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# THE DEVIL'S CHOICE

## PRECARIOUS WORK AND THE POLITICS OF TIME

CAROLINA ENJOYED WORKING AS A JEWELRY salesperson. She had “hopes of making a lot of money within jewelry,” but things “didn’t pan out that way.” Like many Ontario workers, Carolina was dealing with precarious working conditions including long, yet unstable, hours, which left her feeling frustrated and unwell. While working her shifts, Carolina did not get breaks. She was expected “to stand there for eight hours [at the jewelry kiosk] and not eat. . . . You have to sneak in and eat at the kiosk,” she says, “sneaking a bite to eat or a wash-room break comes with the risk of getting in trouble or even fired.”

Carolina’s story is not unique. She is one of 77 precariously employed workers from Sudbury, Toronto, and Windsor who shared their stories with ‘Closing the Employment Standards Enforcement Gap,’ a partnership between university researchers and community-based organizations. The project aims to shed light on the experiences of precariously employed workers in Ontario and to inform the development of more effective enforcement practices.

As more and more employers in Ontario seek to manage their costs by hiring workers into precarious jobs, these employment practices have become normalized for workers who must take on low-paying

By Mark P. Thomas, Shelley Condratto, Mercedes Steedman, and Danielle Landry

insecure jobs to make a living. These workers experience long hours, a lack of control over their working time, and not getting paid for hours worked. Their physical and mental health suffers, and they have little 'choice' when it comes to saying no to these working conditions. As employers continue to evade labour and employment laws, they erode standards around wages and regular hours of work. Women and workers of colour, particularly, feel the effects. They are disproportionately represented in precarious work, in industries where temp agencies and subcontractors are prevalent, and in workplaces where practices such as misclassification, irregular hours, and exemptions from the Employment Standards Act (ESA) are most common.

Only about 30 per cent of Ontario's workforce is unionized, so most workers depend on the ESA to establish the basic floor for their working conditions. Yet, many workers fall through the gaps of this legislation (Vosko et al. forthcoming 2020), and many who experience violations of their workplace rights feel they are unable to complain. This may be due to the precarious structure of their employment, and/or their precarious status in Canada, both of which create significant workplace power imbalances and leave workers vulnerable to employer retribution. Other workers are simply not covered by the ESA due to being misclassified as an independent contractor (rather than an company employee) or because of exemptions or special rules that diminish their workplace rights.

The legislated standards in the ESA were further undermined when right-wing populist Doug Ford and his majority Progressive Conservative government were elected in June 2018. The Ford government's promise to make Ontario "Open for Business" came at the cost of workers' rights. Ford made rapid changes to the ESA, repealing hard-fought gains that had only just been implemented under the previous provincial government's Better Jobs and Fair Workplaces Act, 2017.

### PRECARIOUS WORKERS MUST OFTEN CHOOSE BETWEEN BEING EXPLOITED OR SPEAKING UP AND RISKING JOB LOSS

By November 2018, through the Making Ontario Open for Business Act, Ford froze the minimum wage at \$14 per hour, eliminated new ESA provisions supporting equal pay for equal work for part-time and temporary workers, and rolled back paid sick-leave days and other newly established protections against worker misclassification. Then, in April 2019, the government passed the Restoring Ontario's Competitiveness Act, which removed government oversight of both excess-hours permits (covering hours over 48 per week) and overtime-averaging arrangements, effectively creating further openings for employers to schedule long hours and to avoid paying overtime.



PHOTOGRAPH: DEENA LADD

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Workers already “put up with a lot of different hours . . . doing the extra hours . . . juggling the shifts, not getting enough hours, trying to get more hours,” says Deena Ladd, an organizer with the Workers Action Centre (WAC) in Toronto. Frustrated and challenged by the Ministry of Labour’s claims process, workers often turn to community organizations such as WAC to help them address violations of their workplace rights and to push for stronger laws.

Workers in precarious jobs frequently face impossible choices: they must ‘choose’ between being exploited or speaking up and risking employer retaliation or job loss.

While this sense of risk and lack of control was expressed by many workers who shared their stories with us, some of the most compelling stories came from workers in the restaurant industry. Within Ontario, it’s the restaurant industry that sees the most complaints from workers when it comes to hours of work and overtime.

Alison was employed as a dishwasher and knows firsthand the difficulties of working in that industry. Her supervisor often criticized her, telling her she “wasn’t worth minimum wage” and used her work hours as a form of punishment. He also avoided paying her overtime. She explains, “If I worked too many hours, he started cutting my hours. He only had me work three hours a day. As soon as he came in, he would tell me to go home and he’d do my job. . . . He came in one day and said ‘you’re done, go home’ . . . I was too afraid to do anything back then.”

