Written submission to the Expert Panel on Modernizing Federal Labour Standards
May 7, 2019

Introduction

The Public Service Alliance of Canada represents more than 200,000 workers in every province and territory in Canada and in a few locations outside Canada. Our members work for federal government departments and agencies, Crown Corporations, universities, casinos, community services agencies, Aboriginal communities, airports, and the security sector among others. PSAC is headquartered in Ottawa with 23 regional offices across Canada. More than 13,200 of our members are in workplaces governed by the Canada Labour Code; 143,00 members fall under the jurisdiction of the Federal Public Service Labour Relations Act and the Parliamentary Employees Staff Relations Act. The remainder of the membership falls under provincial labour statutes.

This written submission supplements, and in some areas repeats, the comments we made to the Expert Panel during the round table consultation session on April 30, 2019 in Ottawa.

While we fully agree with the need to review Canada's federal labour standards, we are concerned that the mandate of the Expert Panel is too narrow. Specifically, we do not think it is enough for the Panel to provide advice on how to mitigate the challenges through labour standards arising from low wages, "non-standard" work, the difficulties workers have disconnecting from work, the limited access to benefits experienced by a growing number of workers, and the need for non-unionized workers to have collective voice. What would be as useful, if not more, is for the Expert Panel to address the root cause of these challenges.

We assert that that it is the relentless pursuit of so-called efficiencies and profits by employers over the past decades that has resulted in the inter-related problems of growing employment precarity, worsening wages and work conditions for a growing percentage of the workforce, limited access to benefits, the expectation of workers to be "connected" at all times and decreases in unionization. What we want from the Expert Panel (and from the federal government) is recognition that profound changes in employment and how work is organized are necessary.

The current world of work—and all the problems that go with it—are the result of deliberate choices by employers with respect to how work and workplaces are structured. Addressing the problems will require structural change, and it is within the power and control of governments to make that change.

It is past time for a serious analysis of how economic forces have cheapened work and devalued workers. It is past time to investigate and make recommendations on how Canada can move away from non-standard employment and back to a world of work

where workers get a fair deal in exchange for their labour, where they have access to universal social benefits, where every new generation of workers benefits from the productivity and labour of the previous generation.

Additionally, we want to state at the outset of our submission our position that federal standards enshrined in the Canada Labour Code must also apply to workers in the federal public service. We urge the Expert Panel to recommend such a change in existing legislation. It is not tenable for the federal government to impose standards on federally-regulated private sector employers that it is not prepared to accept for its own workforce—the largest in Canada. This is especially important given that precarious work, with all the problems associated with it, is becoming increasingly prevalent in the federal public service because of increased reliance on temporary help agency workers, contracting out, term and casual positions and increasing connectedness through technology.

Issue #1. Federal Minimum Wage

The Expert Panel's background paper on a federal minimum wage has gaps and limitations, including the following:

- There is little reflection on the possible structures and processes for determining a federal minimum wage.
- There is no mention of Low-Income Cut-Off (LICO) calculation as a factor for determining an appropriate minimum wage even though LICO is a common measurement of relative poverty.
- The 2008 Federal Jurisdiction Workplace survey showed that just 1% earned less than $10 per hour.[1] The Expert Panel's paper reports 5% of federally regulated private sector (FRPS) employees are paid minimum wage. These contrasting figures point to a significant increase in the proportion of FRPS employees working for minimum wage.
- With minimum wage for federally regulated employees set to the provincial minimum wage, federally regulated employees doing identical work can earn different amounts, make different pension contributions and be eligible for different rates of EI benefits and other income-related benefits.
- Introducing a federal minimum wage is more than an economic issue. A living wage enables working families to have enough income to cover expenses, promotes social inclusion, improves healthy development of children, etc.).
- 47% of federally regulated private sector employees are women. As the Ontario Equal Pay Coalition has said, "any increase to statutory minimum wage laws serves as a down payment on closing the gender pay gap for vulnerable workers."[2] The Federal Government must lead on matters of women's economic justice.

<u>Our recommendations</u>

1) A legislated federal minimum wage for all workers in the FRPS, including those under 17 years of age.

