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**BRAVE
NEW
WORK**

KEY ISSUES SERIES

MANAGING PRECARIOUS WORK

Three Canadian models for rebalancing bargaining power in the future of work

BRIAN TOPP & THERESA LUBOWITZ
NOVEMBER 2019





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1400—130 Albert Street
Ottawa, ON, Canada, K1P 5G4
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ISBN: 978-1-988886-72-5

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ABOUT BRAVE NEW WORK

How can Canadian businesses and workers thrive and prosper in the future of work?

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In partnership with TD Bank Group, The Business Council of Canada, The Canadian Bankers Association, Cogeco, Deloitte, General Motors Canada, the Government of Canada, the Metcalf Foundation and Unifor, PPF has committed to a three-year initiative focused on the changing nature of work and its implications for Canadians. Through research projects and pan-Canadian convening, PPF is developing brave, informed and precautionary policy ideas and solutions to issues related to the future of work.

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EXECUTIVE SUMMARY

Hear the expression “precarious employment” or the “gig economy” and you’ll almost certainly think of the Uber driver who took you to the airport last week. Drivers for Uber and other software-driven disruptors of traditional models—think Air BnB, for example—are those who come to mind when one thinks of such employment. And they are indeed good recent examples, but precarious employment dates back much further than these innovations. Indeed, a study commissioned by the Government of Ontario found that “non-standard employment” grew nearly twice as fast as standard employment between 1997 and 2015. Poverty and Employment Precarity in Southern Ontario reports that between 2011 and 2017, slightly more than “40 percent of the GTHA [Greater Toronto and Hamilton Area] workforce between the ages of 25 and 65 were working in some degree of precarious employment,” and nearly 85 percent of said workers report their income varies at least some of the time from week to week.

Anywhere from 27% to 45% of Canadian workers are employed in nonstandard jobs, and up to 25% of these jobs are precarious

Fleury, D. and Cahill, E. Nov. 2018. Precarious Employment in Canada: An Overview. HillNotes. Parliament of Canada.

It’s also important to note that specific groups are over-represented in the precarious work sphere. The single engineer who’s driving for Lyft in his spare time, to save money for a down-payment on a home and pay for the odd vacation is the exception. Those over-represented in these jobs are single parents, recent immigrants, women, visible minorities and those with less than a high-school education.

In this paper, we make a bigger point: Precarious employment may play a much larger role in the Canadian economy than just playing out experiments with digital gigs. What does precarious employment look like in the real world, and are

there any sectors where employers and employees have managed it effectively, and where government has succeeded in regulating it successfully?

This paper looks at three more entrenched models—construction workers, those in film and theatre, and those in academia—to come up with recommendations for government to this large, growing and multi-faceted policy challenge. While the flexibility of these new-economy jobs is attractive to some, this kind of employment is a fast track to poor social and economic conditions for many.

Governments need to act, and they have started, in small ways, such as reviewing the Canada Labour Code, striking an expert panel and considering some aspects of this issue in different provinces. However, more must be done.

Over the next one to two budget cycles, we recommend the federal government:

- work towards a pan-Canadian definition of the terms “vulnerable worker” and “precarious workplace,” keeping at the core of these definitions the worker’s ability to meet his or her material needs;
- mandate and fund Statistics Canada to track and evaluate data on vulnerable workers and precarious workplaces so policymakers can propose effective solutions to mitigate the vulnerability of these workers.

Over the same period, provincial and territorial governments should:

- work towards new standards to ensure equal pay for equal work, regardless of part-time or full-time status, as seen in the academia example;
- require that employers give first access and choice to part-time workers when it comes to the creation of additional work hours made available in the workplace, rather than creating additional part-time positions to fill needs; and
- require that employers first consider temporary workers already filling a given position in the workplace when it becomes possible to make that position permanent.

Over the medium term, the federal government should:

- establish a regular labour review process, on a recurring timeline laid out in legislation, to consult with employers, employees and labour groups in order to better respond to the current needs of workers in Canadian workplaces; and
- develop options for the creation of a portable benefits bank to help ensure minimum health and social benefits for workers without existing extended benefit plans;

Also, over the medium term, provincial and territorial governments should:

- establish a regular labour review process, on a recurring timeline laid out in legislation;
- coordinate and share best practices with the federal government;
- consider models to help employers and employees mitigate the consequences of precarious work (such as in the construction trades model) and models to promote more legally enforceable regimes (as in the film industry model); and

- work with the federal government to develop a portable “benefits bank” that reflects extended benefit gaps within vulnerable sectors as well as the self-employed, temporarily employed and any other group lacking basic access to health benefits.

Broadly speaking, we’ve identified a need for better, consistently tracked data on precarious work. In addition, governments should look for ways to build on, or more widely apply, models that work, borrowing, for example, from the experience of construction and film industry workers, and they should write labour standards where such models don’t yet exist.

INTRODUCTION: PRECARIITY AND THE NEW WORK OF TOMORROW

To understand precarious employment, take out your phone and use a ride-share app. Once your ride is done, the software will deposit 75 percent of the fare into the driver's account, including any tips. This is the economic relationship between the software provider and that employee, give or take arranging for the minimum insurance and driver qualifications prescribed by local government.

Your driver is a classic example of a precariously employed worker. In return for the opportunity to earn that share of the fare, the driver has provided both the capital (the car) and the labour (their time). It's a tidy transaction for the corporation and offers autonomy for the driver. But the work is insecure and there are no pensions or benefits.

Such “gig work” is just the tip of the iceberg of a much broader issue. Precarious work is prevalent in many forms in the Canadian economy and throughout the world. By our best latest estimates, anywhere from 27 percent to 45 percent of Canadian workers are employed in nonstandard jobs, and up to 25 percent of these jobs are precarious¹. While these jobs may offer some flexibility and autonomy, precarious work often leaves workers relatively powerless to negotiate their compensation and terms of employment, leading to lower earnings, uncertainty about future employment and income volatility.

This paper considers what precarious work looks like in Canada. It examines where employers and employees have managed precarious work effectively and where government has succeeded in regulating it. Canada's current legal frameworks do not govern precarious employment very well. As we will see, the only legal framework designed to govern precarious work in Canada was purpose-built to protect employers from their own employees in the construction industry. In the film and television industry, a workable contractual framework has evolved largely outside of the law. Most other precarious workers fend for themselves.

