

Submission to 'The Changing Workplaces Review'

Friday, September 18, 2015

**On Behalf of the Ryerson University Research Study: Improving Labour
Policy for Highly Flexible Workforces: Focus on Canadian Screen Labour**

**Supported by the Ted Rogers Centre for Labour Management Relations at
Ryerson University**

Emilia Zboralska, Ph.D. Candidate
Communication and Culture
Ryerson University, Toronto
emilia.zboralska@ryerson.ca

and

Charles H. Davis, Ph.D.
Professor, School of Radio & Television Arts
Faculty of Communication & Design
Ryerson University, Toronto
c5davis@ryerson.ca



Dear Mr. Mitchell and the Honourable John C. Murray,

1. We are researchers from Ryerson University who, with the financial support of the Ted Rogers Centre for Labour Management Relations (CLMR), are currently conducting research that explores the challenges to labour policy raised by the short-term, contract-based work that has become predominant in the screen industries (television, film and web).

2. With the spread of project-based, vertically disintegrated production methods to other industries, the screen industry can be considered a significant precursor to what is likely to become an even more generalized mode of flexibilized work and employment. Although our particular research project focuses on the screen sector, we therefore believe it has broad relevance to other industries in which highly flexibilized employment practices are emerging and, in some cases, commonplace.

3. Canada, like many other western nations, now faces a situation in which there is a strong demand for flexible employment, on the one hand, and an equally strong demand to provide security for workers and vulnerable groups, on the other. There is thus a need to strike a *balance* in the so-called 'flexibility-security-nexus'. Such a goal has long been advocated by the European Union. A balance between flexibility and security is thought to ensure the competitiveness of firms, and the productivity of individual workers, while providing social justice.

4. Although our research is not yet complete and is currently ongoing, we would like to share some preliminary findings from our study.

5. The first phase of the study involved a literature review of labour policy approaches to contract-based flexible production systems in general, and to the creative industries specifically.

6. We urge the Ministry, in its modernization of Canadian labour policy, to examine the European concept and application of the 'flexicurity' approach, best characterized as a system that combines labour market flexibility with social security for workers. Although flexibility and security are often seen as contradictory, the two are prerequisites of an adequate and considered response to labour market adaptability. The flexicurity approach was first established in Denmark in the 1990s. Key to the approach is the requirement for flexibility and security strategies to be developed in tandem, in a coordinated and deliberate manner. The Danish approach to flexicurity is characterized by a highly flexible approach to labour markets with few regulations governing hiring and dismissal, a healthy and universal social safety net encompassing comprehensive and generous unemployment benefits even to self-employed persons, and an active labour market policy that is designed to lead the system away from job security, toward employment security. The active labour market policies include programs for human capital development aimed at re-skilling unemployed individuals to better their prospects for long-term employment.

7. We are aware that the current review does not relate to the federal Employment Insurance Act, but we recommend that the Province of Ontario work with the Federal Government and other provinces to conduct a comprehensive evaluation of labour policy. Only such a review can provide the substantive change that is needed to make Canada's labour policies effective and fair in the 21st century.

8. Screen workers represent a group that is (generally) highly skilled, highly educated and highly motivated. These individuals do not fit the traditional picture

of precarious workers who are generally represented as under-educated and low-skilled. Even highly skilled work requiring high levels of education is often precarious. The majority of work in the screen sector is organized according to a life-of-project model, in which workers are engaged on a short-term basis. Increasingly these screen workers are treated as freelance independent contractors (micro-entrepreneurs) rather than as employees. This has led to extreme insecurity and structural inequity due to the effects of exclusionary networks, which particularly affect traditionally marginalized segments of the population, especially women and visible minorities. Women and visible minorities are especially disadvantaged when it comes to career entry and advancement due to barriers presented by child-rearing, differential access to job networks, incongruent cultural capital, lack of visibly similar role models, the perpetuation of the 'old boys club' due to homophily in hiring practices, and other factors. The main method of recruitment in the screen industries is through informal networks of professionals who recommend, and compete with, each other for jobs. As the labour market becomes increasingly flexibilized, we believe similar patterns and issues will emerge in the larger labour market sphere.

