businesses like Starbucks to ensure these employees are feeling satisfied with their working conditions or run the risk of facing unionization.
meaningful bargaining about conditions of employment, with the result being that the business purchasing their labour can set the working terms unilaterally. This is problematic because workers, unlike bricks and staples, are human beings, and society has an interest in promoting environments in which humans do not feel disenfranchised or exploited.

In contrast with neoclassicists and managerialists, pluralists support an activist government that intervenes in the work relationship to promote decent working conditions and worker “voice” in the determination of those conditions. Pluralists support minimum employment standards to ensure decent working conditions because they reject the neoclassical belief that market forces alone will produce a fair balance between equity and efficiency concerns.

Most importantly, pluralists believe that the most effective way to ensure worker voice and to promote a healthy distribution of wealth throughout the economy is to promote collective bargaining and unionization. Collective bargaining, including a legal right to withhold labour (a strike), empowers workers by putting them on a more equal footing as they bargain for the sale of their labour. This ensures that workers receive a reasonable share of the economic pie produced by their labour, a result that benefits the economy (by fuelling consumption) and society (by producing a decent standard of living). Therefore, pluralists support laws that protect the right of workers to join unions, to engage in collective bargaining, and to strike if necessary to apply pressure on their employers to agree to better working conditions (see Exhibit 2.2).

Pluralists reject the neoclassical claim that labour markets are perfectly competitive, or even nearly so. For example, they argue that in the real world, workers usually lack information about new jobs, so they are ill equipped to assess the true value of their labour during the initial bargaining process. Workers also lack information about alternative job opportunities, contrary to the assumptions of the neoclassical model. Even if they have that information, in practice people do not move from job to job with the mobility and ease that the neoclassical model assumes. Workers will often remain at a workplace for years, even if there are better job opportunities elsewhere. Behavioral economists describe this effect as bounded rationality—the recognition that humans often do not make decisions that would maximize their personal utility because they either lack the necessary information to assess the various options or lack the capacity to assess the information they have.

In short, people are far more complex and unpredictable than their depiction in the neoclassical model. Pluralists argue that since the assumptions on which that model is based do not hold true in the real world, it is inappropriate to base real-life public policies on neoclassical ideas. Pluralists also reject the managerialist claim that progressive human resource management policies and the supposed economic benefits derived from them will protect the interests of workers. For example, pluralists argue that the shift toward NSE,

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Pluralists argue that collective bargaining is valuable because it promotes two important outcomes:

*Democracy and voice:* It introduces a form of democracy into the workplace by giving workers the tools and power to participate directly in the development and enforcement of workplace rules and practices.

*Distributive Fairness:* It empowers workers to bargain for a larger share of the economic pie than is possible in the alternative system in which individual employees bargain for the sale of their labour. This encourages a stronger middle class and lesser income inequality, which according to the pluralists facilitates a healthier economy and more stable society.

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**Exhibit 2.2 The Benefits of Collective Bargaining**

activist government
A government that intervenes in the employment relationship by passing laws that restrict freedom of contract, such as employment standards, human rights, health and safety, and employment equity laws.

collective bargaining
A process of negotiation measures between a group of employees (through a union) and an employer (or group of employers) leading to a collective agreement that applies to the entire group of employees.

bounded rationality
The idea that humans often do not make decisions that would maximize their personal utility because they either lack the necessary information to assess the various options or lack the capacity to assess the information they have.
discussed earlier, which is contributing to the growth in economic inequality and fall in workers’ real wages in Canada, is a trend being pushed and implemented by human resource management professionals. Unions, not management, are the institution that fights against these trends in favour of more secure, higher-paying jobs (see Talking Business 2.2).

### Talking Business 2.2

**The State of Canadian Unions—Down but Not Out**

Employees who are covered by a collective agreement or a union contract earn higher wages than employees who are not. In 2012, the average hourly wage for unionized employees was $27.36, compared to $22.25 for non-unionized employees. However, after adjusting for variances by occupation, education, and experience, the union wage premium has declined in recent decades to less than 8 per cent—nonetheless, a clear benefit still flows to unionized workers.

Despite this advantage, the proportion of workers covered by a collective agreement has been slowly trending downward in Canada over the last twenty years. Union coverage now sits at 31 percent, down from close to 34 percent in 1997.

In order for union membership to grow, the labour movement must find a way to make strides in organizing some industries that have traditionally remained elusive—such as the services, agriculture, and financial sectors. And, as business continues to boom in the resources sector, companies in the mining and oil and gas sector may present opportunities to expand.

The first bold step taken by the labour movement has been the merger of the Canadian Auto Workers (CAW) and the Communications, Energy and Paperworkers Union of Canada (CEP). The merged entity will be Canada’s largest private-sector union, representing roughly 300,000 workers right out of the gate. The new conglomerate will not only have more clout thanks to its larger size, but will be better able to focus its resources to support organizing efforts. The union leadership plans to grow the union—to about double its current membership—in relatively short order and will devote 10 per cent of its revenue to these activities. Membership may be expanded to include students, retirees, and the unemployed, demonstrating its commitment to move beyond the limits of the traditional union model. The impact could be significant.

Unions know they need to adapt to the new realities of the Canadian landscape—the economy will grow only slowly over the medium term, technological change will continue at a rapid pace and international competition will intensify. This will make gains at the bargaining table increasingly difficult. In the public sector, concessions are likely as governments grapple with budget deficits and growing levels of debt. In response, unions will need to be creative in growing their membership base to secure their social and political power but also their financial future. So, while unions may be down, don’t count them out quite yet.

Critical Perspective  The focus of the critical perspective is the inherently exploitative nature of the capitalist system. This perspective draws its inspiration from Marxist theory. It argues that the interests of labour (workers) and capital (the owners and managers of economic organizations) are irreconcilably in conflict. The objective of capital is to extract from labour maximum effort and control at minimal cost. Since workers depend on capital for their basic needs in a capitalist system, and there are almost always more workers than jobs, labour is inherently disadvantaged and subject to exploitation at the hands of the more powerful capitalists.

The critical perspective posits that employment regulation and collective bargaining are at best only marginally useful in protecting workers from this exploitation. In fact, these measures can actually be harmful to worker interests insofar as they can blind workers to their exploitation and distract them from the more important objective of building class consciousness, which will be necessary to challenge the capitalist model and replace it with a more egalitarian model. From the critical perspective, the managerialist perspective glorifies the manipulation of labour by capital in an attempt to mask the inherent conflict between labour and capital. The neoclassical model is dismissed as a faulty theory based on nonsensical assumptions that have no basis in reality. Moreover, neoclassicists ignore the central fact that the “market” itself is a construct developed by capitalists and supportive politicians to serve the interests of capital.

THE LABOUR CONTEXT IN CANADA: WHERE ARE WE NOW?

Which of these perspectives dominates public policy in Canada today? The best answer is probably that all of them play some role in shaping the debates about how best to organize and structure the labour relationship. Certainly, in the period running from the end of World War II until about the 1980s, the industrial pluralist perspective was highly influential. Governments across the country, from all of the major political parties, supported strong labour laws that facilitated and encouraged workers to join unions and engage in collective bargaining.

These laws remain in place. For example, Canadian employers are prohibited by labour relations statutes, such as the Ontario Labour Relations Act, from discriminating against employees who try to organize a union or who support unions. These statutes also require employers to engage in collective bargaining with unions that have been certified by the government as the representative of a group of the employer's employees. Unions get certified when they can demonstrate that a majority of the employees want union representation. Once this happens, the government orders the employer to bargain “in good faith” with the union toward reaching a collective agreement. If no agreement is reached, labour relations laws permit employees to go on strike to put pressure on the employer to improve its offer and prohibit employers from firing the employees for doing so. The law also permits employers to lockout the employees, thereby denying them their pay.

For much of the 20th century, the Canadian economy was dominated by large manufacturing workplaces (steel, automakers) and the extractive (mining, oil and gas) and forestry industries. The SER dominated in these industries, which were staffed primarily by men. Canadian governments during the postwar period sought to encourage an economy in which working men were able to earn a “family income” sufficient to support their spouses and children. Today, household income is used to describe the total amount of income brought in by all members of a household or place of residence.
and children. This was the ideal Canadian family around which public policies were designed. Promoting collective bargaining in heavy industry was considered a sensible way to protect the ideal: Working men were encouraged to join unions, and through collective bargaining they would bargain for stable, long-term employment and wages and benefits sufficient to support a family and fuel a consumer economy. Women, who worked primarily either in the home or in service-sector jobs, were considered secondary income earners and less important from a public policy perspective.