The introduction of new gig work models poses a growing policy challenge to governments. How should governments respond to the decline in long-term, full-time jobs and the increase in short-term and precarious employment jobs? Inaction risks a future of work that exacerbates income and social inequalities.

¹ Fleury, D. and Cahill, E. November 2018. [Precarious Employment in Canada: An Overview](#). HillNotes. Parliament of Canada.

DEFINING AND MEASURING PRECARIOUS EMPLOYMENT

The definition of “precarious employment” is heavily debated. Is the structure of the employer and employee relationships—like temporary or “gig” arrangements—the root cause of poor work conditions? What are the markers of precarity and how many need to be seen in a job to call it “precarious”?

Definition of ‘Precarious Work’

According to the International Labour Organization (ILO),² “precarious work” can be defined as, “An inadequacy of rights and protection at work (and) ... reduced financial security stemming from lower wages, less access to benefits such as private pension plans and complementary health insurance and greater uncertainty about future employment income.”

This definition of precarious employment challenges our perceptions of who is affected by this type of employment. A study commissioned by the Government of Ontario found that a substantial portion of workers in standard jobs, including permanent full-time roles, may be considered to be precarious workers because there are no medical benefits or a pension plan available in their jobs.³ Precarious work is not solely found, as is often assumed, in non-standard work arrangements.

² Summary of International Labour Organization (ILO) definition in ACTRAV Symposium on Precarious Work (Oct. 4-7, 2011). April 30, 2012. [From Precarious Work to Decent Work](#). Outcome Document to the Workers' Symposium on Policies and Regulations to Combat Precarious Employment. ILO. In Fleury, D. and Cahill, E. November 2018. [Precarious Employment in Canada: An Overview](#). HillNotes. Parliament of Canada.

³ Mitchel, M. C. and Murray, J. C. May 2017. [The Changing Workplaces Review: An Agenda for Workplace Rights](#). Government of Ontario., Pg 42.

Standard vs. non-standard work

Discussions of precarious work often compare standard work to non-standard work.

According to Employment and Social Development Canada, standard work is permanent, full-time employment, while non-standard work includes a broad spectrum of work arrangements, including part-time employment, temporary contract work and working for a temp agency.⁴

Examples of precarious employment regularly form part of news and research. Temporary employment agencies are a growing part of precarious employment. In an eye-opening investigative report titled “Undercover In Temp Nation,” *Toronto Star* journalists Sara Mojtahedzadeh and Brendan Kennedy reported on a major Toronto bakery that had staffed its production floor with factory workers who, for legal purposes, were employed by temporary employment agencies.⁵ The journalists narrated the consequences of this form of employment for those workers: uncertain and on-call employment; poor wages; informal payroll arrangements (cash compensation; no tax, CPP or health and benefit deductions); poor safety training; and no access to grievance or dispute settlement in a gruelling work environment. Some of the temporary agencies the journalists visited appeared to be operating out of post-office boxes or private apartments.

In *Permanently Impermanent: Migrant Agricultural Workers in Canada*, Tahara Bhate, Sophie Gagnon, Sally Guy, Umang Khandelwal and Matthew Klassen reported on their survey of issues associated with Canada’s more than 50,000 migrant agricultural workers.⁶ These workers are totally dependent on their original employers’ goodwill to remain in the country. As their visa is tied to a job with their specific employer, they are in no position to advocate for themselves, to report poor or improper working conditions, or to attempt to pool their bargaining power. They face the familiar issues of uncertain and poorly paid work; no access to pensions or health benefits; poor workplace safety and additional burdens such as the risk of deportation.

Another area of precarity that can be overlooked is the misclassification of workers doing equal work.⁷ The issue is evidenced most concretely by numerous class-action lawsuits put forward by workers on the legal

⁴ Employment and Social Development Canada (ESDC). July 29, 2019. [“Non-standard Work and the Canada Labour Code”](#) in the Federal Labour Standards Protections for Workers in Non-standard Work: Issue Paper. Government of Canada.

⁵ Mojtahedzadeh, S. and Kennedy, B. Sept. 8, 2017. [Undercover in Temp Nation](#). *Toronto Star*.

⁶ Action Canada 2018/2019. March 2019. [Permanently Impermanent: Migrant Agricultural Workers in Canada](#). Task Force Report. Action Canada. Public Policy Forum.

⁷ Secretariat to the Expert Panel on Modern Federal Labour Standards. January 2019. [Federal labour standards protections for workers in non-standard work: Issue paper](#). Employment and Social Development Canada (ESDC). Government of Canada.

boundary lines of employee versus contractor definitions in Canada, and discussed recently by Carole Piovesan in her 2019 research report.^{8,9} This might happen when workers are hired as contractors and their work product and relationship to their employer would more accurately categorize them as employees (such as in the case of 7,000 door-to-door sales workers for the major Canadian energy company Just Energy).¹⁰ Or, part-time employees may deliver the same work product as a full-time employee, but receive less remuneration because of their part-time status. In still other cases, a worker may fill a roll on a “temporary basis” that stretches into months or years, while never receiving the option of becoming a full-time employee (such as in the lengthy case of up 12,000 former temporary workers at Microsoft, self-described “permatemps,” which settled for \$97 million).¹¹ In these instances, workers who are misclassified, and are now fighting legally to be reclassified, lose even basic protections from labour standards, such as minimum wages or maximum hours of work.¹²

Without a clear consensus or standard working definition from the Government of Canada, provincial governments or even the courts,^{13,14} Canadian researchers and policymakers are left to create their own. Francis Fong, chief economist for the Chartered Professional Accountants of Canada (CPA), has defined precarious work as **“the intersection of low earnings, high income volatility, uncertainty in future employment, the presence of employer misconduct and individual preferences in work arrangements.”**¹⁵ By this definition, precarity in work has a lot to do with job conditions, employer-employee relationships and bargaining power, but is also influenced by external factors such as economic conditions and policy interventions or gaps.

Because it captures this complexity, and to be consistent with current conversations, this paper accepts Fong’s definition of precarity. Risks to worker social and economic stability, mobility and well-being are similar across different types of work and industries. Fong’s definition highlights factors that are industry- and job-neutral.