9. Preliminary research from the second phase of our study, which involves in-depth interviews with screen workers, indicates that these individuals are often miscategorized under current labour law by hiring companies as independent contractors, rather than as employees. Work hours, work location and other factors that are typically used to determine whether one is a contractor or an employee (for example, whether one is able to hire additional employees to complete work) are dictated by the firm. In this sense, these individuals do not pass the 'independence' test. When they are treated as employees, and the firm makes deductions and contributions, they are most often only short-term employees, engaged in short contracts (sometimes shorter than one month). Some of the workers have spent many years working with a single company, in these short-term contracts as on-again and off-again employees. These workers

feel dependent on the company for their living and feel that their livelihood is extremely insecure. They receive no benefits (health, dental or otherwise) even though in some cases, they may have worked for the same company (and only one company) for many years through the provision of these short-term contracts.

10. The workers we have spoken with have revealed that they typically work exceedingly long hours, often greater than 60 hours per week, with less than a twelve hour turnaround from the start of one day and the next and in unsafe conditions. Workers have told us that they feel that they have no other choice than to continue working under these conditions for fear of losing their jobs. When they are ill, they go to work. If they are unable to go to work due to more severe illness, they do not get paid. Currently, independent contractors in the screen industry, *and* employees in the screen industry are exempt from the ESA's provisions regarding minimum wage, hours of work, daily rest periods, time off between shifts, weekly and bi-weekly rest periods, and eating periods. A two-tier system has emerged in the screen industries, particularly in the largely non-unionized factual entertainment industry, in which workers who do not fall under the jurisdiction of a union are forced to work and be on call as much as "24 hours a day" while on set, as one worker told us, while their unionized counterparts "get to sleep for 12 hours". Minimum periods of rest and other protections from which these workers are exempt (both as employees and as contractors) are not privileges reserved solely for unionized workers, but are rights of all workers. The ESA's protections should be extended in scope. We applaud the Canadian Media Guild's efforts to advocate on behalf of the freelance screen workers who have been left out of collective bargaining.

11. As the government continues to view the creative industries as sources of great economic potential, it must also acknowledge the reality of work and the quality of jobs in this sector. It must ensure that the purveyors of this potential,

the individual men and women who work in this sector, have basic protections that should be afforded to all Canadian workers, whether 'standard' or not.

12. A new term has emerged in the European context that recognizes the rise in incidence of highly skilled, highly educated independent professionals or 'iPros' who work as contractors because they prefer the freedom this working arrangement offers them to standard employment. Some screen freelancers, who prefer short-term, contract-based work for the freedom, fall into this category. iPros work for themselves, but do not aspire to employ others, or become SMEs. iPros are thought to provide firms with highly specialized skills in a way that is flexible and adaptable across the economy. Firms that require such capabilities at critical points may not be able to acquire them in the context of long-term, standardized employment, and may thus lose out on opportunities and innovations. iPros allow firms that are not in a position to, or do not need to, hire long-term, to benefit from their specialized skills.

13. To increase the incidence of screen freelancers who work short-term contract-based jobs because they prefer it, rather than because they feel they have no choice, labour policy must address the *needs* of these workers. In the Canadian context, although iPros provide much needed flexibility, policy's bias toward *job* creation, rather than work creation, and on SMEs and entrepreneurs, has led to the needs of iPros being underserved. iPros do not receive an appropriate level of security (in the form of employment insurance, health plans, training programs etc.) that is commensurate with the flexibility they provide firms, and the economy at large.

14. An adaptive labour market requires that all elements of the equation be in balance. Workers who are encouraged to be flexible so that they can be responsive to the changing needs of the economy must be provided with adequate security. This is why we believe a Canada-wide conversation is needed

to achieve the goal of a more innovative, adaptive and agile Canadian economy. In the meantime, extending the provisions of the ESA to those employed in the screen industry universally, or at minimum, to those who currently fall outside of union or guild agreements, would force some positive changes. The growing incidence of freelance labour in the screen industry, and beyond, cannot be addressed by this provincial review. A thorough examination of how work is being categorized in the screen industry, as well as an in-depth exploration of working conditions, is urgently required. Our own study will provide a stepping-stone, but further research is needed for a comprehensive understanding of the issues.

15. We thank you for the opportunity to contribute to this review.