



Targeted Surveys on application of core labour standards Canada

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Targeted Surveys on application of core labour standards, Canada

This report has been developed to provide a picture of the application of core labour standards in Canada. The report is based on a combination of desk research and stakeholder interviews. The assessments of the issues covered in the report are based on the views of credible international organisations, national governments, employer organisations, trade unions, experts and other stakeholders.

Progress

- Judicial protection over freedom of association and collective bargaining
- Reference to international labour standards in court judgments
- Pay equity (equal pay for work of equal value) legislation

Challenges

- Declining unionisation rates, particularly within the private sector
- Vulnerability of some groups to forced labour incl. trafficking (TFWs, indigenous women)
- Discrimination (race, disability)
- Lack of data on child labour
- Legislated restrictions on freedom of association and collective bargaining

Key context

Canada is a high-income country with a long-standing record of economic openness, stability, and inclusiveness. Its labour market has remained strong despite the 2008-2009 financial crisis, and also scores well on job quality metrics including labour market security, working environment, and earnings. Canada's laws are generally aligned with ILO conventions on core labour standards.

Canada is governed according to a federalist constitutional structure, which divides legislative powers between different levels of government. Both the federal government and provincial governments have jurisdiction over labour and human rights. Federal jurisdiction extends to federally regulated businesses including banks, air transportation, and communications, while provincial jurisdiction covers remaining entities that account for a vast majority of Canada's workforce. Despite these disparate legal regimes, labour laws generally retain the same essential features across all jurisdictions. The country's labour law landscape is changing in light of legislative reforms as well as judicial decisions, particularly constitutional cases interpreting the *Canadian Charter of Rights and Freedoms* (the Charter) which binds all levels of government.

Although some gaps have been identified with respect to the application of core labour standards in Canada, there generally are no egregious instances of non-compliance. Enforcement is largely viewed as adequate or good, with some exceptions.

Coordination is an overarching issue, largely owing to Canada's federalist constitutional structure which provides for both provincial and federal responsibility over several areas including labour, human rights and immigration. For instance, there is a lack of national coordination with respect to disability access laws, discrimination laws, and services

provided to temporary foreign workers (TFWs). Stakeholders have submitted that this leads to uneven application, implementation, and enforcement.

Freedom of association and collective bargaining

While laws across Canada are generally aligned with ILO conventions, many developments have been driven by recent judgments decided by the Supreme Court of Canada (SCC). Following a spate of labour-related cases, Canada's Charter extends constitutional protection to collective bargaining, free association, and the right to strike. International standards, including core labour standards, have also received more attention in judicial decisions.

Trade unions have raised the issue of precarious work and the difficulties associated with organising precarious workers. Stakeholders, including labour experts, trade unions and the ILO CEACR, have also drawn attention to labour legislation in several provinces which often preclude certain workers (typically 'professionals' such as lawyers and engineers, but sometimes agricultural workers) from organising trade unions. Other concerns include 'back-to-work' laws in some jurisdictions, which are used to statutorily end strikes, 'essential services' laws that limit the right to strike for workers deemed essential, and laws that prohibit negotiations on certain topics or that 'freeze' wages (or other contractual terms) under collective agreements.

Forced labour

There are no general concerns relating to Canadian law and its alignment with international standards on forced labour. Some concerns have been raised regarding the vulnerability of specific groups, particularly the vulnerability of migrants under visa schemes for low-skilled workers (particularly the TFW programme) as well as the vulnerability of indigenous women to trafficking and exploitation.

The TFW programme allows Canadian employers to hire foreign nationals to fill gaps in the workforce on a temporary basis. According to trade unions, TFW visas restrict employment options and ties workers to a single employer which makes it difficult for them to leave their job if their rights are abused. Language barriers may serve to compound these problems. Employer representatives emphasise that instances of abuse are the exception rather than the rule.

