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Abstract

This article reconsiders the shift in Canada from an exclusively government-regulated occupational health and safety system to the Internal Responsibility System (IRS). The IRS gives workers rights, or "voice," to manage, know about, and refuse unsafe working conditions. I present new evidence that worker voice and the IRS have weakened with the decline of unions and the rise of precarious employment. Survey data are analyzed from Ontario workers who rated the likelihood that raising a health and safety concern with their current employer would negatively affect their future employment. My analysis models how workers' sex, race, unionization, sector, and degree of employment precarity affect their probability of exercising voice. Results of a logistic regression suggest the most precariously employed are the least likely to use voice. Consequently, I argue that the IRS should be supplemented with more external oversight in sectors where employment is most insecure.

The Limits of Voice: Are Workers Afraid to Express Their Health and Safety Rights?

WAYNE LEWCHUK *

This article reconsiders the shift in Canada from an exclusively government-regulated occupational health and safety system to the Internal Responsibility System (IRS). The IRS gives workers rights, or "voice," to manage, know about, and refuse unsafe working conditions. I present new evidence that worker voice and the IRS have weakened with the decline of unions and the rise of precarious employment. Survey data are analyzed from Ontario workers who rated the likelihood that raising a health and safety concern with their current employer would negatively affect their future employment. My analysis models how workers' sex, race, unionization, sector, and degree of employment precarity affect their probability of exercising voice. Results of a logistic regression suggest the most precariously employed are the least likely to use voice. Consequently, I argue that the IRS should be supplemented with more external oversight in sectors where employment is most insecure.

Cet article réexamine au Canada le passage d'un système de santé et sécurité au travail réglementé exclusivement par le gouvernement à un système de responsabilité interne (SRI). Le SRI confère aux travailleurs des droits et leur donne la parole au moment de reconnaître, gérer, et refuser des conditions de travail non sécuritaires. Je présente de nouvelles preuves à l'effet que la voix des travailleurs et le SRI ont régressé avec le déclin des syndicats et la précarisation de l'emploi. Les données de sondage proviennent de travailleurs ontariens à qui on a demandé d'évaluer la probabilité selon laquelle manifester auprès de leur employeur actuel de l'inquiétude sur des questions de santé et sécurité aurait un impact

négatif sur l'avenir de leur emploi. Mon analyse modélise la manière dont le sexe, la race, la syndicalisation, le secteur, et la précarité de l'emploi d'un travailleur affectent la probabilité qu'il se fasse entendre. Une analyse de régression logistique permet de conclure que les travailleurs dont l'emploi est le plus précaire sont les moins susceptibles de se faire entendre. Par conséquent, je fais valoir que le SRI devrait être assorti d'une plus grande surveillance externe dans les secteurs où prévaut la précarité de l'emploi.

IN THE 1970s, MOST CANADIAN JURISDICTIONS moved away from the external regulation of health and safety at work through codified regulations enforced by an independent inspectorate to the Internal Responsibility System (IRS). A central pillar of this new model of regulation was an assumption that workers could be active participants in the regulation of their own safety at work. Workers were given new rights to participate in health and safety decisions affecting their workplaces, to know about the risks they faced, and to refuse unsafe work. I refer to the exercise of these rights by workers as worker voice. Workers were to exercise their voice by participating on joint health and safety committees, by asking for information on the hazards to which they were exposed, or by declaring their work unsafe and refusing to work until conditions improved. The ability of workers to fulfill the role assigned to them under the IRS was contentious in the 1970s and continues to be debated. Research has shown that the labour-management context of individual workplaces influenced the effectiveness of worker voice and joint health and safety committees.[1]

1.   See Wayne Lewchuk, Leslie A Robb & Vivienne Walters, "The Effectiveness of Bill 70 and Joint Health and Safety Committees in Reducing Injuries in the Workplace: The Case of Ontario" (1996) 22:3 Can Pub Pol'y 225; Garry C Gray, "A Socio-Legal Ethnography of the

In particular, voice was more effective where labour was organized and where management had accepted a philosophy of co-management of the health and safety function.

As argued by others,[2] the pluralist assumptions underlying regulatory approaches, such as the IRS in Canada, that rely on worker voice to advance workplace health and safety are suspect. Others have already shown how the manifestation of voice as the right to refuse dangerous work and to raise health and safety issues is inherently constrained by pressure to produce.[3] Nonetheless, we have witnessed a continued degradation of external regulatory mechanisms dealing with workplace health and safety and even a shift to what Garry C. Gray has described as a "responsibilization strategy" through the implementation of a "ticket" system in some Ontario workplaces.[4] In this system, individual workers are not only being asked to participate in improving their own safety at work, their failure to do so could result in the issuance of a ticket exposing them to substantial fines.[5]

However, the significant reorganization of the Canadian economy since the 1970s may make the exercise of worker voice at work even more problematic, raising serious questions about the increasing reliance on self-regulation of

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Right to Refuse Dangerous Work" (2002) 24 Stud Law, Pol & Soc'y 133 [Gray, "Socio-Legal Ethnography"]; John O'Grady, "Joint Health and Safety Committees: Finding a Balance" in Terrance Sullivan, ed, *Injury and the New World of Work* (Vancouver: UBC Press, 2000) 162; Christian Lévesque, "State Intervention in Occupational Health and Safety: Labour-Management Committees Revisited" in Anthony Giles, Anthony E Smith & Kurt Wetzel, eds, *Proceedings of the XXXIst Conference* (Canadian Industrial Relations Association, 1994) 217; Carolyn Tuohy & Marcel Simard, *The Impact of Joint Health and Safety Committees in Ontario and Quebec* (Study prepared for the Canadian Association of Administrators of Labour Law, 1993); Alan Hall et al, "Making a Difference: Knowledge Activism and Worker Representation in Joint OHS Committees" (2006) 61:3 Indus Rel 408.