As demonstrated in Exhibit 2.3, with government support union density reached nearly one quarter of the (nonagricultural) workforce during the mid-1980s, most of which was in the manufacturing and natural resources sectors. The union wage premium—the additional amount of wages paid to non-unionized over non-unionized workers—was measured at close to 25% in the 1970s. However, both union density and the union wage premium have experienced a decline since the 1980s, which is most apparent when we look at the private sector. In 2010, private-sector union density was only 17.5% of the nonagricultural Canadian workforce. The union wage premium, according to some recent studies, has fallen to close to 10%.

This decline in the prevalence and impact of collective bargaining coincided with, and was in part caused by, a shift in the dominant perspectives away from industrial pluralism and toward the neoclassical and managerialist perspectives. Since the 1990s, governments in Ontario, British Columbia, Saskatchewan, and Alberta have revised labour laws to weaken unions and discourage collective bargaining, arguing that collective bargaining discourages businesses from investing in Canada. Recently, the federal government has been prohibiting workers from going on strike. This turn against unions and collective bargaining is closely aligned with the neoclassical perspective and the belief that markets operate most efficiently without collective bargaining and with little employment regulation.

Economic globalization has also influenced the debate about how best to organize work in Canada. Greater mobility of capital and industry has contributed to a shift in the composition of the Canadian economy. Many manufacturing workplaces have moved to lower-wage countries, and many of the new jobs being created are in the service sector. Governments must wrestle with how to balance their desire to create a “business-friendly” climate while also ensuring that good jobs are created. This challenge has been rendered more difficult by the increased ability for businesses to move from one jurisdiction to another. The fear is that if labour costs rise too high, or laws make control of labour too rigid, businesses will avoid Canada or leave. In this way, globalization can be said to create downward pressure on employment-related laws and practices (see Talking Business 2.3).

### Exhibit 2.3 Union Density in Canada, 1921–2010

<table>
<thead>
<tr>
<th>Year</th>
<th>Union Density (percentage of nonagricultural workers who are union members)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1921</td>
<td>16</td>
</tr>
<tr>
<td>1930</td>
<td>13.1</td>
</tr>
<tr>
<td>1940</td>
<td>16.3</td>
</tr>
<tr>
<td>1945</td>
<td>24.2</td>
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<tr>
<td>1951</td>
<td>28.4</td>
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<tr>
<td>1958</td>
<td>34.2</td>
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<tr>
<td>1960</td>
<td>32.3</td>
</tr>
<tr>
<td>1965</td>
<td>29.7</td>
</tr>
<tr>
<td>1970</td>
<td>33.6</td>
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<td>1975</td>
<td>35.6</td>
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<tr>
<td>1980</td>
<td>35.7</td>
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<td>1985</td>
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<tr>
<td>1990</td>
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<td>1995</td>
<td>34.3</td>
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<tr>
<td>2000</td>
<td>31.9</td>
</tr>
<tr>
<td>2005</td>
<td>30.7</td>
</tr>
<tr>
<td>2009</td>
<td>29.9</td>
</tr>
<tr>
<td>2010</td>
<td>29.6</td>
</tr>
</tbody>
</table>


**union density** A measure of the percentage of employees that are members of a union out of the total employees in the labour market.

**union wage premium** The additional amount of wages paid to unionized over non-unionized workers.
**Chapter 2 The Employee–Employer Relationship**

The past decade has seen organized labour decline as a share of the Canadian workforce. Between 1997 and 2011, union density in Canada fell approximately 1.7 per cent from 30.9 per cent to about 29.2 per cent. The overall decline in union density would have been greater but for the fact that the highly-unionized public sector continued to represent a large share of total employment. More than 70 per cent of the broader public sector is unionized—which includes government departments, agencies, and Crown corporations, along with publicly funded schools, hospitals, and other institutions.

In contrast, union density in the private sector now sits at an all time low of 15.9 per cent. This decline is due, in part, to legislative changes restricting union certification processes but also changes in the economy including the “hollowing-out” of the manufacturing sector.

Union density is not a flawless measure of labour’s influence in terms of bargaining power and wage setting. Collectively-bargained agreements can serve as a standard against which other non-unionized organizations set wages and benefits in order to remain competitive. As union density declines, however, the degree to which it serves as the benchmark also diminishes.

The changing demographic profile of the population is also undermining the role and importance of unions. Baby boomers, who are beginning to exit the workforce, can more easily relate to the success of the labour movement in achieving gains around pay equity for women, racial equality, and improved working conditions. Many members of the younger generation—call them Millennials or Generation Y—hold negative views about the relevance of labour unions. This generation has grown up in a society where many of these battles were already won. Therefore, many younger workers fail to see the benefits of belonging to a union. In fact, seniority rules can be impediments to younger workers getting coveted day shifts and vacation time during summer months.

Unions have historically played an active role lobbying on issues affecting working Canadians. Labour’s influence has produced public policy improvements in workplace health and safety in the workplace, pension benefits, wellness, and literacy, to name just a few areas. However, labour’s ability to exert pressure on behalf of workers will undoubtedly be impacted by a declining base of members and the resulting loss of union dues. Even though union density is on the wane, organized labour can continue to have a positive impact on government policy—particularly if they focus on issues that have broader public appeal.


**DISMISSING EMPLOYEES**

Unemployment rates measure the percentage of adults in the labour market who are actively seeking employment. Exhibit 2.4 shows how those rates have varied over a 35-year period. In 2012, the unemployment rate was between 7% and 7.5%. Avoiding high rates of unemployment is one of the great challenges of governments. High, sustained unemployment imposes high costs on economies and societies.

For example, workers who lose their job often need to access public resources, such as unemployment insurance or welfare benefits. People who are not earning money are not paying taxes, so government revenues used to fund essential public services decrease. The unemployed also have less money to spend in the economy, and our economy depends in large measure on Canadians buying things. Unemployment also imposes other social costs, including higher incidence of depression, alcohol and drug dependency, and poor child nutrition. When a community suffers large numbers of job losses at one time, such as when a factory closes, there are negative spillover effects throughout the entire community.
Therefore, governments have an interest in discouraging unemployment and job losses. On the other hand, employers sometimes need to respond to changes in their economic situation by downsizing the labour force. If the survival of the business requires shedding labour costs, then employers should be permitted to do this with as little complication and cost as possible. An important challenge for business and government alike is to find an appropriate balance between permitting flexibility in work practices while also protecting the welfare of workers. The most obvious point when these interests come into conflict is at the end of the employment relationship.

Rules and programs have emerged over time that attempt to balance the interests of business in being able to downsize and the interests of workers and the community in avoiding unemployment. These rules come in a variety of forms. Here we will briefly discuss three of them: (1) court-made common law rules, (2) employment standards notice requirements, and (3) unemployment insurance benefits.

**Common Law Rules Requiring Notice of Termination**

All nonunion employees in Canada have an employment contract with their employer. Sometimes the contract is written, but if it is not then the parties have a verbal contract. Disputes about what an employment contract says or how it should apply in a given situation are resolved by judges in courts of law. Over time, a large body of decisions by judges interpreting employment contracts have been released and recorded in law books and, more recently, on electronic websites. This body of case law is known as the **common law of the employment contract**.

One rule that judges created and that forms part of the common law of the employment contract is a requirement for employers to provide employees with **reasonable notice** of the termination of the employment contract. How much notice is “reasonable” is decided by judges and depends on a number of factors, including the length of the employee’s service, the employee’s age, and the type of work the employee performed.

**Exhibit 2.4**

Unemployment Rates in Canada


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**Common law of the employment contract** All of the rules of interpretation of employment contracts applied by judges over the years, as recorded in legal decisions.