The situation of indigenous women and their vulnerability to trafficking has received increasing attention. The 'National Inquiry into Missing and Murdered Indigenous Women and Girls' has a broad mandate that includes exploring the underlying social, economic, cultural, institutional and historical factors that contribute to the vulnerabilities of indigenous women and girls. Academics have linked trafficking vulnerability to a number of factors including Canada's colonial legacy – notably forceful assimilation – as well as systemic discrimination based on race, gender and social status.

Child labour

In terms of both the legal framework and the situation in practice, child labour is not identified as a salient issue in Canada. However, the ILO supervisory bodies have identified certain jurisdictions where children under 18 can perform certain hazardous tasks or where general prohibitions against under-18s in hazardous work are not expressed (Canada, Newfoundland, Prince Edward Island and Nunavut). While child

labour is not a widely reported issue, this might be viewed as a government failure to systemically collect data on working children.

Discrimination

Although Canada's anti-discrimination framework, as part of its human rights legislation, is generally viewed as comprehensive across the country, questions have been raised relating to its scope of application. Prohibited grounds of discrimination, such as social origin and political opinion are not consistently covered across the multiple jurisdictions. With respect to pay equity – which is the Canadian technical phrase for equal pay for different work of equal value – the ILO has noted that a number of provinces do not have pay equity legislation, including Alberta, British Columbia, Newfoundland, Saskatchewan, the North-West Territories and the Yukon. In other jurisdictions, pay equity laws are only applicable to the public sector (Manitoba, New Brunswick, Nova Scotia and Prince Edward Island). Reforms and reviews to pay equity laws have been undertaken, most notably in the federal jurisdiction.

Information deficits are an overarching obstacle to addressing discrimination in employment. Lack of government data collection and statistical information on discrimination in employment may mask the pervasiveness of certain issues.

According to worker representatives, discrimination in employment persists in practice, particularly on the basis of gender, race (especially indigenous persons), disability and religion. There are reported undue delays in processing discrimination complaints in many jurisdictions. Enforcement gaps have also been noted by trade unions in connection with pay equity laws, particularly in jurisdictions which rely on complaints as opposed to more 'proactive' approaches, as well as in occupations where 'male comparators' are difficult to identify.

Status of ratification and reporting

Canada has ratified all eight ILO fundamental (core) labour conventions, following the ratification of C98 in 2017 and C138 in 2016. It has ratified two of the four ILO governance (priority) conventions (C122 and C144). It is up-to-date with all of its reporting obligations to the monitoring bodies of the ILO in relation to these conventions.

		Application issues - latest ILO CEACR observations and direct requests on core conventions
Freedom of association & collective bargaining	C87	(2016): Several jurisdictions do not extend the right to organise and bargain collectively to all workers, for instance land surveyors, agricultural workers, lawyers and domestic workers. (2016): Laws governing public sector labour relations in certain jurisdictions provide for broad essential services provisions or prohibit strikes; broad back-to-work legislation has been used in some jurisdictions and in some sectors to end strikes.
	C98	<i>No recent comments</i>
Forced Labour	C29	(2017): <i>No specific application issues raised</i> (2017): <i>No specific application issues raised</i>

Child labour	C105	(2017): <i>No specific application issues raised</i> (2017): <i>No specific application issues raised</i>
	C138	<i>No recent comments</i>
	C182	(2017): <i>No specific application issues raised</i> (2017): Noted that a number of jurisdictions permit children under 18 to perform hazardous work; notes that indigenous children have lower educational and academic outcomes.
Discrimination	C100	(2017): Noted that in several jurisdictions, laws providing for equal remuneration for work of equal value do not apply to the private sector or do not fully achieve the end of pay equity. (2017): <i>No specific application issues raised</i>
	C111	(2017): Noted that most jurisdictions do not cover “social origin” and “political opinion” as prohibited grounds of discrimination under human rights laws; at national level there lacks a coherent policy for coordinating equality in employment and occupation. (2017): Exclusion of “mail contractors” from labour laws allegedly amounts to indirect discrimination to the extent that most contractors are women.

References

ILO CEACR, [Observations and Direct Requests for Canada](#)