⁸ Piovesan, C. Sept. 30, 2019. [Old Gigs, New Gigs: Are Courts and Legislators Reinterpreting an Age-Old Debate for the New World of Work?](#) Brave New Work: Key Issues Series. Public Policy Forum.

⁹ Kuretzky, B. and Levy, R. B., Littler. March 21, 2019. [Canada: Class action lawsuits over alleged misclassification of employees as independent contractors are increasing, say lawyers.](#) Business Human Rights Resource Centre.

¹⁰ Mojtehedzadeh, S. Aug. 8, 2016. [Father living off \\$3.32 an hour launches class action against energy giant.](#) *The Star*.

¹¹ Greenhouse, S. Dec. 13, 2000. [Technology: Temp Workers at Microsoft Win Lawsuit.](#) *New York Times*.

¹² Ibid.

¹³ Piovesan, C. Sept. 30, 2019. [Old Gigs, New Gigs: Are Courts and Legislators Reinterpreting an Age-Old Debate for the New World of Work?](#) Brave New Work: Key Issues Series. Public Policy Forum.

¹⁴ Fong, F. 2018. [Navigating Precarious Employment in Canada: Who is Really at Risk?](#) CPA Canada.

¹⁵ Ibid.

In Canada, researchers have used definitions that, when used to measure the scale of precarious employment in the country, found precarity to be concentrated in non-standard work.

The scale of precarious work in Canada is equally hard to define. The Library of Parliament, attempting to make sense of the data for policymakers,¹⁶ uses the International Labour Organization's definition of precarious employment (see definition in table above)¹⁷. Using this definition, the Library of Parliament study found that between 27 percent and 45 percent of Canadian workers do not have stable full-time jobs. Of these people in non-standard jobs, up to 25 percent of their jobs are precarious¹⁸.

Different definitions and measures create data gaps. It is impossible to get a clear picture of the scale and impact of precarious work; comparisons across regions, provinces or countries are disjointed at best. But even with different definitions, it is possible to look at what makes jobs precarious and examine the impact precarity has on workers and economies.

Regional attempts to research precarious work use definitions that make a closer link between precarity and specific job types and give a deeper view of impacts on workers.

Definition of “precarious work” according to Poverty and Employment Precarity in Southern Ontario (PEPSO), 2018¹⁹

“Part-time, contract and on-call positions; jobs without benefits; and, jobs with uncertain futures. These are jobs marked by uncertainty, insecurity and instability.”

The Poverty and Employment Precarity in Southern Ontario (PEPSO) study group at McMaster University conducted one of the most in-depth studies on precarious employment. It amassed large swaths of data on precarious employment within the Greater Toronto and Hamilton Region (GTHA) during two large-scale

¹⁶ Fleury, D. and Cahill, E. November 2018. [Precarious Employment in Canada: An Overview](#). HillNotes. Parliament of Canada.

¹⁷ Summary of International Labour Organization (ILO) definition in ACTRAV Symposium on Precarious Work (Oct. 4-7, 2011). April 30, 2012. [From Precarious Work to Decent Work](#). Outcome Document to the Workers' Symposium on Policies and Regulations to Combat Precarious Employment. ILO. In Fleury, D. and Cahill, E. Nov. 2018. [Precarious Employment in Canada: An Overview](#). HillNotes. Parliament of Canada.

¹⁸ Ibid.

¹⁹ Lewchuck, W. et al. June 2018. [Getting Left Behind : Who Gained and Who Didn't in an Improving Labour Market](#). Poverty and Employment Precarity in Southern Ontario (PEPSO) Research Group. Pg. 7.

studies conducted in 2011 and 2017.²⁰ The study delivered some startling revelations. In the post-recession period of 2011-2017 “just over 40 percent of the GTHA workforce between the ages of 25 and 65 was working in some degree of precarious employment” and “nearly 85 percent of workers in precarious employment still report their income varied at least some of the time from week to week.”²¹ This constant uncertainty makes it extremely difficult for workers and their families to plan for their future and keep their costs in line with income.

Similarly, another study commissioned by the Government of Ontario found that non-standard employment grew nearly twice as fast as standard employment between 1997 and 2015.²² At the same time, specific groups of people are over-represented in precarious work, including single parents, recent immigrants, women, visible minorities and those with less than a high school education.²³

²⁰ Lewchuck, W. et al. June 2018. [Getting Left Behind : Who Gained and Who Didn't in an Improving Labour Market](#), Poverty and Employment Precarity in Southern Ontario (PEPSO) Research Group.

²¹ Ibid., 8.

²² Mitchel, M. C. and Murray, J. C. May 2017. [The Changing Workplaces Review: An Agenda for Workplace Rights](#), Government of Ontario.

²³ Ibid., 48.

ACROSS THE SPECTRUM: CASE STUDIES OF PRECARIITY

Precarious employment in Canada is complex and diverse. Construction, film and television and academia provide good case studies to examine precarious work and how it develops—or is mitigated. Across these cases, precarity is managed differently, resulting in different outcomes for workers.

CONSTRUCTION

The only legal regime specifically targeting precarious employment in Canada exists for the construction industry. The irony is that employers exerted heavy influence to gain bargaining power against a formidable group of precariously employed workers. This legal regime seems “upside down,” or focused on the wrong group, but it has matured into a model that seems to benefit workers reasonably well. That being so, it provides a good place to begin to look for clues about successful models to manage precarity.

Few workers in the skilled construction trades have what most Canadians would recognize as a stable full-time job. Yet the increase of resource- and commodity-based work has made construction one of the most reliable and fastest-growing careers in the country.^{24, 25} By its nature, the construction industry is project driven. The more than 360,000 firms in the sector²⁶ expand and contract in concert with their construction mandates and typically do not offer permanent, full-time positions^{27, 28, 29} to the bulk of the one million construction workers³⁰ they employ.

Most skilled trade workers are responsible for providing themselves with the kinds of benefits that are usually provided by employers in other sectors. Workers have independently organized their unions and guilds so they can have access to benefits including health and dental coverage, pension plans and training.³¹ Terms under which employers compensate workers in this sector and contribute financially to

²⁴ *Canadian Business Journal*. Sept. 13, 2018. [The Current State of Canada's Construction Industry](#).