**Reasonable notice** The amount of time in advance that employers must inform employees that their services are no longer necessary and their employment contract is ending. How much notice is “reasonable” is decided by judges and depends on a number of factors, including the length of the employee’s service, the employee’s age, and the type of work the employee performed.
Chapter 2 The Employee–Employer Relationship

Statutory Minimum Notice of Termination

If an employer fails to provide the employee with reasonable notice, the employee can sue the employer in court to recover it. However, this is costly and takes a lot of time, so most workers do not bother. To provide a less expensive, quicker, and more informal means of ensuring employees receive some notice of their termination, governments have imposed notice requirements. Employment standards statutes in Canada include mandatory minimum statutory notice provisions. For example, in Ontario the Employment Standards Act requires employers to provide the following minimum periods of notice of termination:

1. At least one week before the termination if the employee's period of employment is less than one year
2. At least two weeks before the termination if the employee's period of employment is one year or more and fewer than three years
3. At least three weeks before the termination if the employee's period of employment is three years or more and fewer than four years
4. At least four weeks before the termination if the employee's period of employment is four years or more and fewer than five years
5. At least five weeks before the termination if the employee's period of employment is five years or more and fewer than six years
6. At least six weeks before the termination if the employee's period of employment is six years or more and fewer than seven years
7. At least seven weeks before the termination if the employee's period of employment is seven years or more and fewer than eight years
8. At least eight weeks before the termination if the employee's period of employment is eight years or more

The amount of notice is higher if 50 or more employees are terminated in a four-week period. While the statutory minimum notice is usually less than the common law period of reasonable notice assessed by judges, the employee does not need to sue the employer in court to recover it. An employment standards complaint to recover statutory minimum notice can be filed by completing a form online, at which point the government will investigate and order the employer to comply with the statute.

Both reasonable notice and statutory minimum notice are intended to provide employees with a cushion—a period of time to plan for their job loss and to look for another job. These requirements impose costs on employers. However, they are justified on the basis that job losses impose costs on society and employees, some of which should be borne by employers. This is a different approach than that used in the United States, where employment contracts can be terminated at any time with no notice. That model is known as “at will” employment and is highly influenced by the neoclassical perspective. The US approach assumes that if employees value notice of termination, they will bargain a contract term requiring it. In Canada, our courts and governments have imposed a notice requirement, recognizing that most employees will not know that they should bargain for one or will lack the bargaining power to do so.

mandatory minimum statutory notice The minimum job termination notice employers must give their employees. It is found in employment standards statutes and varies from province to province.

“at will” employment A concept used in US labour law that allows employers to terminate employees without any notice for any reason. At-will employment does not exist in Canada.

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Unemployment Insurance Programs

Another way that we attempt to reduce the cost to workers and society associated with job losses in Canada is through unemployment insurance programs. The unemployment insurance program operated by the federal government first appeared in 1940. Today, the program is administered under the Employment Insurance Act. The model requires employers and employees to make contributions into an unemployment insurance fund. To access benefits, unemployed individuals must satisfy a series of conditions, including having paid into the fund for a specified period of time and actively searching for employment. The amount of benefits payable are based on a percentage of the employee’s prior earnings up to a maximum amount, and benefits last for only a fixed period of time (usually several weeks).

The unemployment insurance program provides a measure of security to some Canadian workers who lose their jobs. However, the model has been criticized on a number of fronts. Supporters of a strong insurance program point out that less than 50% of unemployed people in Canada qualify for benefits because of the strict qualifying criteria; they want the criteria to be loosened so that more people can receive the benefits they contribute to. Others are critical of unemployment insurance plans because they believe that they discourage people from working. These critics call for the elimination of unemployment benefits altogether, or at least for lower benefit levels and even more stringent eligibility requirements.

CURRENT ISSUES IN THE WORKPLACE: MANAGING WORKFORCE DIVERSITY

Canadian businesses operate within a diverse society. The Canadian population reflects a multitude of cultures and demographic backgrounds. For example, recent census figures provided by Statistics Canada show that over 5 million Canadian citizens were foreign-born, comprising nearly 20% of the total population. This diversity is increasingly reflected in the Canadian labour pool. Immigrants who came to Canada in the 1990s have accounted for approximately 70% of the total growth of the labour force in recent years. Women also comprise a significant component of the Canadian labour force and account for about half of both the employed workforce and all union members. Visible minorities and people with disabilities, together with women, make up over 60% of Canada’s labour force.

Diversity in our workforce is also reflected in the growing presence of older workers. At the start of the 21st century, Canadians between the ages of 37 and 55 made up about 47% of the labour force, but by 2011 half of these workers were 55 or over. Consequently, it is clear that organizations must attend to the rights of a diverse group of individuals.

Protecting Diversity and Guarding against Discrimination in Canadian Law

If the Canadian economy is to flourish, businesses must be encouraged to tap the considerable potential of Canada’s diverse population. However, how best to achieve this is the source of much debate.

For politicians, the question arises as to whether it is appropriate to use legislation to address these challenges, and if so, what sorts of laws to deploy for this purpose. Neoclassicists reject the need for legal intervention to address discrimination in the labour market. They argue that market forces will punish employers who select employees based on factors...
unrelated to productivity (such as skin colour, sex, disability, or ethnic origin) and reward employers who ignore those irrelevant factors. In the “long run” these market forces will drive discriminatory employers to alter their behaviour or else put them out of business.

However, that is not a position that Canadian governments have accepted. In fact, there is extensive regulation intended to break down barriers to employment that confront Canada’s diverse labour force. In this section, we will consider three types of laws that address discrimination in the labour relationship: (1) the Charter of Rights and Freedoms, (2) human rights legislation, and (3) employment equity legislation.

**Canadian Charter of Rights and Freedoms**  
The Charter of Rights and Freedoms forms part of Canada’s Constitution. It governs the relationship between governments and citizens by protecting fundamental rights and freedoms of Canadians against state interference, including the following:

- Fundamental freedoms of speech, press, assembly, association, and religion
- Democratic rights
- Mobility rights regarding the right to move freely from province to province for the purposes of residence or employment
- Legal rights, which provide standard procedural rights in criminal proceedings
- Equality rights, which guarantee no discrimination by law on grounds of race, ethnic origin, colour, religion, sex, age, or mental and physical ability
- Language rights

The Charter applies only to government action. Governments can act in two ways: as an employer and as lawmakers. Therefore, in the labour context, the Charter is applicable directly to governments as employers and to all laws passed by governments.

For example, if the Government of Ontario paid its female employees less than its male employees for the same work, that would be in violation of the Charter’s protection of equality rights based on sex. However, if it were a private corporation that was paying its female employees less than its male employees, such as McDonald’s, the Charter would not apply because McDonald’s is not the government. Employees of McDonald’s could still file a complaint under a human rights statute (see the discussion that follows). All laws passed by a government must be consistent with the rights and freedoms guaranteed in the Charter. For example, if a government passed a law that granted special privileges to Christian workers, that law would violate Section 15 of the Charter, which protects Canadians from discrimination by the government on the basis of religion.

Equality rights are not the only part of the Charter that can affect the employment relationship. There has been a considerable number of Charter cases in recent years exploring the meaning of “freedom of association,” which is protected by Section 2(d) of the Charter. Courts have ruled that freedom of association guarantees workers the right to form and join unions and to engage in collective bargaining. That means laws that restrict the right of workers to engage in these activities could be, and sometimes have been, struck
Part 2 The Internal Challenges

In 2012, unions launched Charter complaints challenging laws that prohibited Air Canada and Canada Post employees from going on strike. If the unions are successful in those complaints, the ability of governments to pass laws that ban strikes would be curtailed.

A law that violates a right or freedom found in the Charter might nevertheless be “saved” if a court finds that the violation is justified “in a free and democratic society” because the harm caused by the limitation on rights and freedoms is outweighed by the benefits produced by the challenged law. This exception appears in Section 1 of the Charter. For example, in 1990 the Supreme Court of Canada ruled that laws permitting forced or “mandatory retirement” of workers who reach the age of 65 violated the Section 15 guarantee of protection against age discrimination. However, the court then ruled that the laws were “saved” by Section 1, because retiring people at age 65 created necessary job opportunities for young people, among other reasons, and the retired workers had access to pension plans.

If a law violates the Charter and is not “saved” by Section 1, then a court can order that the law is no longer in effect. That is because the Charter supercedes all other laws.