2) A formula for calculation of the federal minimum wage, benchmarked preferably to a localized Living Wage calculation or alternatively to the Low Income Cut Off (LICO) index, with upward annual adjustments.

3) Inclusion of a formula for fixing and adjusting the federal minimum wage in Part III of the *Code*, rather than in regulations.

4) Introduction of a national program for certification of Living Wage Employers under both federal and provincial/territorial jurisdictions. That is, employers officially certified as paying the living wage for families as defined in the Canadian Living

[1] 2008 Federal Jurisdiction Workplace survey http://publications.gc.ca/collections/collection_2012/rhdcc-hrsdc/HS24-89-2011-eng.pdf

[2] Ontario Equal Pay Coalition. Brief to the Parliamentary Special Committee on Pay Equity. 2016, p. 19. http://www.ourcommons.ca/Content/Committee/421/ESPE/Brief/BR8223427/br-external/EqualPayCoalition-e-final2.pdf

Wage Framework, which reflects what earners in a family need to bring home, based on the actual cost of living in a specific community.[3]

5) Introduction of legislation that would require the Government of Canada, its institutions, agencies and contractors to partner, contract or sub-contract for services and/or only with Living Wage Employers who have been certified as such under the national Living Wage Employers certification program.

[3] Canadian Living Wage Framework: A National Methodology for Calculating the Living Wage in Your Community. 2008. http://livingwagecanada.ca/files/3913/8382/4524/Living_Wage_Full_Document_Nov.pdf

Issue #2. Labour standards protections for non-standard workers

The expert panel has posed the following questions:

1. Should workers in non-standard work be covered by all labour standards?
2. Should workers in non-standard work be covered by only a selection of core federal labour standards? If so, what standards should apply?
3. Should other federal programs be examined to better protect workers in non-standard work?

It is the position of the Public Service Alliance of Canada that all employees in federally-regulated sectors and the federal public service should be protected by the same minimum labour standards. Further, no employer, including the federal government, should be able to opt out of these labour standards by declaring certain groups of workers (such as students or casuals or certain contractors) not to be employees.

As the background paper produced by the Expert Panel states, currently there is a continuum of protections available to workers in different categories. For example, a part-time permanent worker has greater protection than a full-time temporary agency worker who in turn may have greater protections than a dependent contractor and so on. As a result, workers doing the same duties in the same workplace can be compensated differently. This is unacceptable.

The solution should center on strengthening and supporting the ability of workers in non-standard jobs to unionize by providing the resources to organize, and then by increasing the effectiveness and efficiency of collective bargaining, particularly with respect to bargaining a first collective agreement.

Further, to create greater equity and fairness between employees, and to address the generally poorer and worsening working conditions of workers in non-standard jobs, we recommend:

1) Part III of the Canada Labour Code should include a definition of employee, that includes those currently identified as “dependent contractors”.

2) All non-standard workers, regardless of sector, should have social protections on par with those in standard work, including access to benefits, EI, CPP, other social programs, and the right to unionize. This should include dependent contractors, and any employees of independent contractors.

3) The onus should be on the contracting employer (client of the independent contractor) to:
    a. prove that the independent contractor is not an employee and;
    b. if it is proven that the independent contractor is not an employee, and if the independent contractor in turn has employees, the client must also ensure that the employees of the independent contractor are afforded the

same wage, social protections, and ability to unionize as if they were standard employees.

4) Term limits for temporary or contract employees should be imposed. Given that the precedent already exists[4] within the FRPS, we suggest that 18 months may be a reasonable term. Any worker who works for an employer for longer than 18 months should be made permanent and given all the related entitlements.

5) All workers in federally regulated workplaces should be covered by a federal workers' compensation scheme that provides for compensation at a rate equivalent to full-time work, and at least at the (higher) minimum wage payable in the province of work. If the worker was making, or could make more in a similar job, that should be the assumed wage.[5]

6) Workers in precarious positions with unclear employer relationships (e.g. Temporary Help Agency workers) should be afforded increased protection by making both the firms and public sector employers in the relationship jointly and severally liable for labour standards violations.

7) To make it possible for workers to exercise their constitutional right to organize into unions, employers should be required to provide complete employee lists and contact information to the organizing union provided it is able to demonstrate that it is engaged in a bona fide organizing drive.