²⁵ Hoadley, G. October 2018. [Construction sector in Canada: The current state of job growth](#). Design Group Staffing.

²⁶ Build Force. [Fast Facts](#). Based on latest Labour Market Information.

²⁷ For instance, in Ontario: C. M. Mitchel and J. C. Murray. May 2017. Archived. [Chapter 4: Vulnerable workers in precarious jobs. The Changing Workplaces Review – Final Report](#). Government of Ontario.

²⁸ Chen, W-H. and Mehdi, T. Dec. 10, 2018. [Assessing Job Quality in Canada: A Multidimensional Approach](#). Analytical Studies Branch Research Paper Series. Statistics Canada.

²⁹ Kapsalis, C. and Tourigny, P. Dec. 2004. Archived. [Duration of Non-Standard Employment](#). Perspectives on Labour and Income, 5(12). Statistics Canada.

³⁰ Build Force. [Fast Facts](#). Based on latest Labour Market Information.

³¹ The construction trades work together through an umbrella organization called “Canada’s Building Trades Unions” (CBTU). The component organizations include (using the short form of their names): The Boilermakers, the Iron Workers, The Heat and Frost Workers, the Plasters and Cement Masons, The Electrical Workers, The Teamsters, the Bricklayers, the Elevator Constructors, the Operating Engineers, the Painters, the Labourers, the Sheet Metal Workers, the Piping Trades and the Carpenters.

Few workers in the skilled construction trades have what most Canadians would recognize as a stable full-time job.

these self-provided pensions and benefit arrangements are typically centrally bargained.³² This is done within the framework of provincial construction labour-relations legislation. These rules were created specifically to govern this sector—and are limited to it.

In this sector, workers organized themselves, beginning with some of Canada's first trade unions in the 19th century. Within these unions and guilds, members replicated most of the services typically provided by employers. By the 1960s, workers had significant market power and could practically dictate their compensation to employers, the opposite of what many

project-based workers experience today. Construction workers and their unions became adept at playing individual employers off each other and weathering lengthy strikes by finding work on other projects.

In the face of this organized workforce, employers felt they needed more bargaining power. At the request of these employers, provinces enacted construction labour-relations regimes to help employers organize themselves.³³ The result was a relatively orderly labour-relations environment, with employer councils negotiating industry agreements with unions and guilds. This framework has matured into a reasonably collaborative one.

As with any system designed to regulate labour relations, there are issues. Some employers try to work inside and outside these systems by operating unionized and non-unionized divisions in a practice that is called “double-breasting.” Unions compete for members and bargaining mandates. Nonetheless, this approach provides workers with more stable and secure work opportunities and compensation than a highly adversarial, fragmented, conflicted and unstable regime would likely provide. Taken overall, the construction trades regime is an attractive model for precariously employed workers.

Yet these unique arrangements were possible only because construction workers built significant economic power and were able to compel them into being, in a sector of the economy in which their skills and numbers are in permanently high demand. No other group of workers in similarly flexible work in Canada has been able to do this.

³² Mitchell, C. M. and Murray, J. C. July 27, 2016. [Chapter 4.6.1: Broader-based Bargaining Structures](#). The Changing Workplaces Review — Special Advisors' Interim Report. Ministry of Labour. Government of Ontario.

³³ Ibid.

FILM, TELEVISION AND THEATRE

The construction trades system is echoed in another large sector—the film, television and theatre industries. These industries are a significant employer in Canada. Film and television, for example, is an \$8-billion industry employing almost 200,000 people.³⁴

As in construction, screen production and theatre are project-based industries that assemble large teams for specific productions. And as in construction, many workers in this industry self-organized into unions and guilds to provide pensions and benefits and to represent themselves when negotiating compensation.³⁵ For example, the Alliance of Canadian Cinema, Television and Radio Artists (ACTRA) was founded inside CBC in 1943 (the original organizing goal of radio announcers there was to grow their pay to “a dollar a holler”).^{36, 37} The International Alliance of Theatrical Stage Employees (IATSE) was founded in the U.S. in 1893.³⁸

Whereas construction workers are compensated within provincial legal frameworks, screen production and theatre unions and guilds are typically contracted through more precarious national or regional “voluntary recognition agreements” that fit awkwardly into provincial labour law. An exception is Quebec, which enacted Status of the Artist legislation in 1988, roughly replicating the construction regime in the arts (concurrent federal Status of the Artist legislation is largely a dead letter, since the federal government has very little jurisdiction in this industry.) Despite its precarious legal foundation, the voluntary recognition regime in the Canadian film industry outside of Quebec works fairly well for workers. They tap into many of the benefits construction workers enjoy—training, grievances and arbitration for disputes, protection from harassment and discrimination, pay bargaining and pension and benefits.

Relationships between these labour counterparties are generally collaborative and have been quite stable and resilient. Yet there is room for improvement. Pay in film and television industries can be very low. While leading and skilled work in these industries is typically well-compensated, productions employ large numbers of workers, such as background performers, security personnel and junior production personnel at minimum wage and on highly precarious employment terms.

³⁴ Canadian Media Producers. February 2018. [Profile 2017: The Economic Report on the Screen-based Media Production Industry in Canada](#).

³⁵ The principal unions and guilds in film and television include ACTRA (actors, stunt performers and other performers), The Directors' Guild, the Writers' Guild and IATSE and NABET (representing production crew). Performers are represented in theatre by Actors' Equity. In addition to these organizations, workers in this sector in Quebec are represented by Quebec organizations (l'union des Artistes; AQTIS, representing crew). Employers are represented in English Canada by the Canadian Media Producers Association (CMPA) and in Quebec by the Association quebécoise de la production médiatique (AQPM).

³⁶ Downey, F. January 2012. [President's Message – January 2012: Passion for Collective Bargaining United we stand; divided we beg](#). Actra.

³⁷ Neil, G. [The Actra Story](#). InterActra: Special 60th Edition, 9 (3).

³⁸ IATSE 873. [History](#). International Alliance of Theatrical Stage Employees (IATSE).