Human Rights Laws While the Charter does not apply to private-sector businesses, human rights laws do. Those laws typically prohibit discrimination in employment based on certain prohibited grounds. For example, in the Canadian Human Rights Act, which applies to businesses governed by federal laws (about 10% of Canadian employees are governed by laws made in Ottawa), prohibits discrimination in employment on the following grounds:

- Race
- Colour
- National or ethnic origin
- Religion
- Age
- Sex (including pregnancy and childbearing)
- Marital status
- Family status
- Physical or mental disability (including dependence on alcohol or drugs)
- Pardoned criminal conviction
- Sexual orientation

The Canadian Human Rights Act and each of the provincial human rights codes govern human rights issues and provide detailed procedures for investigation and resolution. An employee who feels they employer has discriminated against them on a prohibited ground may file a complaint with the appropriate human rights tribunal and seek a remedy, including lost wages and reinstatement if they have been dismissed for discriminatory reasons. The prohibitions on discrimination in employment apply throughout the life of the employment relationship, including hiring, terms of employment, and dismissal.

Provincial human rights legislation, which governs most Canadian businesses, include similar though not identical prohibited grounds. For example, in Manitoba it is unlawful for an employer to discriminate on the basis of political belief, but that prohibited ground is not included in either the Ontario Human Rights Code or the Canadian Human Rights Act. Recently, Ontario added the new ground of gender identity and gender expression to prohibited grounds.
the list of prohibited grounds, making it the first province to do so. Which grounds to protect, and how to apply those grounds to employment situations, can be controversial.

Indeed, employers who are proactive in understanding the law and its application can benefit from diversity, as seen in Talking Business 2.4.

### TALKING BUSINESS 2.4

**Organizations Seeing the Light about Faith at Work**

Religion may still be an off-limits topic for some people, but organizations can’t afford to ignore the subject. . . .

First, religious accommodation is a legal requirement; it is not about endorsing a specific belief system: Deb Volberg Pagnotta, a legal human rights expert, told the CIWE [Council on Inclusive Work Environments] that federal and provincial human rights laws prohibit discrimination in the workplace based on religion. For example, under the Ontario Human Rights Code, employers are required to accommodate employees who are unable to work certain days for religious reasons, unless the employer can demonstrate that it would cause it undue hardship to do so. In addition to religious leave, employers may be asked to consider requests related to issues such as dress code flexibility and breaks for religious observance or prayer.

However, Nouman Ashraf, Director of the Anti-Racism and Cultural Diversity Office at the University of Toronto, emphasized that “accommodating and celebrating spiritual traditions and holidays does not constitute an endorsement of a specific belief system, just as supporting women or those with different levels of ability and sexual preferences does not translate into a corporate statement of preferential treatment.”

Second, faith is not too personal for the workplace: Some organizations are hesitant to visibly support religious diversity because faith is “too private.” Consequently, they respond reactively to religious requests rather than proactively supporting faith at work. Yet organizations have grown to support diversity related to grounds such as sexual orientation that were once also considered private or personal. Today, leading organizations recognize that, for many employees, faith is an essential aspect of their identities and an integral part of who they are. Respectfully acknowledging their faith is fundamental to engaging the whole person.

Third, culture and faith are not one and the same: Many organizations assume that religious diversity is addressed under cultural diversity policies and training. Nadir Shirazi, President of Multifacet Diversity Solutions, stressed that religious affiliation is not synonymous with culture; therefore, training in religious diversity is required, particularly as the workplace becomes increasingly multicultural and global. In addition, some workers choose religions or belief systems outside of their cultural and family traditions. Nadir noted that organizations also need to be aware that even people who share the same faith will practice it in different ways.

Fourth, acknowledging religious diversity can benefit the company: The Ford Motor Company, viewed by many as a leader in supporting faith diversity, connects its faith-based efforts to its business goals. Dan Dunnigan, Chair of Ford’s Interfaith Network, told the council how Ford’s faith-friendly initiatives have helped the company attract and retain valued employees. He noted how one Ford employee summed up the benefits: “My faith is the foundation of who I am as a human being. It is deeply important to me and guides how I choose to live my life, the quality of my work, [and] everything I do, and the company honours and embraces that.”

There are also opportunities for organizations to encourage employee faith groups to get involved in community activities, such as food drives, violence prevention programs, and green initiatives. Supporting their efforts can further an organization’s corporate social responsibility goals.

Senior management support and a strong diversity policy that is aligned with business values and goals are prerequisites for creating a faith-inclusive environment. Effective faith diversity strategies are proactive and go beyond the requirements of compliance; they are designed to help the organization value, strengthen, and respect religious differences. A study by the Society for Human Resource Management found that employee morale, retention, and loyalty are the factors most positively affected when companies grant religious accommodations to workers. By embracing religious diversity, employers can leverage the unique talents, knowledge, and backgrounds of their workers to gain a competitive advantage during this turbulent economic time.

All Canadian human rights legislation prohibits employers from discriminating on the basis of physical and mental disability. When a disabled worker is unable to perform all of the essential duties of a job, these laws impose on employers a **duty to accommodate** the employee’s disability with the aim of enabling the worker to perform the job. This might mean providing the employee with special tools to help with lifting, to build ramps or elevators, or to change schedules to give disabled workers more frequent breaks, among other changes. Changes need to be made up to the point that they would cause **undue hardship**, which is an onerous standard for employers to meet. The duty to accommodate applies to other prohibited grounds too, including religion. For example, employers have been ordered to give employees time off of work to observe religious holidays that fall on regular work days.

**Employment Equity Legislation**  
A significant portion of our valued labour pool is derived from members of **designated groups** whose participation in the workplace contributes to the success of an organization. With regard to past discrimination, there are four groups in particular that traditionally have not received equitable treatment in employment: women, Aboriginal peoples, visible minorities, and people with disabilities. Exhibit 2.5 identifies their relative presence in the population and the labour pool. These groups represent approximately 60% of the total workforce. They have faced significant obstacles related to their status in the labour force, including high unemployment, occupational segregation, pay inequities, and limited opportunities for career advancement.

The federal government introduced the Employment Equity Act in 1986 to break down barriers for these four designated groups. Before looking at how that legislation works, consider the following background on the designated groups.

**Women**  
Traditionally, women have been segregated in occupations that are accorded both lower status and lower pay. According to a 2003 report by Statistics Canada (based on 2001 census data), while women represented 44.8% of the total workforce, they were clearly not equally represented across occupations. For example, women have been underrepresented in such areas as semiprofessional occupations, management and board positions, supervisors in crafts and trades, and sales and service personnel. The failure of women to achieve higher-level corporate positions has been attributed to a variety of sources, including lack of mentoring opportunities, lack of female role models, stereotyping and preconceptions of women’s roles and abilities, exclusion from informal networks of communication, and failure of senior leaders to assume accountability for women’s advancement.

In a report commissioned by the Women’s Executive Network (WXN) in Canada, the majority of women executives surveyed believe they have to work twice as hard as men to achieve success. Respondents also indicated that they continuously find themselves hitting

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### Exhibit 2.5  
**Representation of Designated Groups in the Labour Force**

<table>
<thead>
<tr>
<th></th>
<th>Representation in the Canadian Population</th>
<th>Representation in the Workforce</th>
</tr>
</thead>
<tbody>
<tr>
<td>Women</td>
<td>50.85%</td>
<td>44.8%</td>
</tr>
<tr>
<td>Aboriginal peoples</td>
<td>3.3</td>
<td>1.6</td>
</tr>
<tr>
<td>People with disabilities</td>
<td>12.4</td>
<td>2.3</td>
</tr>
<tr>
<td>Members of visible minorities</td>
<td>13.4</td>
<td>11.7</td>
</tr>
</tbody>
</table>

*Source: Statistics Canada, Table 282-0002. Retrieved from [www.statcan.ca/english/Pgdb/labor20a.htm](http://www.statcan.ca/english/Pgdb/labor20a.htm).*
the “glass ceiling” and are not accepted into the executive-level culture, which includes participation in “the boys club.” The findings also revealed a concern that women continue to face more barriers to career advancement than men with the same qualifications and are often presented with fewer opportunities. Among the greatest career barriers identified was the “lack of comfort on the part of men in dealing with women on a professional level.” Gender-based stereotyping was also indicated as a career barrier. In addition, many respondents felt that they are paid less than men with similar qualifications and they receive less credit and recognition for accomplishments (see Talking Business 2.5).