8) Legislative changes to provide for sector-based and/or broader-based bargaining should also be explored to allow workers in non-standard and precarious employment situations to join forces with workers in more standard jobs to obtain greater bargaining power, and to negotiate working conditions on a more equal footing.

9) The Expert Panel should recommend improvements and expansion of public and universal services and programs, including the introduction of a comprehensive and universal Pharmacare program, and a system of universally accessible affordable child care.

[4] CBC, p.8 of https://www.canada.ca/content/dam/esdc-edsc/documents/services/reports/SPAWID-SPLR-IssuePaper-Non-StandardWork-FINAL-EN.pdf

[5] Canadian Labour Congress, 2013, *Government Employees Compensation Act Review* - 2012-2013 and Deloitte Consulting, 2004, *Feasibility and Planning Study for a Federally Managed Workers' Compensation System-Final Report*

Issue #3. Right to Disconnect

The Public service Alliance of Canada holds the view that government policy and law should generally encourage and facilitate the disconnection of workers from work outside of scheduled work hours. If it is essential that an employee keep working beyond their work hours, the employee must be compensated.

We recommend:

1. Introduction of legislative provisions to enshrine the right of employees to disconnect and an employer obligation to facilitate disconnection.

2. Time spent reading and/or responding to email, or text messages etc. should be treated as work for all purposes of the Code, including weekly hours of work maximums, with accompanying compensation entitlements. Compensation for on-call or stand-by periods should be introduced.

3. Introduction of legislative provisions to protect employees from reprisal if they exercise their right to disconnect.

4. Introduction of legislative provisions to provide for financial penalties and remedial orders in cases where an employer breaches employees' right to disconnect or engages in reprisal for its exercise.

5. Legislative provisions could provide for approaches tailored to specific workplaces, industries or occupations via an obligation on employers to introduce policies crafted in meaningful consultation with workers or their bargaining agents where workers are organized into unions. Such approaches could also require the issuance of appropriate exemption permits in a manner like the current overtime averaging system.

6. Legislative measures should protect and advance an employee's right to privacy, and place restraints upon employer intrusion into and interference with the private lives of employees by technological means.

7. Public education efforts in support of a governmental policy approach that advances both the legal right to disconnect and an individual responsibility to disconnect.

Issue #4. Access and portability of benefits

The expert panel issue paper rightly acknowledges that:

> *Benefits, including statutory minimums such as annual vacations and leaves as well as employer-provided benefits such as medical and retirement savings plans, make crucial contributions to the personal and financial security of Canadian workers.*

It also recognizes that access to benefits has traditionally been based on a traditional conception of work based on full-time long-term employment with a single employer. Workers in precarious/non-standard work arrangements tend to have a narrower access to these benefits.

The issue paper mostly focuses on two types of benefits:

- statutory minimums, such as annual vacation and leaves
- employer-provided benefits, such as medical, dental and vision insurance, pensions and retirement savings plans

We are disappointed at the document's lack of attention to the need for reform and improvement to government social programs. Although they are mentioned in the paper, universal "state benefits" such as Medicare, Pharmacare, CPP seem to be completely omitted by the expert panel consultation. One could argue that those universal public programs should be front and center to any credible plan to provide access and coverage for worker in non-standard working arrangements.

<u>Pharmacare, an idea whose time has come</u>

PSAC has fought for health insurance coverage for many of our members. We also believe anyone with a health card should have coverage for the medicines they need. That's why PSAC supports the establishment of a universal prescription drug plan that covers everyone in Canada, regardless of their income, age or where they work or live.

When it comes to drugs, the Canadian system mirrors the broken health care system of the USA. Coverage is a mix of private insurance and out-of-pocket spending, with the provinces and territories filling some of the gaps with various local programs, each unique to its jurisdiction. The provinces and territories all provide different coverage. Most subsidize the cost of medications for vulnerable Canadians such as those over 65 and recipients of social assistance and disability benefits. Many also provide catastrophic coverage for those with astronomical medical costs.

While most Canadians have workplace drug insurance, part-time workers, the self-employed and the precariously employed or unemployed usually are not among them. Even for those with insurance, it is contingent on remaining with the same employer. About one- third of working Canadians don't have employer-funded prescription drug coverage. Even those with drug plans are paying ever-increasing co-payments and deductibles.