Pensions in this sector are generally provided in the form of an RRSP, into which employees and their various employers both contribute over time. Artistic careers have historically offered low stability and been more susceptible to fallow periods. To bridge interruptions in earnings, workers turn to RRSP savings, at considerable long-term cost to themselves. Since RRSP room can only be tapped once, using the RRSP as an emergency fund negates the benefits of pension savings. It is not uncommon that people pursuing careers in this sector retire into relative poverty.^{39, 40}

Workers in film, theatre and production must continuously apply for work on new productions to secure steady income.^{41, 42} This makes workers vulnerable to *quid pro quos* to obtain employment and can make them reluctant to complain or insist on the enforcement of labour norms out of fear of being “blacklisted” for future employment. Historically, “unfriendly” work environments,⁴³ sexual harassment and exploitation of workers in this industry was endemic.⁴⁴ When the #MeToo movement surfaced, employers and unions responded by writing tough new anti-harassment language into recent collective agreements.⁴⁵

The low compensation and benefits, uncertain retirement income and vulnerability that comes with having to continuously re-apply for work are what make employment precarious. Still, the film, television and theatre industries also demonstrate an employment model that could provide stability and better working conditions for workers if it were enforced and legal precarity of the voluntary recognition agreements could be remedied. Because there are fewer legal barriers to recognizing a union under the voluntary recognition regime, the current film, television and theatre model is flexible and dynamic, which is helpful in any quickly evolving and growing industry. It also rests on a balance of power and a spirit of co-operation between the parties. Production is impossible without access to the unique skills of these workers and this demand gives workers leverage to insist on respect for this regime.

This model serves its purpose. While some producers of advertising and documentaries have enjoyed growing success in persuading professionals to moonlight outside their collective agreements, most film and television producers find circumventing these arrangements is not worth the trouble or the quality trade-offs. In return, employers enjoy access to a large pool of skilled workers while retaining an extraordinary amount of flexibility in terms of who they can hire, for how long and on what terms. Employers do this

³⁹ Adams, J. Feb. 5, 2009. [Starving artists? Study shows that's not far from the mark](#). *The Globe and Mail*.

⁴⁰ Hill Strategies Research. March 27, 2019. [A Statistical Profile of Artists in Canada in 2016 \(With Summary Information about Cultural Workers\)](#).

⁴¹ Houpt, S. May 17, 2019. [The perils of being 'casual' at the CBC: How precarious work affects the public broadcaster's temporary employees](#). *The Globe and Mail*.

⁴² Canadian Media Guild. Sept. 2015. [The glory and the grind: The reality of working in TV and media in Ontario](#). Submission to the Ontario Changing Workplaces Review. CWA/SCA Canada.

⁴³ Women in Film & Television Toronto (WIFT). January 2012. [Frame Work II: Canada's Screen-Based Workforce](#).

⁴⁴ Hawkins, K. March 20, 2018. [Confronting sexual harassment in the Canadian film industry with TIFF](#). Canadian Women's Foundation.

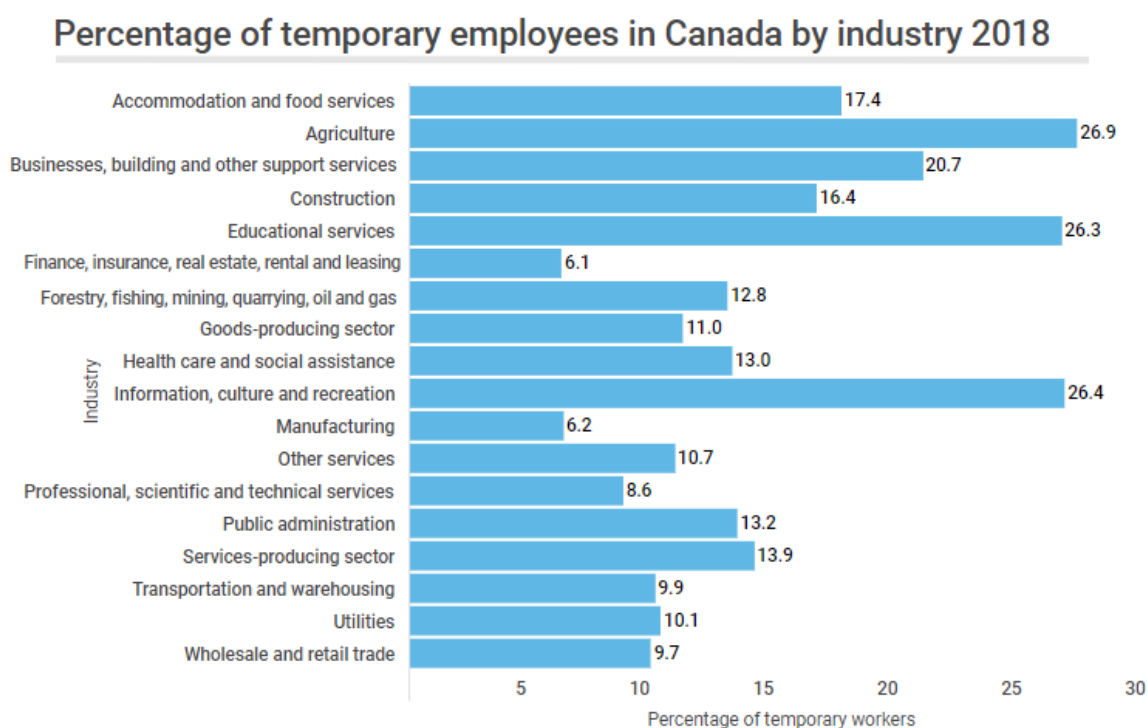
⁴⁵ ACTRA. March 8, 2018. [Canadian creative industries release new Code of Conduct](#).

without assuming long-term obligations to these workers, who nonetheless can aspire to reasonable earnings and benefits because of their ability to create unions and guilds.

ACADEMIA

Flexible employment is structured collaboratively in the construction trades and in the film and television industry to mitigate precarity. In contrast, precarious employment is the object of bitter contention in the post-secondary sector.^{46, 47} Recent studies show that Canada's education services sector has made it to the top three sectors in highest number of temporary jobs (Figure 1 shows a comprehensive breakdown from 2017).^{48, 49, 50} In 2018, more than a quarter of jobs in the education services sector were temporary.⁵¹

FIGURE 1



Source: Statistics Canada. Sept. 5, 2019. Table 14-10-0072-01: Job permanency (permanent and temporary) by industry, annual (x, 1,000).