The highly gendered and racialized division of labour in many restaurants also adds to the exploitation experienced by many of these workers. “When you look at the back of the house, it is mainly people of colour,” says Deena Ladd. “You see who the hostesses are and who the waiters are and who the bartenders are. They are not people of colour, and so you have to have a racialized and gendered lens in terms of how you look at enforcement of rights in [that] industry.”

### **WORKERS OFTEN TURN TO COMMUNITY ORGANIZATIONS TO HELP THEM ADDRESS VIOLATIONS OF THEIR WORKPLACE RIGHTS**

Workers with precarious immigration status not only fear retaliation and job loss, but also possible deportation if they speak up. Care workers are especially vulnerable. Coming to Canada as part of the Live-in-Caregiver program (LICP), Wen was told by her employer that she “only needed to work about 9 hours a day” but was routinely pressured to work more hours with little time off. She felt trapped. “I was under the live-in caregiving program. I couldn’t leave this family before I finished two years of work.”

Until a short time ago, under the LICP, workers had to be employed by a family for at least two years before they could apply for permanent residence in Canada. (Recent changes made to the LICP, after

research for this article was completed, allow workers to apply to change employers and remain within the program.) As Deena Ladd explains, workers like Wen lose their ability to say no. They are “tied to an employer and will not say anything because they’ll lose their job and they’ll lose their ability to stay in the country.”

Working excessive hours and working without breaks have become normalized through the structure of precarious work. For example, subcontracting arrangements may result in workers being exempted from ESA working-time provisions, but those same workers may find their employer’s expectations impossible to meet within regular working hours. Many workers in more traditional employment relationships also experience underpayment or no payment for hours worked: employers may not allow for breaks that are mandated by the ESA, they may not pay overtime rates, or they may expect/require employees to put in extra/unpaid time. Practices like these constitute another kind of wage theft.

Laura, who works in administration, explains, “We didn’t take any breaks because it was just go, go, go . . . I wasn’t paid overtime . . . they owe us the vacation pay . . . if I started in the morning, I’d always have to make sure and have a big breakfast because if we were busy they did not allow us to take breaks.”

Workers like Laura may actually end up making much less than minimum wage. Hanna, employed


in a retail administration job doing data entry for \$15 per hour, notes “when you add up the emotional strain and ridiculous hours . . . I was probably making close to 10 bucks an hour.

“You are expected to work weekends when necessary and there is a lot more work at the end of the month than the beginning of the month.” She reported fewer hours than the 70-plus hours per week

## WORKING EXCESSIVE HOURS AND WORKING WITHOUT BREAKS HAVE BECOME NORMALIZED



she was actually working because the employer was “being disappointed with how long it was taking me to get all this work done, so I started billing them a bit less, under stress, right. Oh you know, I am just being a little slow, or you know I am just tired, I really shouldn’t bill them for this much, so I ended up getting paid less than what I should have there, because I wasn’t being forthright enough, and not demanding enough. If I would of, I probably would of got fired.”

At WAC, Deena Ladd recounts, “we get a lot of workers calling us in crisis . . . because they’ve been trying to cope with the increased demands or with the issues in the workplace.” This can have serious health effects, she continues, explaining that “[n]ot getting your wages, not getting the minimum wage,



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your vacation pay, your public holiday pay, all of those things accumulate and then when you don't get paid overtime pay, [it takes] a toll on their health, forcing them deeper into poverty."

Hanna was "working somewhere between 12-16 hours a day . . . depending on how many hours I could stay awake." Working night shifts with poor working conditions was affecting her sleep, and her family life.

"I remember leaving at 11:30 at night," she says, "getting home at 1:30 in the morning, getting up at 6:00 a.m. the next day, leaving by 6:30 and being there at 8:30 again." Far from being unusual, "this was becoming a regular thing. So without overtime and, not only that, there were ergonomic problems. I was starting to suffer from chronic muscular back, eye, and neck things."

Celeste, a restaurant worker, was classified as full time by her employer; yet she worked only 25 hours per week. The work schedule made it impossible for her to find a second job because her scheduled hours and the days she worked varied from week to week. This "flexible work schedule" negatively affected all aspects of her life. "You basically don't have a life," she says. "You can't schedule anything . . . You can't go to doctor's appointments, like, like they are impossible to make. I have to make them four weeks in advance and it doesn't matter . . . [they sometimes schedule you even when you have] booked time off."