**TALKING BUSINESS 2.5**

**He Says, She Says: Gender Gap Persists in Attitudes toward Women’s Advancement in the Workplace**

Attitudes about advancing women into senior management roles are still polarized along gender lines. Men in senior executive positions appear to be the least concerned about increasing the number of women in the top ranks of organizations. Yet the stagnating advancement of women to senior positions in recent decades may be due to more than the attitudes of men. Women in Leadership: Perceptions and Priorities for Change finds that a gap in opportunities between women and men emerges early in their respective careers—at the first level of management. Compared to men, women are less likely to feel they can obtain line management responsibilities, creating an experience gap at the earliest stages of their management careers.

Further, both women and men were of the view that leadership development and human resource management programs were not serving their intended purposes—identifying and developing the next generation of leadership candidates.

“Gender diversity in senior management is a strategic and cultural issue within organizations. Our research shows that barriers to women’s advancement exist throughout organizations, but the responsibility starts at the very top—with the board of directors and the existing senior management,” said Ian Cullwick, Vice-President, Leadership and Human Resources.

“It will take more than neutrality on the part of senior male executives to bring about significant improvement in the advancement of women within organizations.”

Numerous studies have shown that organizations improve their bottom lines when they have more women in senior management positions.

Leadership opportunities, motivations and abilities are three factors that are crucial to women’s advancement. In the research, a fourth factor has emerged as even more crucial—attitudes. These attitudes can have a huge influence on the other factors. Eighty-six (86) per cent of women believe there is still a glass ceiling. While 68 per cent of women managers think that the organizations are still run by an “old-boys club,” only 43 per cent of men agree.

This finding shows in the survey results when upper-level female managers indicated that they have the same aspirations as their male counterparts to reach senior management. Women in first-level management, however, appeared less ambitious to reach senior levels of the organization than men.

“Paradoxically, we may need more female leaders before we can increase the number of women in senior management,” said Donna Burnett-Vachon, Associate Director, Leadership and Human Resources.

Most women (and men, for that matter) ranked formal Talent Management programs at the bottom of the list in terms of having an impact on their careers. Further, mentors for women were more likely [to] have a lower organizational rank than men, and women were more likely than men to look outside their organizations for mentors.

“To advance, women need not just mentors, but sponsors—senior leaders who can advocate for them and help to open up career opportunities, often in an informal way. However, women are less likely than men to have sponsors as they work their way up the ranks,” said Burnett-Vachon.

Based on a core focus on changing philosophies and values, recommendations for change fall into three categories, which together make up an integrated approach to promoting the advancement of women in organizations:

- Governance: Make women’s advancement a formal governance and performance priority for the board; ensure that policies, practices and measures are both in place (continued)
Part 2 The Internal Challenges

TALKING BUSINESS 2.5 (continued)

Support for Increasing the Number of Women in Senior Management, by Gender and Level

Note: Data represent the percentage of respondents who strongly agree/agree with the statement “Organizations should try to increase the numbers of women in their senior ranks,” n = 430).

42
77
65
64
44
53

Senior executive
Executive
Middle manager
First-level managers

Women
Men

and consistently applied; communicate the business case for advancing women throughout the organization.

- Leadership development: Engage senior leaders to identify emerging women leaders; ensure there are senior women role models in the organization; provide high-potential and emerging women leaders with strategic assignments.

- Human Resources Management: Identify actual or perceived barriers to career development; seek out high-potential women from the earliest career stages and provide meaningful support; regularly review talent management practices and educate supervisors and managers on such processes; provide more family-friendly policies and encourage all employees (men and women) to take advantage of them.

Some Canadian organizations do follow best practices and get exceptional results, but they are not the norm. Without the involvement of top leaders who champion, monitor, and measure organizational progress, the number of women in the senior leadership ranks will not increase dramatically any time soon.

The report is based on a national survey of 876 women and men, along with in-depth interviews with 29 women (15 who have reached C-suite levels and 14 emerging leaders). Overall, 43 per cent of male managers and 68 per cent of female managers agree that organizations should try to increase the number of women in senior management. Male senior executives were the least likely of all management groups to agree that there is a need to increase the number of women in leadership roles. The vast majority of female senior executives (90 per cent) agreed or strongly agreed that organizations should try to increase the number of women in their senior ranks. But only 42 per cent of men agreed with that sentiment.


Aboriginal Peoples

Aboriginals make up about 3.3% of the population. They represent one of the fastest growing populations in Canada but remain vastly underrepresented in the workforce, with their unemployment rate hovering at the 20% range. Researchers have estimated that the Aboriginal population “baby boom” will result in 350,000 Aboriginal people reaching working age by the next few years, and this underscores the growing need for Canada to absorb more Aboriginal people into its workforce. However, as researcher Stelios Loizedes of the Conference Board of Canada observed:

A major difficulty in achieving this goal is that most of this large cohort of Native Canadians coming of working age will have insufficient education and limited job experience, restricting their ability to compete for jobs. . . . Native communities and the private and public sectors will have to implement creative solutions to narrow the education and employment gaps.11

The educational challenge has proven to be a significant barrier, with Aboriginal populations experiencing a high school dropout rate of 70%. In addition, the lack of job experience and language and cultural barriers have made the plight of this group often appear bleak.

Another barrier to improved employment is the geographical distribution of the Aboriginal community. Employment opportunities on or near Aboriginal reserves are limited. In addition, while over half of the Aboriginal population live in the four Western provinces, these provinces account for a relatively small percentage of the total jobs in Canada, compared to Quebec and Ontario. Sadly, in many urban contexts, Aboriginal workers have typically been largely segregated in low-wage, unstable employment.

Among the biggest barriers faced by the Aboriginal community may be perception—with many Aboriginal Canadians feeling that they do not “fit” with the corporate environment. As David Brown observed:

That’s a problem for both the First Nations community and corporate Canada to address. Aboriginal Canadians have been prevented from playing a part in the modern corporate world for so long that many now feel that exclusion is normal.  

Aboriginal Canadians, however, have the potential ability to meet Canada’s labour shortages, as seen in Talking Business 2.6.

**TALKING BUSINESS 2.6**

**Aboriginal Workers: Integral to Canada’s Ongoing Competitiveness and Performance**

In the coming years, Canada’s economy is unlikely to have enough workers with the right skills to meet its labour market needs. Our workforce is aging at an accelerating rate, and the fertility levels of the Canadian population are below replacement levels. Canada’s Aboriginal population—including Métis, Inuit, and First Nations—can play an important role in helping meet Canada’s current and future labour market needs.

The Aboriginal population is the fastest growing population in Canada, and is also much younger than the non-Aboriginal population. Between 1996 and 2006, Canada’s Aboriginal population grew by 45 per cent while Canada’s non-Aboriginal population grew by just 8 per cent. In 2006, 39.8 per cent of Aboriginals were under the age of twenty, compared to only 24.1 per cent of non-Aboriginals.

Yet, Canada’s Aboriginal population continues to be underutilized within the workforce. In 2006, the unemployment rate for non-Aboriginals was 5.2 per cent, compared with unemployment rates of 19 per cent for Inuit, 16.3 per cent for First Nations, and 8.4 per cent for Métis. Why do Aboriginal employment levels lag behind those of Canada’s non-Aboriginal population? . . .

One reason for the lagging employment levels of [the] Aboriginal population is lower educational attainment. Some Aboriginal workers lack the educational qualifications they need to succeed in the labour force—such as post-secondary education, or skills such as literacy and numeracy. The educational shortfall compared to the Canadian average is striking. The 2006 Census notes that just 8 per cent of Aboriginals have a university degree compared to 23 per cent of non-Aboriginals. And 34 per cent of Aboriginals aged 25 to 64 have not completed high school compared to 15 percent of non-Aboriginals in Canada. However, Aboriginals are also more likely to be unemployed than non-Aboriginals with the same level of education. What else might explain the underutilization of Canada’s Métis, Inuit, and First Nations within the labour force?  

(continued)

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TALKING BUSINESS 2.6 (continued)

Our initial findings suggest that Aboriginal workers often lack much-needed work experience, or formal documentation of their work experiences and skills, required to gain entry to good jobs. As well, some Aboriginals, particularly those in remote areas, lack access to transportation to get to work. Others are reluctant to leave their communities for a job for an extended period, contributing further to their underutilization. Negative stereotypes may also make it difficult for Aboriginals to gain employment, and may make it difficult for them to succeed in some work environments.