⁴⁶ Chiose, S. March 5, 2018. [York University, union at odds over temporary instructors](#). *The Globe and Mail*.

⁴⁷ Fullick, M. Feb. 26, 2016. [Confronting the conditions of contract faculty](#). *University Affairs*.

⁴⁸ Fleury, D. and Cahill, E. November 2018. [Precarious Employment in Canada: An Overview](#). Parliament of Canada.

⁴⁹ Statistics Canada. Sept. 5, 2019. [Table 14-10-0072-01: Job permanency \(permanent and temporary\) by industry, annual \(x, 1,000\)](#).

⁵⁰ *The Canadian Press*. March 27, 2016. [Librarians fight rise of precarious work](#). CBC.

⁵¹ Statistics Canada. May 14, 2019. [Temporary employment in Canada, 2018](#).

Another Canadian survey confirms the growing role of precarious employment in the higher-education sector⁵² and estimates that a third of academic employees in Canada are employed on temporary or part-time contracts.⁵³ The ILO frames the growth of precarious academic work arrangements in Canada as part of a global trend impacted by new and emerging forms of employment and recruitment in the tertiary education sector.⁵⁴

Recent research at the provincial level suggests more than half of post-secondary education workers in Ontario are precariously employed.⁵⁵ A series of bitter strikes in Ontario in 2018 tried to reverse this trend. Unions representing faculty and support workers attempted to compel colleges and universities to reduce the number of temporary and precarious contracts. When faculty are indefinitely employed on brief (single-semester or single-course) contracts, they must re-apply for their jobs each cycle. Protesters argued the number of these types of contracts were climbing and even made up the majority of available positions. Compensation being relatively low, these workers must string together multiple contracts, often to earn a livable income.⁵⁶ They argue that this significantly reduces economic security and makes it almost impossible to apply for a mortgage or otherwise begin a middle-class life.⁵⁷ The paradox of this sector is that by virtue of the system of university tenure, tenured professors, some of the best compensated and protected employees in the Canadian economy, work side-by-side with some of the worst served.

There are two common rationales given for the increase in—and even the value of—temporary and contract arrangements in academic employment among faculty staff. One is about money; the other is about the basic mission of the institution. The first argument is that Canadian governments have not funded colleges and universities at levels that permit them to employ full-time, permanent and secure staff. Long-term patterns of budget freezes and cutbacks in the post-secondary sector across Canada and government policies restricting tuition increase⁵⁸ support this argument. On the other hand, there are arguments that these choices of employment arrangements are avoidable.⁵⁹ Second, it may be argued that at least in institutions and faculties that are not focused on primary research, students benefit from learning from

⁵² Foster, K. and Birdsell Bauer, L. September 2018. [Out of the Shadows: Experiences of Contract Academic Staff](#), The Canadian Association of University Teachers (CAUT).

⁵³ Canadian Association of University Teachers (CAUT). August 2016. [Statement Regarding the 2017/2018 Federal Budget](#).

⁵⁴ International Labour Organization (ILO). September 2018. [Employment terms and conditions in tertiary education](#). Issues paper for discussion at the Global Dialogue Forum on Employment Terms and Condition in Tertiary Education. Sectoral Policies Department.

⁵⁵ Shaker, E. and Shaban, R. Feb. 8, 2018. [Ontario's shifting college and university workforce](#). Centre for Policy Alternatives.

⁵⁶ Field, C. C., Jones, G. A., Karram Stephenson, G. & Khoyetsyan, A. 2014. [The "Other" University Teachers: Non-Full-Time Instructors at Ontario Universities](#). Toronto: Higher Education Quality Council of Ontario.

⁵⁷ Sandals, L. Sept. 26, 2018. [Precarity a Major Concern for Canadian Art-School Faculty](#). *Canadian Art*.

⁵⁸ Rajagopal, I. Oct. 5, 2002. *Hidden Academics: Contract Faculty in Canadian Universities*. University of Toronto Press, Scholarly Publishing Division.

⁵⁹ Foster, K. and Birdsell Bauer, L. September 2018. [Out of the Shadows: Experiences of Contract Academic Staff](#), The Canadian Association of University Teachers (CAUT), 8.

teachers who are principally employed in their fields of, for example, business administration, accounting, architecture and public policy.

The government of Ontario forced an end to these strikes by legislation⁶⁰ and punted the resolution of the province-wide college strike's underlying issues to a new College Task Force. It is unclear whether the College Task Force will continue its mandate under the current provincial government, or whether the significant issues in the university sector will be addressed.

This is a clash of seemingly irreconcilable visions of what working for these institutions should be like. It is also an example of management teams imposing precarious employment on a workforce that largely rejects it as a model. As a result, these administrations manage institutions prone to regular cycles of labour disputes.

Those in the post-secondary system have at least some ability to argue their corner. They are well-educated, largely middle class and often represented by unions. Many precarious workers do not enjoy the same advantages and are not able to advocate for themselves with the same force.

NEW INITIATIVES

Provinces have taken a variety of legislative and policy measures to address precarious employment affecting specific groups of workers in recent years.

The government of Ontario passed the *Fair Workplaces, Better Jobs Act* on Nov. 22, 2017. Among other measures, the bill was an attempt to regulate the more egregious abuses of “bad actors” in the temporary employment industry. A centrepiece of these reforms was an “equal pay for equal work” provision that eliminated the financial incentive to employ workers through agencies, and some enhanced labour standards rules. However, most of the provisions in this reform have since been repealed by the Ford government.⁶¹

In 2018, the B.C. government adopted the Temporary Foreign Worker Protection Act to give migrant workers the ability to apply for open work permits in cases of employer abuse, opening the restrictions for workers to remain with one employer regardless of working conditions. It also established a complaints process, employer and recruiter registry and penalties for violating the act to improve employer

⁶⁰ Bill 178: [An Act to resolve the labour dispute between the College Employer Council and the Ontario Public Service Employees Union](#). 2nd Sess, 41st Leg, Ontario, 2017 (assented to Nov. 19, 2017).