Our patchwork prescription drug system is inefficient and expensive. It has left Canadians with wildly varying prescription drug coverage and access. It has also allowed pharmaceutical companies to take advantage of a fragmented system, charging higher prices for drugs because the buyers are numerous and disorganized. Private insurance companies benefit by charging employers, unions and employees to administer private drug insurance plans. It is time to complete the unfinished business of our Medicare system with a universal prescription drug plan that will save money through bulk purchasing power.

Two reports released in September 2017 demonstrate that a universal Pharmacare plan will save Canada billions of dollars. The first, by the Canadian Centre for Policy Alternatives and Canadian Doctors for Medicare, estimates Pharmacare would mean almost $30 billion a year in savings for federal, provincial and territorial governments, the private sector and individual Canadians. According to the report potential public sector savings can be conservatively estimated at over $18 billion. Additional private savings of $13.7 billion would be realized by Canadian families and businesses.

A second, more conservative report released by the Parliamentary Budget Officer estimates savings of $4.2 billion a year for the federal government alone. It used Quebec's model – the most expensive in Canada – in its calculations and did not consider savings for the provinces and territories.

Improving our public retirement regimes

With the retreat of private-sector workplace pension plans, the steady transfer of risk from employers to individual workers and their growing exposure to income shocks, declining participation in RRSPs, unsustainable and growing levels of household indebtedness, and the collapse in Canada's household saving rate, improvements to public pensions are urgently needed.

The consultation document rightly points out that even when workers meet the eligibility requirements of our public pensions' regime (CPP, OAS, GIS), the level of available support is often limited. Workers who spend part of their career in part-time work, have employment gaps between contracts or earn a lower income would likely not meet maximum contribution or benefit amounts. Given that they are also less likely to have access to employer-provided retirement savings plans, they are at an even greater risk of an underfunded retirement or being unable to retire at all.

In our view, an integrated approach to improving public pensions within a strengthened retirement income system should examine further enhancements to the Guaranteed Income Supplement (GIS), targeted to low-income seniors. Particularly, the GIS claw-back on additional income should be reformed.

The government should also explore improving the Old Age Security (OAS) benefit, the flat-rate residency-based benefit with the greatest value for low- and modest earners, women, Indigenous Canadians, and workers with disabilities. Indexed to inflation rather than the average nominal wage, the relative value of the OAS benefit and the relative

incomes of OAS recipients will continue to fall unless the indexation of the benefit is improved.

The government should also to continue to explore the opportunity to further improve Canada Pension Plan (CPP) and Quebec Pension Plan (QPP) benefits.

Establish a national, mandatory pension insurance scheme

PSAC believes that the stress, suffering and material loss of pension and other post-retirement benefits experienced by pensioners and their families when defined benefit (DB) plan sponsors enter restructuring and bankruptcy is unconscionable and unacceptable. In our view, governments in Canada could have taken steps long ago to prevent this phenomenon.

The federal government should explore the feasibility of working with provincial governments to establish a national, mandatory pension insurance scheme, akin to Ontario's Pension Benefits Guarantee Fund, to insure pensions against losses from restructuring and bankruptcy. Government representatives have suggested that this innovation would be cost-prohibitive. However, arguments and data in this respect have yet to be publicly shared and tested. In particular, different design options for a national mandatory pension insurance fund should be assessed and subjected to public scrutiny and debate.

Explore ways to facilitate the transfer of assets and liabilities from distressed defined benefit plans to large, securely-funded public-sector plans

The federal government should work with provincial governments and large federal and provincial public-sector plans to explore ways to facilitate the transfer of assets and liabilities from distressed defined benefit (DB) plans to large, securely-funded public-sector plans **where plan members, unions and trustees consent to do so**. The OPSEU Pension Trust (OPTrust) and Ontario Colleges of Applied Arts and Technology (CAAT) Pension Plan have recently created new career-average DB benefits aimed at employers in the not-for-profit sector (OPTrust Select) and private sector (CAAT DBPlus). Other jointly-sponsored pension plans (JSPPs) may expand their offerings as well. As innovation proceeds, rules should make it possible for private-sector plans to explore mergers with the JSPPs where it makes sense for unions, plan members and trustees, and where there is plan member consent to explore this. While we remain opposed to attempts simply to reduce benefits in this process, in specific circumstances, mergers or transfers may make sense for plan members.