The challenges facing Aboriginal people will need to be overcome in order to reduce Canada’s labour shortages. The solutions will not be easy or quick: engaging Métis, Inuit, and First Nations people more fully in Canadian workplaces will take some time.


Individuals with Disabilities  Individuals with disabilities have faced a variety of employment obstacles. Typically, this group has experienced a higher unemployment rate compared to the national average. Among the challenges faced are attitudinal barriers in the workplace, physical demands unrelated to the job requirements, and inadequate access to technical and human support systems.

The Canadian Healthcare Network, a national nonprofit web-based health information service, clearly notes the importance of acknowledging this segment of the population and of the labour pool:

In the coming decades, people with a disability will comprise a larger percentage of the population in Canada than ever before. The math is pretty straightforward. As the baby boom generation grows older, the overall age of the population will increase. And because the incidence of disabilities is strongly correlated to age, these numbers will rise together. The degree of accessibility available to this aging population will play a key role in determining their level of health or of hardship, just as it plays a critical role in the daily lives of the more than four million people currently living with a disability in Canada.  

A major challenge faced by people with disabilities is the issue of accessibility. This can entail a variety of obstacles. While physical barriers may be the most visible obstacle to full accessibility, economic barriers, social discrimination, and obstacles to communication can all prevent someone from having equal access to a building, a service, or a job (see Talking Business 2.7).

Visible Minorities  Visible minorities make up a growing segment of the population. In the last decade, almost 70% of the growth in the labour force was accounted for by newcomers who arrived in the 1990s. In addition, as the baby boom generation

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Ontario Employers Have a New Tool to Improve Accessibility for People with Disabilities

The Conference Board of Canada in partnership with the Government of Ontario’s EnAbling Change program have released a new free resource to help employers make their workplaces more inclusive.

This free resource, Employers’ Toolkit: Making Ontario Workplaces Accessible to People With Disabilities, is intended to help employers to understand and implement the Employment Standard related to the Accessibility for Ontarians with Disabilities Act (AODA).

“Employers across Ontario will have to implement the Employment Standard over the next five years. This toolkit will help organizations make their workplaces more inclusive. A strong business case exists for creating accessible and inclusive work environments for employees with disabilities,” said Ruth Wright, Director, Human Resources Management Research, The Conference Board of Canada.

“The full inclusion of people with disabilities in all aspects of community life and the workplace opens the door to their full participation in the economy as customers, entrepreneurs, and employees. An inclusive work environment is one where everyone is treated with respect and all employees are valued for their contributions.”

Labour shortages are looming in Ontario. A 2007 Conference Board report indicated that vacancies in Ontario could reach 190,000 in 2020, and rise to 364,000 by 2025 and to 564,000 by 2030.

According to Statistics Canada, approximately 15.5 per cent of Ontarians had a disability in 2006. And Ontario government data reveal that in 2009, people with disabilities were three times more likely than people without disabilities to be unemployed or out of the labour force.

This toolkit helps employers of all sizes to implement the Employment Standard. It includes:

- Special text boxes that introduce each of the individual sections of the Employment Standard requirements;
- Tips and good practices to promote inclusive practices at all stages of employment;
- Case studies to help employers to see how others have successfully implemented accessible strategies and policies;
- Tips for small businesses that frame the requirements of the Employment Standard according to their specific circumstances; and
- Tools and templates that employers can tailor to their own organizations.


Workplace obstacles faced by visible minorities include culturally biased aptitude tests, lack of recognition of foreign credentials, and excessively high language requirements. Recent statistics indicate that while visible minorities are well educated, they experience the highest unemployment rates, with recent estimates at roughly twice as high as that for the Canadian-born population.

A study released by the Canadian Race Relations Foundation indicated that desirable jobs and promotions elude many visible minorities and Aboriginal people who believe...
that subtle forms of racism permeate the workplace. The report, prepared by Jean Lock Kunz, Anne Milan, and Sylvain Schetagne from the Canadian Council on Social Development (CCSD), examined the experiences of visible minorities and Aboriginal peoples in cities across Canada. Among the findings were the following:

- Aboriginal peoples, visible minorities, and immigrants to Canada encounter more challenges in finding employment in all regions in Canada.
- Foreign-born visible minorities experience the greatest difficulty finding desirable work, and only half of those with a university education have high-skilled jobs.
- Compared to White Canadians, visible minorities and Aboriginals who possess a university education are less likely to hold managerial and professional positions. Among those visible minorities who do hold managerial positions, over 50% are self-employed, compared with only 30% of White Canadians.
- Higher education appears to yield fewer benefits for minorities and Aboriginals in terms of employment and income. Given the same level of education, White Canadians (both foreign-born and Canadian-born) are three times as likely as Aboriginals and about twice as likely as foreign-born visible minorities to rank among the top 20% of income earners.

**The Model of the Employment Equity Act**

The Department of Justice defines equity as focusing on treating people fairly by recognizing that different individuals and groups require different measures to ensure fair and comparable results. Employment equity was a term developed by Justice Rosalie Abella, commissioner of the Royal Commission on Equality in Employment (1984), to reflect a distinct Canadian process for achieving equality in all areas of employment. In addition, the term was intended to distinguish the process from the US notion of “affirmative action” as well as to move beyond the “equal opportunity” measures that were available in Canada at that time.

According to the commission, “systemic discrimination” was responsible for most of the inequality found in employment. Systemic discrimination refers to internal policies, practices, patterns, or biases that tend to disadvantage some groups and favour others. It might not be deliberate, but it has the effect of excluding certain classes of people. For example, if managers of a business hold management meetings and make important business decisions on golf courses or in “men’s clubs,” they might envision managers as people who like to go to those places. This perception would tend to work against women seeking management positions. If managers believe people educated in Canada are “smarter” than people educated in other countries, then they will tend to give preference to Canadian-educated applicants and employees. Systemic discrimination maintains historical preferences and creates barriers to diversity in workplaces.

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To address systemic discrimination, the Employment Equity Act (EEA) was designed as an ongoing planning process used by an employer to accomplish a number of objectives:

- eliminating employment barriers for the four designated groups identified in the Employment Equity Act—women, people with disabilities, Aboriginal people, and members of visible minorities
- redressing past discrimination in employment opportunities and preventing future barriers
- improving access for the designated groups and increasing their distribution throughout all occupations and at all levels
- fostering a climate of equity in the organization
- implementing positive policies and practices to ensure the effects of systemic barriers are eliminated.

Note that the EEA only applies to private-sector employers under federal jurisdiction as well as almost all employees of the federal government. This means that it does not apply to the vast majority of private-sector businesses in Canada, which are governed by provincial laws.

The EEA requires employers that have 100 employees or more to implement employment equity and to report on their results. Under the act, the employer must do the following:

- distribute to employees a questionnaire that allows them to indicate whether they belong to one of the four designated groups
- identify jobs in which the percentage of members of designated groups is below their relative representation in the labour market
- disseminate information on employment equity to employees, and consult with employee representatives
- scrutinize the current employment system to assess whether any barriers exist that may limit the employment opportunities of members of designated groups
- generate an employment equity plan directed at promoting an equitable workplace
- endeavour to implement the employment equity plan
- monitor, assess, and revise the plan in a timely fashion
- complete an annual report on the company’s employment equity status and activities.

The objective of the EEA is to slowly break down systemic discrimination and thereby build up the composition within the workforce that reflects the diversity of the labour force as a whole. A number of resources are available to employers to help in this endeavour, as outlined in Talking Business 2.8.

More and more businesses have begun to recognize that employment equity is good for business, and Canada continues to strengthen its programs to capitalize on the strength of an increasingly diverse workforce, including immigrants (see Talking Business 2.9). Among the numerous organizations that focus on employee equity is BMO Financial Group. BMO recently received accolades from the Conference Board of Canada for their employment equity and diversity initiatives, including its employee-led diversity action teams, internal employee assistance program, and its recently launched project to help identify workplace barriers among individuals with disabilities.
TALKING BUSINESS 2.8

Employment Equity Resources

1. Government of Canada Labour Program: The Government of Canada’s Labour Program website (www.labour.gc.ca/eng/standards_equity/eq/index.shtml) is a national clearinghouse of employment equity technical expertise. Through the site, you can obtain general information on employment equity or access tools and resources for the implementation of employment equity as well as information on legislation and programs.