⁶¹ Bill 47: [An Act to amend the Employment Standards Act, 2000, the Labour Relations Act, 1995 and the Ontario College of Trades and Apprenticeship Act, 2009 and make complementary amendments to other Acts: “Making Ontario Open for Business Act.”](#) 1st Sess., 42nd Leg., Ontario, 2018 (assented to Nov. 21, 2018).

accountability to workers and the provincial government's enforcement abilities. Other provinces have yet to adopt similar measures.⁶²

Changes may be also underfoot under the next Liberal-led federal government. The Liberal platform for the 2019 federal election proposes to strengthen employment benefits and move forward with new federal labour code protections. One aspect of this commitment is greater labour protections for people who work through digital platforms whose status isn't clearly covered by provincial or federal laws.⁶³

⁶² The Canadian Council for Refugees publishes a report card of federal and provincial protections for migrant workers. The latest (published before B.C.'s latest legislation) can be found at: Canadian Council for Refugees, May 2018. [Evaluating Migrant Worker Rights in Canada 2018](#).

⁶³ Liberal Party of Canada. 2019. [Forward: a real plan for the middle class](#), Pg 12.

CONCLUSION & RECOMMENDATIONS

Precarious employment is a large, growing and multi-faceted policy challenge for government. While new types of flexible jobs are seen by some as an exciting part of our emerging economy, there is also evidence that precarious employment is a road to poor social and economic conditions for too many people particularly for young people, women, people of colour and new Canadians.

Construction trades, film and television, academic workers, temporary work agency employees, foreign agricultural workers, young workers in two-tier employment regimes and employees whose work has been subcontracted are all different facets of a broad, possibly increasingly ubiquitous trend in the economy towards precarious work.

Workers in the construction trades and in film and television have generated enough market power to develop rules-setting regimes that work reasonably well. But no other major sector of precariously employed workers has managed to do so. Therefore, there is strong case for revisiting public policy on these issues, at both the federal and provincial/territorial levels.

Broadly, we recommend:

1. **Much better, consistently tracked data on precarious work so the basic facts are clear;**
2. **Governments should look for ways to build on, and more widely apply, models that work; and write better labour-standard rules where those models aren't extended; and**
3. **Further study of international comparisons, models and standards which could be applied in Canada.**

RECOMMENDATIONS FOR GOVERNMENT

Federal government

In the short term (one or two budget cycles), the federal government should:

- Work towards a pan-Canadian definition of “vulnerable worker” and “precarious workplace” with the worker’s ability to meet material needs forming the core of this definition; and
- Mandate and fund Statistics Canada to track and evaluate data on vulnerable workers and precarious workplaces so that policy-makers may propose effective solutions to mitigate worker vulnerability.

In the medium term, the federal government should:

- Establish a regular labour review process, on a recurring timeline laid out in legislation, to consult with employers, employees and labour groups in order to better respond to the current needs of workers in Canadian workplaces. As part of that process, consider models to permit and require employers and employees to bargain their terms of work and to mitigate the consequences of precarious work (the construction trades model), and models and resources to promote more legally enforceable and legally resilient voluntary recognition regimes (the film industry model). Consider a substantially stronger labour-standards regime for sectors that do not take up either of these models; and
- Develop options for the creation of a portable benefits bank to help ensure minimum health and social benefits for workers without existing extended benefit plans.

Provincial and territorial governments

In the short term (one or two budget cycles), provincial and territorial governments should:

- Work toward new standards to ensure equal pay for equal work regardless of part-time or full-time status;
- Require employers to give first access and choice to part-time workers when it comes to the creation of additional work hours made available in the workplace, rather than creating additional part-time positions to fill needs; and
- Require that employers first consider temporary workers already filling a given position in the workplace when it becomes possible to make that position permanent.

In the medium term:

- Establish a regular labour-review process, on a regular recurring timeline laid out in legislation, to consult with employers, employees and labour groups in order to better respond to the current needs of workers in provincial workplaces. Co-ordinate and share best practices with the federal government to the extent willing provinces and territories want to;
- Consider models to permit and require employers and employees to bargain terms of work and to mitigate the consequences of precarious work (the construction trades model), and models and resources to promote more legally enforceable and legally resilient voluntary recognition regimes (the film industry model). Consider stronger labour-standards regimes for sectors that do not adopt either of these models; and

- Work with the federal government to develop a portable benefits bank that reflects extended benefit gaps within vulnerable sectors as well as the self-employed, temporarily employed and any other group lacking basic access to health benefits.

APPENDIX

RECOMMENDATIONS FROM RECENT STUDIES

Several recent studies have looked into the issue of precarious work and proposed policy solutions.

CPA Canada

For CPA Canada, chief economist Francis Fong suggests the federal government:

1. **“Take measures to ensure that Statistics Canada begins collecting data that allows for precarious employment to be tracked based on our proposed definition.**
2. **“Charge Employment and Social Development Canada with monitoring and annual reporting on trends in precarious work.**
3. **“Develop accountability within government, and work with the provinces and territories to assess whether policies implemented to address the rise of precarious work are having an impact.”⁶⁴**

A national standard will enable research to be conducted and policy solutions developed across a wide variety of workplace scenarios and worker demographics. Perhaps even more importantly, accurate baseline data will allow researchers, policymakers and governments to determine whether policies are delivering intended consequences.