Improving Canada Labour Code Part III leave provisions

Vacation leave

With the passage of Bill C-86, annual paid vacation leave will now rise from the current two (2) weeks after one (1) year of continuous employment and three (3) weeks after six

(6) consecutive years of employment, to two (2) weeks after one (1) year of employment, three (3) weeks after five (5) years' employment, and four (4) weeks after 10 years' employment.

These improvements are a step in the right direction, but the federal government should continue to explore ideas to improve benefits in this area. Under Part III of the Code, annual vacation is only available after employees have worked for their employer for 12 months. Employees who change jobs often may find it difficult to meet this requirement.

In Québec, the minimum standard employment act provides one (1) day/month for employees with less than 12 months of service. The Canadian government should seriously consider such option.

We would also note that employees covered by Saskatchewan's *Employment Standards Act* receive three (3) weeks' vacation leave after 12 months.

Further improvement to eligibility requirements

Eligibility periods: Part III (Labour Standards) of the *Canada Labour Code* sets out continuous employment eligibility requirements for certain labour standards. This means that an employee must have worked for the same employer for a certain time before being entitled to certain rights and protections.

Changes to the eligibility requirements for some Part III provisions were introduced in fall 2018 as part of the *Budget Implementation Act*, 2018, No. 2 (BIA II), which received Royal Assent in December 2018.

To address the fact that employees who change jobs often have difficulty meeting eligibility requirements, eligibility periods for some leaves will be eliminated:

- sick/medical leave
- maternity/parental leave
- leave related to critical illness
- leave for parents whose child has disappeared or died as a result of a crime
- entitlement to holiday pay for a general holiday.

These improvements are a step in the right direction, but the federal government should continue to explore ideas to improve in this area. For example, paid domestic violence leave was introduced as part of the Budget Implementation Act, 2018, No. 2 (BIA II). The code will now provide five days of paid leave for victims of family violence, as promised in Budget 2018. While unpaid leave for reasons related to family violence will be available to workers immediately upon hire, workers will only be able to access paid leave after three consecutive months of continuous employment. We believe access to <u>paid</u> domestic violence leave should be available to workers immediately upon hire.

The same is also true for bereavement leave. Workers covered under part III of the CLC are entitled to leave on any normal working day that falls within the three-day period immediately following the day of the death. But paid bereavement leave is only provided to an employee who has been continuously employed for three consecutive months.

Employees without the necessary continuous employment are entitled to leave without pay. We believe access to paid bereavement leave should be available to workers immediately upon hire.

National Indigenous Day

We have consistently advocated for June 21 to be made a federal statutory holiday dedicated to Indigenous Peoples. For non-indigenous people, National Indigenous Day can be a chance to learn more about the history of Indigenous people on this land, the difficult and shameful story of colonization and ways in which Indigenous people have always contributed to the culture and identity of our communities.

National Indigenous Day is currently a statutory holiday in the Northwest Territories and in the Yukon, but it is not for workers regulated by the *Canada Labour Code*. We recognize that there is now a shift in direction to a National Day for Truth and Reconciliation, to be observed on September 30 as a statutory holiday. We encourage the inclusion of at least one of these days as a holiday in the *Canada Labour Code*.

Family day

Family Day was introduced by several provincial governments over the last 10 years. It means that employees covered by the holiday provisions of their provincial employment standards are entitled to this public holiday with pay. In Ontario, Manitoba, Alberta, Prince Edward Island, Saskatchewan, Nova Scotia and the Yukon the third Monday in February is a provincial holiday. This leave is a great opportunity for employees to spend time with their family and loved ones.

Federally regulated workers are not entitled to the Family Day holiday as provincial law does not apply to them. The practical impact for these workers is that schools, day care centers and other services are not open that day forcing employees to scramble to make childcare arrangements, or in many cases, to take a day of leave.

The Canadian government should seriously consider creating a new national Family Day on the third Monday of February. It would not only ensure that federally regulated workers have access to a holiday that is already provided to millions of other Canadian workers, but at the same time not require employees to take a day of often unpaid leave.