2. Employment and Social Development Canada: This department is mandated with breaking down barriers to equality of opportunity for Canadians. Responsibilities include helping families with children, supporting people with disabilities, and ensuring that seniors can fully participate in their communities. The department provides policies, services, and programs for Canadians who need assistance in overcoming challenges they encounter in their lives and their communities. These resources can be accessed at their website (www.hrsdc.gc.ca/eng/home.shtml).

3. Human Resources and Skills Development Canada (HRSDC): HRSDC supports human capital development and labour market development. Among their clients are employees, employers, individuals receiving employment insurance benefits, students, and those who need focused support to participate in the workforce. HRSDC provides federal-level management of labour and homelessness issues and supports students and communities through the Canada Student Loans Program and community economic development initiatives. Visit their website at www.hrsdc.gc.ca/eng/home.shtml.

TALKING BUSINESS 2.9

Immigrants Make Significant Contributions to Innovation

Immigrants can help boost Canada’s innovation performance, which has been lagging behind many other developed countries, according to a Conference Board of Canada report. . . .

“Immigrants tend to be motivated individuals willing to take risks in search of greater opportunities, which should predispose them to be innovative,” said Diana MacKay, Director, Education and Health. “At every level we examined—individual, organizational, national and global—immigrants were associated with increased innovation in Canada.”

Canada is a consistent below-average performer in its capacity to innovate. Canada ranks 14th out of 17 industrialized countries in the Conference Board’s How Canada Performs innovation report card.

The report, Immigrants as Innovators: Boosting Canada’s Global Competitiveness, uses a number of measures to show that countries benefit from welcoming immigrants. For example, in Canada:

• At least 35 per cent of Canada Research Chairs are foreign-born, even though immigrants are just one-fifth of the Canadian population;
• Immigrants to Canada win proportionally more prestigious literary and performing arts awards (immigrants comprise 23 per cent of Giller Prize finalists and 29 per cent of winners; 23 per cent of Governor Generals Performing Arts Award recipients are immigrants);
• Immigration rates affect trade levels between Canada and immigrants’ countries of origin. Based on the Conference Board’s model of known factors influencing trade, a one percentage point increase in the number of immigrants to Canada can increase the value of imports into Canada by 0.21 per cent, and raise the value of exports by 0.11 per cent;
• Immigrants are a source of diverse knowledge and experience that can increase innovation in Canadian businesses, based on a survey undertaken for this study and a literature review; and,
• Foreign direct investment into Canada is greater from countries that are well represented in Canada through immigration, based on data from the census and from Foreign Affairs and International Trade Canada.

Despite the innovation skills that immigrants bring to Canada, they face obstacles that limit their ability to maximize their contribution as innovators. These include...
inadequate recognition of international experience and qualifications, failure of employers to tap foreign language skills which could be employed in international markets, and lack of opportunities for newcomers to fully utilize their skills.

Employers can make hiring, integrating, and retaining immigrants effective innovation strategies. Policies and practices available to employers to help immigrants contribute in the labour market include:

- Hiring immigrants at every level of the organization, including leadership roles—Employees tend to be more dedicated to an organization and motivated in their work if they see that the organization is committed to their advancement.
- Matching the organization’s workforce to its clientele—Employers who match the diversity of their staff to that of their markets may be better positioned to meet their client’s needs.
- Providing encouragement for immigrants to share their views—Managers who actively invite feedback from immigrant employees reap the benefits of hearing diverse points of view, which is essential for innovation.

The research was jointly conducted as part of the CanCompete project and the Leaders’ Roundtable on Immigration. CanCompete is a three-year Conference Board program of research and dialogue that is designed to help leading decision makers advance Canada on a path of national competitiveness. The Leaders’ Roundtable on Immigration brings together key stakeholder groups to address common issues relating to immigration.


Many businesses have also stepped up their efforts to assist the Aboriginal community in gaining greater self-sufficiency and participation in the workforce. There are a number of companies that have been actively involved in boosting the presence of Aboriginals in the workplace. Many businesses have proven that they can work with Aboriginal communities, educational institutions, and government to enhance employment prospects for Aboriginals. A typical recruitment method for companies is to offer support for educational institutions, training initiatives, and scholarships for Aboriginal students. For example, 3M Canada contributes to bursaries given through Aboriginal Affairs and Northern Development Canada for Aboriginal students who are pursuing careers in fields related to health care. In addition, recruitment strategies that reach out to Aboriginal communities and organizations are also employed.

Dating back to 1990, the federal government formally recognizes federally regulated companies for achievements in implementing employment equity and addressing the needs of a diverse workforce. Employment equity awards have been given to those organizations deemed to be models in the establishment and implementation of equity practices. The Vision Award is presented to those organizations that exhibit outstanding approaches to the implementation of equity, diversity, and inclusiveness in the workplace. The Certificate of Merit is presented to organizations for their sustained efforts toward attaining a representative workforce.

Recent awards have been presented to such high achievers in equity and diversity as Pelmorex Media Inc., the company that runs the Weather Network. Employee surveys conducted at Pelmorex indicated that more than 90% of employees feel the company highly values equity. This company also offers training on nondiscriminatory interviewing techniques, integrating new employees into the workplace, and accommodation strategies. Interestingly, the company rewards managers for their support of the company’s efforts—annual bonuses for managers are linked to promoting equity.
CHAPTER SUMMARY

This chapter has considered the complexities associated with the labour context of business. Societies and economies are influenced dramatically by how work is organized. We discussed how debates about the best way to organize work are long-standing and influenced by perspectives on markets, power, and the role of the state in capitalist societies. The result is a complex web of rules and forces that businesses must learn and adapt to if they are to operate successfully. We looked more closely at some of these rules, including rules and processes relating to unemployment and the loss of work and rules that attempt to address Canada’s diverse labour force.

CHAPTER LEARNING TOOLS

Key Terms

- activist government 51
- “at will” employment 57
- bargaining power 50
- bounded rationality 51
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Multiple-Choice Questions

Select the best answer for each of the following multiple choice questions. Solutions are located in the back of your textbook.

1. Which of the following factors are important considerations in deciding whether a worker is an employee or an independent contractor?
   a. Who controls the manner in which work is performed
   b. Who owns the tools used in performing the work
   c. Who assumes the economic risks
   d. All of the above

2. “A legal minimum wage harms businesses and workers alike.” This statement is most consistent with which perspective?
   a. Managerial
   b. Neoclassical
   c. Industrial pluralist
   d. Critical

3. The belief that employers, through enlightened managerial practices, will protect the interests of workers is most consistent with which perspective?
   a. Managerial
   b. Industrial pluralist
   c. Neoclassical
   d. Critical

4. “Collective bargaining through unions is the best way to address income inequality.” This statement is most consistent with which perspective?
   a. Managerial
   b. Industrial pluralist
   c. Neoclassical
   d. Critical

5. The Canadian Charter of Rights and Freedoms governs
   a. the behaviour of workers
   b. the behaviour of private corporations
   c. the behaviour of governments
   d. both B and C
6. The Canada Human Rights Act prohibits employers from discriminating against employees on the basis of
   a. political opinion
   b. weight
   c. physical appearance
   d. none of the above

7. An employer in Canada is prohibited from firing an employee because
   a. of the employee’s religion
   b. the employee is a union supporter
   c. the employee participated in a legal strike
   d. all the above

8. A union certification
   a. gives a union the legal right to represent employees
   b. requires a union to demonstrate that a majority of employees support the union
   c. requires the employer’s approval
   d. all of the above

9. An example of a common law rule applicable to employment contracts is
   a. the requirement for employers to comply with the Employment Standards Act
   b. the requirement for employers to provide employees with reasonable notice of termination
   c. the requirement for employers to collectively bargain in good faith with unions
   d. the requirement for employers to make contributions to the unemployment insurance fund

10. Human rights statutes in Canada
    a. prohibit all forms of discrimination
    b. prohibit some forms of discrimination
    c. impose a duty on employers to accommodate employee disabilities
    d. B and C only

11. An “unpaid intern” under Canadian law is considered to be
    a. an employee
    b. a volunteer
    c. a student
    d. It depends on the unique circumstances of the situation and the provincial law where the intern works.