Poverty and Employment Precarity in Southern Ontario (PEPSO) study

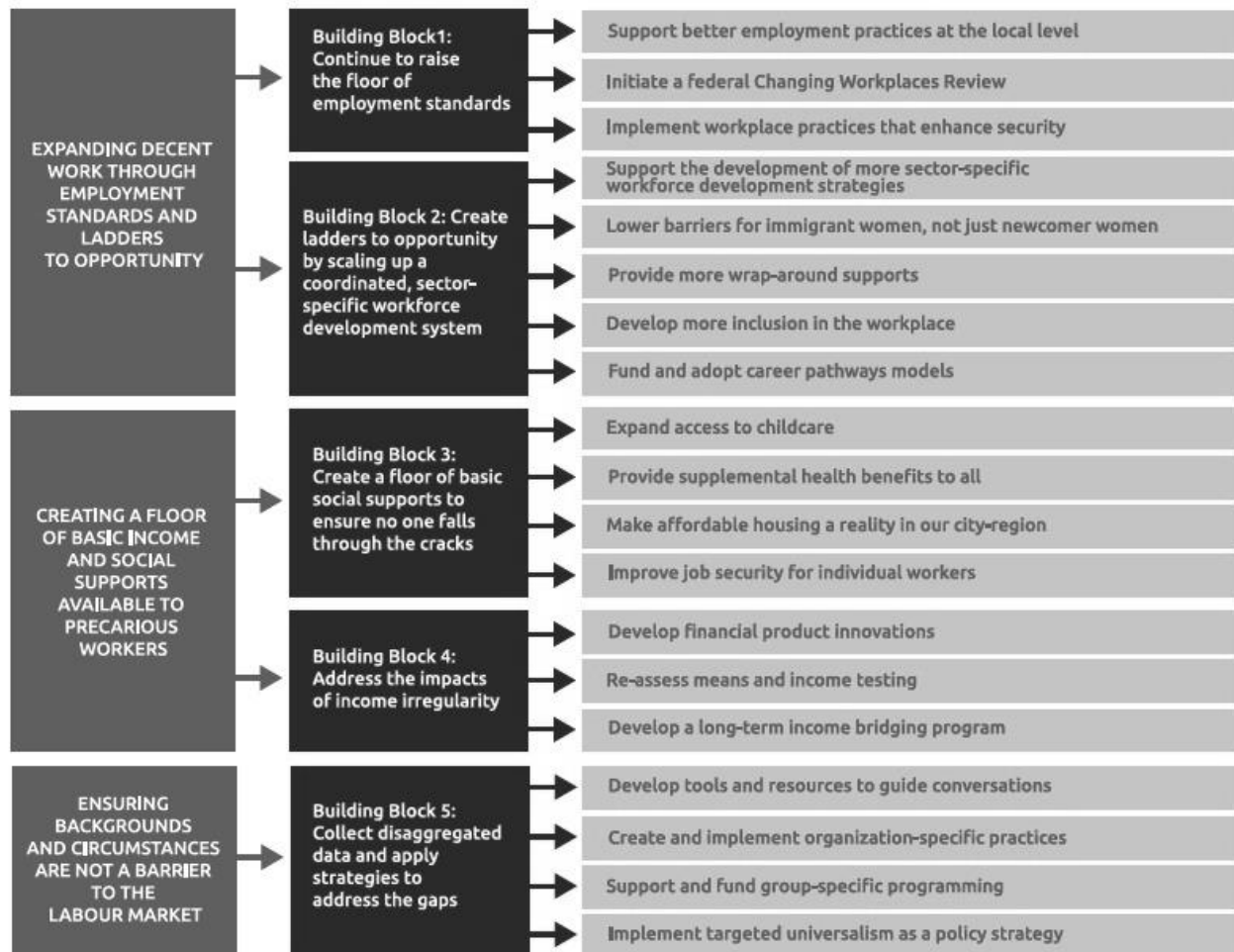
The PEPSO report provides important insights to the depth and breadth of the scope of precarious work in the GTHA. It also provides insight into what can be learned when resources are dedicated to collecting this kind of important and detailed data in the first place. Based on its data, the PEPSO study made the following five overarching recommendations:⁶⁵

⁶⁴ Fong, F. 2018. [Navigating Precarious Employment in Canada: Who is Really at Risk?](#), Pg 3.

⁶⁵ Lewchuck, W. et al. June 2018. [Getting Left Behind : Who Gained and Who Didn't in an Improving Labour Market](#), Pg 65.

FIGURE 2: Summary of recommendations from the PEPSO study⁶⁶

Figure 31: Summary of recommendations



Law Commission of Ontario

The 2012 Law Commission of Ontario (LCO) report *Vulnerable Workers and Precarious Work* recommended that governments “ensure that the review develop and use principles that aim to promote a broadly available minimum floor of basic workers’ rights.”⁶⁷ While many of those basic rights focus on health and safety measures, another major element was the ability to earn a livable wage. In 2012, the LCO recommended that “the Ontario government convene a minimum wage committee, or similar body, to review minimum wage issues, balancing the needs of business and employees.”⁶⁸

⁶⁶Ibid.

⁶⁷ Law Commission of Ontario. December 2012. [Vulnerable Workers and Precarious Work](#), Pg 43.

⁶⁸ Ibid., 45.

In response to these and other recommendations from its own *Changing Workplaces Review*, the government of Ontario passed the *Fair Workplaces, Better Jobs Act, 2017*, which attempts to address precarious work with an initial hike and then scheduled increases to the minimum wage.⁶⁹

The LCO also recommended that:

- The government “ensure part-time workers are paid at proportionately the same rate as full-time workers in equivalent positions where there is no justification for the difference based on skill, experience or job description.”⁷⁰ The implementation of this recommendation in Ontario workplaces was a result of legislative change to ensure that workers receive equal pay for equal work;
- Provinces consult on the concept of “work councils in non-unionized workplaces with high concentrations of vulnerable workers”;⁷¹
- The Ministry of Labour take a tougher stand on compliance when it comes to industries with “high incidences of misclassification”—employees who work for months or years on contract without ever being classified as permanent workers and receiving the benefits that come with that⁷²; and
- a “benefits bank” be financed through mandatory premiums applied to short-term contracts for temporary workers that would allow for “the provision of benefits for non-standard and other workers without benefits coverage.”⁷³ The need for such a bank stretches beyond just temporary workers and led to the 2013 creation of the Coworking Health Insurance Plan (COHIP), a health insurance plan “designed for freelancers, creatives, start-ups, small businesses, collectives and independent workers in any industry.”⁷⁴

⁶⁹ Ontario Ministry of Labour. Nov. 27, 2017. (Archived). [Ontario's Legislation to Create Fair Workplaces and Better Jobs Receives Royal Assent: Protections Against Employee Misclassification and Changes to the Occupational Health & Safety Act Come Into Effect.](#)

⁷⁰ Law Commission of Ontario. December 2012. [Vulnerable Workers and Precarious Work.](#)

⁷¹ Ibid., 68.

⁷² Ibid., 95.

⁷³ Ibid., 47.

⁷⁴ Coworking Health Insurance Plan (COHIP). [Canada's First Coworking Health Insurance Plan.](#)