Issue #5. Collective voice for non-unionized workers

The background paper circulated by the Expert Panel rightly acknowledges that:

> *Historically, union representation has been considered the most important vehicle for collective voice. Employees in standard work arrangements could join a union based on their craft or industry. This provided an important source of power to express discontent without fear of reprisal, establish more favourable working conditions through the bargaining process and challenge managerial decisions through a system of grievance arbitration (Luchak & Gellatly, 1996). Union representation was also associated with higher productivity, lower employee turnover, economic growth, industrial peace and other benefits.*

It then argues that despite the acknowledged historical importance, effectiveness and manifest benefits associated with union representation:

> *In recent years, a number of developments have called into question the effectiveness of this model and generated debate about whether there is a need for new and/or enhanced mechanisms for collective voice.*

The Public Service Alliance of Canada disputes this second assertion. Yes, Canada is experiencing a decline in unionization rates, mostly in the private sector, but not as extreme a decline as many other industrialized counties. Yes, there is a proliferation of non-standard work arrangements. Also, there is evidence that some employers prefer not to have to deal with unionized workers. But none of these challenges are evidence of a need to explore the creation of a new and alternative model to unionization, which remains the best avenue of effective collective voice for non-unionized workers. Rather than come up with new ways for non-union workers to be represented, the Expert Panel should be tackling the current barriers to unionization and making recommendations on what can be done to reverse de-unionization.

Preference of employers

The paper argues that employers see the use of collective voice mechanisms such as focus groups, consultation committees and surveys as beneficial to their efforts to attract and retain talent, and to boost productivity.

Yet the paper acknowledges that:

> *Union representation was also associated with higher productivity, lower employee turnover, economic growth, industrial peace and other benefits.*

It is our experience that often employers introduce alternatives to unionization as a way of deterring it, not because they desire workers to be collectively empowered. Employers that advance alternative vehicles for workers often do so in response to union organizing activity. In fact, we've witnessed employers resisting unionization by every means, including unlawful means such as the commission of unfair labour practices in violation of labour relations legislation.

Workers want unionization, not alternatives

A study by Freeman (2007), with the telling title "Do Workers Still Want Unions? *More Than Ever,"* concluded that:

> *In the mid-2000s, workers see a major gap between the representation and participation they want at the workplace and what they have; the largest proportion ever recorded in survey data express a desire for union representation.*
> (emphasis added)

One of the main reason workers want unionization over non-union "collective voice" options is that unionization gives workers meaningful collective power that cannot be legally ignored. Unions, collective bargaining and grievance processes have a place in law. Unions are also independent of employers and government. They are financed by workers, and their operations are controlled by workers. For these reasons and more, is difficult to imagine any independent and meaningful way to give non-union collective voice outside of unionization.

Furthermore, workers recognize that unions and unionization serve as their collective voice in matters beyond collective bargaining, and beyond the enforcement of collective agreements. For example, unions and only unions can properly enforce the legislated protections and rights of workers. Unions and only unions can ensure that workers are properly represented on joint employer-worker initiatives or structures, such as joint health and safety committees

As noted in the study by Bryson et al. (2013), union membership is also linked to increased civic engagement as measured by levels of voting behaviour and other forms of engagement such as petition-signing and volunteering for a political party. The study found that union members are 10-12 percentage points more likely to vote in elections than are non-members of a union.

Jurisprudence of the Supreme Court of Canada

As stated in the Panel's background paper, "the Supreme Court of Canada has re-animated the guarantee of freedom of association under s.2(d) of the *Canadian Charter of Rights and Freedoms."*

Far from questioning the effectiveness of unionization for achieving collective voice for non-union workers, or from suggesting that alternative forms of association are superior to unionization, the Court, in its decision in *Mounted Police Assn. of Ontario*, required Parliament to provide members of the RCMP with a meaningful process of collective bargaining and the means to access it.

We note in addition the Expert Panel's finding that:

> *…studies show that workers are less likely to speak out about problems in the workplace for fear of reprisal if they do not have access to collective voice mechanisms. This is particularly true for non-unionized workers…*

We submit that these findings once again support the conclusion that unionization is the most effective and preferable mechanism for providing workers with collective voice.