To get compensation, workers must file individual claims with the Ministry of Labour. From 2007-08 to 2015-16 the percentage of claims related to issues

with working time increased, specifically claims to do with unpaid wages, overtime pay, hours of work, and rest periods. (Vosko, Noack and Tucker 2016). (Most of the latter three types of claims were filed along with a claim for unpaid wages). But the highly individualized complaints process, combined with the insecurity of precarious employment, makes it difficult for workers to file a complaint. Even if they do, securing a settlement that fully compensates for the violation is difficult. (Vosko, Noack and Tucker 2016). In these cases, organizations such as WAC can offer some support.

### **THE INDIVIDUAL CLAIM PROCESS AND THE INSECURITY OF PRECARIOUS EMPLOYMENT MAKE IT DIFFICULT FOR WORKERS TO FILE A COMPLAINT**

"We can say to people, okay, we know that you can't do anything at this moment, because you need this job," explains Deena Ladd, "but let's say six months from now, you get a better job, then we can help you file a claim. We can get those hours of overtime that you felt you were forced to sign the letter for or that you didn't get paid for. We can help you with that." Says Ladd, "but really, fundamentally, what we're dealing with is stuff after the person has left their job."

One employee in graphic design services, for

example, decided to file a complaint with the Ministry of Labour after she contacted WAC. She feels WAC "really helped because they gave me the support to fight." They said "you have a right . . . You can do this . . . You don't have to be afraid."

Workers also face potential consequences through the formal complaints process, something that became clear to Carolina. Her employer refused to pay statutory holiday pay, since the company was based in the U.S. Despite fearing she would lose her job, she and her co-workers eventually filed a complaint that led to the workers receiving a settlement for unpaid wages. Six months after the claim was settled she was indeed fired.

Amanda, who works in event planning, states, "I guess you always fear that you're taking a risk . . . when you report . . . you're working for somebody else in a minimum wage job, so you . . . can't help but feel somewhat subordinate." Amanda feels that the length of time it takes for claims to be processed by the Ministry of Labour creates yet another barrier.

Lindsay, a call centre agent, expresses a great deal of cynicism about the complaints process: "I don't have that much faith in government agencies or any sort of process . . . It's supposed to take long. It does take long. It's meant to drive you crazy and discourage you. They really don't encourage you to [complain]. It's not like they're there for you. They're not."

When filing a complaint comes with the risk of losing employment and, for some, deportation, the employer holds the power. The option to report a violation is effectively eliminated for these workers.

Maria, who came to Canada as a child care provider, had an employer who refused to pay her the wages she was owed. "He used to yell, he was rude and mean," she recounts. "He was a slave driver."

### **"GOVERNMENT AGENCIES REALLY DON'T ENCOURAGE YOU TO COMPLAIN. IT'S NOT LIKE THEY'RE THERE FOR YOU"**

Although Maria did file a claim with the Ministry, she decided to stop the process. She had "just come to Canada and . . . was afraid."

Problems related to workers' hours stem from the broader conditions of precarious employment, and when legislated standards are violated, it is because the power dynamics of the employment relationship itself are unequal. To challenge the inadequacy of the Employment Standards Act as well as eroding employment conditions in Ontario, worker organizations such as WAC, which is deeply involved in campaigns like the Fight for \$15 and Fairness, continue to push for stronger protections, such as fair

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scheduling, to combat neoliberal practices like working-time “flexibility.”

While groups such as WAC continue to organize and advocate for improvements, efforts to raise wages and improve conditions require a collabora-

The real solution lies in building the power of workers to collectively challenge the ability of employers to create the very forms of employment that give rise to working-time violations.

As Deena Ladd says, “We have to really fundamentally challenge the root causes of some of those issues that are giving rise to these forms of exploitation. Because ‘hours of work’ is just one of a myriad of issues that people are facing . . . Excessive hours, low wages, and discrimination in the workplace are part of a package of conditions that shape the neoliberal employment relationship of our time.”

**THE SOLUTION LIES IN EMPOWERING WORKERS TO COLLECTIVELY CHALLENGE EMPLOYERS’ ABILITY TO CREATE FORMS OF EMPLOYMENT THAT GIVE RISE TO VIOLATIONS**

tive approach with, and continued support from, the community and the labour movement. And, as Deena Ladd concludes, efforts must target the many issues tied to precarious work, to “ensure that temp agency workers . . . have more protection, to challenge misclassification and to set up a challenge to these employment relationships where workers are taking on the cost of business.” She believes we also need to “challenge unfair immigration laws that tie workers to employers.”

What is clear is that trying to enforce weak employment laws through the defence of individualized workplace rights can only offer partial support to workers in precarious jobs.

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