12. The managerial perspective is closely related to the
    a. human resource management perspective
    b. neoclassical perspective
    c. industrial pluralist perspective
    d. both A and B

13. Industrial pluralists acknowledge that
    a. an imbalance of power exists between employers and workers
    b. strikes are not an effective way for workers to bargain
    c. the market will correct labour issues
    d. none of the above

14. Nonunion employees in Canada can have a/an _________ with their employer.
    a. written employment contract
    b. oral employment contract
    c. either A or B
    d. none of the above

15. The Canadian Charter of Rights and Freedoms is
    a. part of Canada’s Constitution
    b. a legal document that protects mobility rights
    c. a trade document
    d. both A and B

Discussion Questions

1. Why does the distinction between employment and other forms of work arrangements matter to businesses in Canada?
2. What are some potential benefits and disadvantages to businesses of hiring employees rather than retaining independent contractors?
3. Explain the difference between standard and nonstandard employment.
4. Which of the various perspectives on work and government policy do you most agree with, and why?
5. Identify and describe three approaches used in Canada to protecting employees when their employment is terminated. How do they affect business?
6. Identify and explain three types of laws used in Canada to address worker diversity.
7. What are the four designated groups that are protected in the Employment Equity Act?
8. What factors are affecting union density in Canada?
9. Provide arguments both in favour of and against a strong and generous unemployment insurance program.
10. In what ways has economic globalization affected the labour market and debates over how best to regulate globalization in Canada?
Sue Zheng, 40, immigrated to Canada from Fuzhou, China, in 2006. Like most immigrants, Zheng was happy to come to Canada, start working, and begin a new life for her and her family. But Zheng’s experience was not what she expected. To get a job at a manicure salon, Zheng had to pay a $400 deposit. Eager to gain work experience and earn money, Zheng paid the deposit and took the job.

Once she began working, she worked seven days a week, 10 hours a day, for just $25 a day. Zheng decided to quit the job after only two months because of extreme exhaustion. She had no idea about her labour rights until she agreed to participate in a street survey. “I don’t know any English and had no idea what my rights were,” she explained in Mandarin during an interview. “Workers don’t have a lot of rights where I came from.”

Since that time, Zheng has been referred to a legal clinic to try to get back her $400 from her former employer and other possible compensation.

According to the Chinese Interagency Network of Greater Toronto, who conducted the survey, Zheng’s story of immigrant abuse and exploitation is all too common. “Many of the workers have worked in those kinds of conditions for years and they just don’t care about their rights. They just do whatever their bosses order them to do and accept what they pay them. They never challenge,” said Wei Sun, a volunteer who conducted the survey.

Indeed, the survey revealed some surprising facts. Of the 119 respondents who agreed to be interviewed, most could only answer about 5 out of the 10 questions correctly. Most people were not familiar with the Employment Standards Act and did not know the current provincial minimum wage. Moreover, 66% of participants were not aware of overtime pay and 64% were not familiar with holiday pay. Only 55% of participants knew about severance pay as well as proper notice after a probationary period. And most surprising was that only 18% of those interviewed knew the maximum work hours allowed each week.

According to Daniel Yau of the Metro Toronto Chinese and Southeast Asian Legal Clinic, “the problem is newcomers are not familiar with their rights in Canada. They also face the language barrier and don’t know the social infrastructure and supports available to them.”

“It’s shocking in Canada that these people are working 70 hours a week, with an average hourly wage of $4,” said Andy Mark of the Chinese Canadian National Council. “It is difficult to find jobs in the mainstream job market. They want to keep their jobs. It’s simply about survival.”

In 2008, a Chinese-operated automobile parts facility laid off its employees and moved to Mexico. Hui-min Li, a Shanghai immigrant and employee of eight years, was left without $8,000 in severance pay. Li filed a complaint with the Ontario Labour Relations Board and won his case.

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“It was not unusual for us to work 70 hours a week. We worked from 8 a.m. to 1 a.m. and the boss wouldn’t let you go until you finished the work,” said Li. “Most people don’t have knowledge of their rights. Even if they do, they don’t dare to fight for their rights because they are not the type to rock the boat.”

Chinese workers are not the only workers affected by employer abuse. Migrant workers across Canada face similar issues but are not Canadian residents. Migrant workers are workers who come to Canada to gain temporary employment and then return to their home countries. These workers often fill low-skilled jobs such as seasonal farm workers or live-in caregivers. According to one study, these workers are particularly vulnerable to exploitation since they are not permanent residents and there is little oversight by the government. The report explains “the depths of the violations are degrading. There is a deepening concern that Canada’s temporary labour migration programs are entrenching and normalizing a low-wage, low-rights ‘guest’ workforce.”

Former Bank of Canada Governor Mark Carney has recently acknowledged the problem. “One doesn’t want an over-reliance on temporary foreign workers for lower-skilled jobs,” said Carney. “Relying too much on temporary employees from abroad distorts wage adjustments that lead to Canadians getting better pay and delays changes that make companies more efficient.”

Currently, the federal government is looking at changing the Temporary Foreign Worker Program to reduce abuses by businesses. Under the new rules, companies will need to attempt to hire Canadian workers first before hiring temporary, lower-paid foreign workers.

**Worker Rights in Ontario**

| Minimum hourly wage: | $10.25 |
| Maximum work hours per week: | 48 hours without written consent |
| Overtime pay eligibility: | Over 44 hours |
| Overtime pay rate: | 1.5 times base pay |
| Paid holidays per year: | Two weeks |
| Percentage of vacation pay: | 4% of annual salary |

Note: In certain circumstances, there are some exceptions to the above.

Why does exploitation continue to exist? Clearly, full-time work is not as easy to come by as it was a couple of decades ago. According to a McMaster University and United Way study, approximately half of Greater Toronto and Hamilton-area workers belong to precarious employment. What is precarious employment? Typically, it consists

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of temporary, contract, part-time, or on-call positions without benefits. While these types of positions are legal, the reduction in permanent, stable, full-time jobs is a potential threat to the economic prosperity of the region and the social health of communities.26

According to the university study, it is now more common for many people to work multiple jobs to achieve full-time hours. Every demographic, industry sector, and income level is being affected. With union membership on the decline, so is the protection of workers. The study also found working conditions to be more uncertain and opportunities for job training and development on the decline as well.27

Susan McIsaac, president and CEO of the United Way, a researcher in the study, explained that job insecurity is not just about reducing poverty. Employment concerns affect our society in a widespread manner from how we contribute to the economy, care for our children, and socialize with family and friends. Certainly, instability in the workforce creates stress and pressure that have an effect on our self-confidence and level of anxiety. While the study was limited to the Toronto and Hamilton regions, many observers contend a similar pattern may also exist across other parts of Canada.

How can workers be protected from unethical employers? According to Charlotte Yates, dean at the Faculty of Social Sciences at McMaster University, “Raising incomes is an obvious and critical area of focus, but it is not enough. The reality that workers in precarious employment tend to exit and re-enter the labour market much more often than those in permanent employment requires a renewed look at the basic employment standards and protections as well as revamped income security programs.”28

Clearly the labour market has changed, and labour laws need to catch up to protect workers. It is a time for labour organizations, community groups, businesses, and the government to address how to reduce the negative effects of an unstable labour market. Indeed, uncertainty about employment can become a barrier to deciding on a career, starting a family, or beginning other life plans.

According to the Chinese Canadian National Council, “Stopping worker exploitation goes beyond educating the public. It is also the employers’ responsibility to treat workers fairly and with respect. A law without reinforcement is futile . . . the Ministry of Labour needs to reinforce the regulations . . . and harsh penalties should be dealt out to offenders.”29

To enjoy a prosperous future, the university study recommends a renewed public policy framework to support those in precarious employment and to respond to changes in the labour market for the benefit of all workers.

Questions

1. What factors are identified as contributing to the low (and illegal) pay of the workers in this story?

2. How do you think this story would be explained through the lens of each of the four perspectives discussed in this chapter?

3. What, if anything, should be done to improve the working conditions for these workers?