Unionization, not alternatives, will help non-standard workers.

The background paper rightly states that non-standard workers face special barriers with respect to accessing or maintaining access to collective bargaining through trade unions. Again, it is the PSAC's view that the solution is not to develop alternatives to unionization for these workers but rather to facilitate their unionization which is designed to negotiate appropriate standards and to raise them.

We offer a concrete example of the barriers to organizing non-standard workers. Our union has launched numerous organizing drives of workers in the building services sector (security guards and cleaning services, for example). These workers almost always are employees of contract service providers who in turn are under service contracts of fixed duration. These contracts are regularly lost at the time of their expiry through non-bidding or unsuccessful bidding, and a new contractor assumes responsibility for those services.

Frequently those new contractors will retain some (but not necessarily all) of the employees of the previous contractor. However, the trade union's representation rights and the applicable collective agreements are terminated upon the loss of contract. This means that we must engage in fresh organizing and fresh legal processes to regain bargaining rights with the new contractor. If successful, a "first" collective agreement is then negotiated with the new contractor—a process that may not even reach a conclusion before the fixed contract comes to an end.

We recommend that legislation be amended to provide for a "deemed sale of business" in such circumstances, which would see continuity of employment and continuity of collective bargaining rights and collective agreements via statutory flow-through to the new contractors. The resulting stabilizations that would result from such measures are many and important, and they would include a stabilization and continuation of the effective collective voice of employees that may otherwise be disrupted on either a temporary or permanent basis.

With further respect to vulnerable non-standard workers, we believe that it would be advisable if legislative steps were taken to mitigate the harms associated with the proliferation of employment by temporary help agencies and to facilitate their access to collective bargaining through unions as the optimal means of achieving meaningful collective voice. Ontario's recent Bill 148 could be looked to for guidance in this regard.

Suggested alternative models are not real alternatives

We offer the following comments on the various models of providing non-union workers collective voice suggested in the background paper:

Joint workplace committees

In the absence of the resources, protective capacity and legal mechanisms provided by unionization, Joint Workplace Committees do not alleviate the inherent vulnerability to reprisal faced by employee members who choose to speak out on issues that challenge the employer's economic interests and fundamental control over conditions of work, even where those members are freely chosen by employees without manipulation by an employer.

The squeaky wheel does not get the grease. Rather, the nail that sticks up gets hammered down. For that reason, the effectiveness and authenticity of collective voice expressed through such approaches are dubious at best. There is every possibility that such committees would serve to silence the true concerns and aspirations of workers, and ultimately generate only those outcomes that are desired by employers.

Worker organizations

Again, we believe unions remain the best and only proven form of worker organization. The Expert Panel's paper has not provided any data that would support a finding that worker organizations of the types described are effective in any respect, including that of providing workers with collective voice.

Third-party advocates

We believe that the various NGOs and agencies described in the background paper provide valuable services and advocacy on behalf of the workers they serve. However, these NGOs and agencies are not properly structured or independently financed to provide effective representation to workers.

Sector-based approaches

Sector-based approaches to extending collective bargaining rights and the negotiated terms and conditions of employment should be explored.

Sector-based approaches that do not extend unionization proper, but which only extend terms and conditions of employment to non-unionized workers, may function to create disincentives to unionization by non-unionized workers. Simply put, if a worker can receive and enjoy the superior wages, benefits and protections negotiated by unions, but do so without incurring an obligation to pay union dues that fund a union's ability to pursue those gains, many may choose to act in what they perceive to be their immediate, economic self-interest by choosing not to join unions, where they might otherwise choose to join unions in order to seek and obtain the fruits of unionization.

Graduated freedom of association

Once more, we emphasize that access to collective bargaining through unionization is the far preferable means of providing employees with collective voice.

Employees are vulnerable to reprisal from their employers. Unions do not eliminate this vulnerability, but they provide substantial resources, expertise and mechanisms of binding recourse to employees.

As a trade union, we know well that our members often face reprisal because of speaking out and exercising collective voice. And we know well that litigation processes that are available and frequently used to provide recourse in instances of reprisal are costly, complex, and often very time-consuming. Obtaining justice can sometimes require extraordinary expenditures of time, money and resources. Justice can be obtained in many instances, but not in a timely manner.

It naïve to believe that employees without the resources of a union behind them can ever safely make their collective voice heard.

<u>Our recommendations</u>

The Public Service Alliance of Canada encourages the Expert Panel to consider changes to the *Canada Labour Code (Part I – Industrial Relations)* and/or the Canada Industrial Relations Board's *Regulations* to give non-union workers better access to unionization. Specifically, we recommend the following:

1) Increase exercise of the Board's s.99.1 power to certify a trade union as bargaining agent as a remedy for violations of s.94 and make that power available for breaches of s.96 in addition. This remedy is treated as extraordinary. Treating it as less so may encourage employers to engage in less interference.

2) Introduce harsher penalties for contraventions of sections 50, 94 and 96 of the *Code* by employers in circumstances of union organizing and first collective agreement bargaining. Punitive fines and deterrent orders to pay a union's costs in full related to organizing campaigns or negotiations should be readily issued, rather than restricting such orders and confining them to compensatory terms.

3) Enhanced access to first collective agreement arbitration at the request of a bargaining agent should be provided. To be clear, employers should not be provided the same access. While we believe a union should be entitled to access first agreement arbitration as of right upon request, the current s.80 requirement of a reference to the CIRB by the Minister should, at the very minimum, be removed. No such requirement is present, for example, in Ontario, where a party may proceed directly to the OLRB for a determination as to whether access to first agreement arbitration will be granted.

4) Introduce measures that would oblige employers to provide trade unions with access to an accurate list of employees and their contact information during organizing campaigns, prior to the filing of an application for certification (such as was recently introduced in Ontario through Bill 148).

5) Introduce measures that would provide trade unions with direct access to employees on any employer premises, not merely isolated premises as provided for by s.109. The access entitlement provided by s.109 should also be expanded to facilitate union organizing and its prospects for success.

6) Eliminate the $5.00 payment requirement imposed by the CIRB's *Regulations, 2012* for a union membership card to constitute valid evidence of membership in a trade union. Under the *Federal Public Sector Labour Relations Act,* no monetary consideration payment is required. In leading jurisdictions such as Ontario or British Columbia, no monetary payment is required. In those jurisdictions where payment is required, it is typically only $2.00, and in New Brunswick it is only $1.00. Monetary payment requirements are an impediment to union organizing, particularly where fewer and fewer people carry cash. In addition, these requirements result in a worker's first formal interaction with a union being one in which the union is required to seek money from them.

7) Introduce measures that would result in union membership cards constituting valid evidence of membership for a period of at least one year. The duration of card validity varies widely in Canada, but we believe that the approach taken in Ontario and Québec, where cards are acceptable for a period of one year, is preferable.

8) Introduce measures permitting unions to rely upon evidence of union membership generated in electronic form (such as an application for membership completed and submitted via email.) In Québec, a progressive approach has been followed under which applications for membership in a union submitted via simple email are accepted by the tribunal. In British Columbia, electronic evidence of membership has been accepted, though under a much more restrictive set of requirements.

9) Reduce the six-month time bar against subsequent applications for certification established by s.38 of the CIRB's *Regulations, 2012* to a period of three months. In Québec, the time bar is three months.

10) Extend the time bar against subsequent applications for revocation of bargaining rights established by s.39 of the CIRB's *Regulations, 2012* to a period of one year.

11) Eliminate the s.94(2)(c) "employer free speech" entitlement and introduce an express requirement of strict neutrality by employers with respect to the issue of union representation of their employees.

12) Introduce a high onus on a party alleging that a proposed or existing bargaining unit is not appropriate for collective bargaining, and expedited processes for determination of bargaining unit appropriateness questions.

13) Introduce “deemed sale of business” provisions to prevent loss of collective bargaining rights and collective agreement coverage in circumstances where contractor employers lose contracts to other bidders (such as was seen in respect of certain industries in Ontario’s recent Bill 148 and less recent Bill 40).

14) Introduce measures providing security of continued employment for employees of contractor employees in circumstances of contract loss, by introducing an express obligation that employees of the former contractor be offered employment by the new contractor.