2.   See Steve Tombs & David Whyte, "A Deadly Consensus: Worker Safety and Regulatory Degradation under New Labour" (2010) 50:1 Brit J Crim 46; Vivienne Walters & Ted Haines, "Workers' Use and Knowledge of the 'Internal Responsibility System': Limits to Participation in Occupational Health and Safety" (1988) 14:4 Can Pub Pol'y 411; Vivienne Walters & Ted Haines, "Workers' Perceptions, Knowledge and Responses Regarding Occupational Health and Safety: A Report on a Canadian Study" (1988) 27:11 Soc Sci Med 1189.

3.   See Gray, "Socio-Legal Ethnography," *supra* note 1; Jane Mullen, "Testing a Model of Employee Willingness to Raise Safety Issues" (2005) 37:4 Can J Behav Sci 273.

4.   "The Responsibilization Strategy of Health and Safety" (2009) 49:3 Brit J Crim 326 [Gray, "Responsibilization"].

5.   See *ibid*; Tombs & Whyte, *supra* note 2. As of 2012, the fine attached to a ticket was 295 Canadian dollars ("CAD"). See Gray, "Responsibilization," *supra* note 4 at 332, n 6.

workplace health and safety. Competition between companies has increased as a result of the trade deals entered into in the 1980s and 1990s. Exports represent a much larger share of Canadian Gross National Product (GNP). Union density has fallen and, at the same time, the sectors where unions are still reasonably well established have come under increased competitive pressures. Non-standard employment, self-employment, and other forms of less permanent employment have all grown in relative importance.

This article will present new evidence on the effectiveness of worker voice and the Internal Responsibility System in Canada in this new context. Others have looked at how voice is constrained by social dynamics at work, by the pressure to maintain production at all costs, by workers' concerns about self-image if they complain that work is dangerous, and by views regarding the likelihood that management will effect change if issues are raised.[6] I focus on worker views of the impact of using voice on future employment prospects in the context of a labour market where employment is increasingly precarious. Data are drawn from a survey of workers in Ontario conducted by my colleagues and I in 2005.

This article has five parts. Part I introduces the social, economic, and political conditions that have shaped the IRS and worker voice in Canada. Part II sets out the survey's methodological features and data sources. Part III presents the analysis and results. It explores the relationship between various worker characteristics (*e.g.*, union membership) and participants' self-rated likelihood that exercising voice with their current employer would negatively affect their future employment. Part IV assesses the significance of the results with a view to understanding the limits of both worker voice and the IRS in the light of current labour market conditions. Results of a logistic regression suggest that it is the precariously employed, rather than non-unionized individuals, for example, who are the most likely to believe that exercising voice jeopardizes future employment. I argue that the IRS is less likely to deliver safer and healthier workplaces for these workers. Part V reviews the article's major limitations and findings before concluding with a recommendation for more external regulation and oversight of occupational health and safety and diminished reliance on the IRS in sectors where employment is insecure.

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6.   See Gray, "Socio-Legal Ethnography," *supra* note 1; Mullen, *supra* note 3.

I.   BACKGROUND

A.   WORKER VOICE AND THE REGULATION OF OCCUPATIONAL HEALTH AND SAFETY IN CANADA

Prior to the mid-1970s, the emphasis in most jurisdictions in Canada was on protecting workers' health via government regulations enforced by government-appointed factory inspectors, sometimes referred to as the External Responsibility System. Growing dissatisfaction with the effectiveness of this system within the ranks of labour led to calls for more participatory rights for workers. The initial push for change came less from the ranks of senior union officials and more from a group of young activists voicing their concerns within the workplace.[7] These young activists began making health and safety a priority at their workplaces and within the union movement. Supported by political allies in government, they succeeded in getting several Canadian jurisdictions to pass new health and safety regulations in the mid-1970s.

The call for change was strongest in the unionized and male-dominated sectors, such as mining and heavy industry. Most of these workers were employed under standard employment contracts in jobs that were full-time, permanent, and relatively well-paid. Workers were concerned about a range of health and safety issues related to work, but at the forefront were exposures to toxic substances—including sulphur dioxide gas, asbestos, silica, and radon gas—and violent accidents in underground mines or steel mills. The health and safety concerns of women, racial minorities, and workers in precarious employment relationships were addressed only where they were similar to those of this largely male, unionized, full-time industrial workforce. Workplace hazards such as stress, harassment, and employment insecurity were barely on the radar at this time.

In 1974, the government of Ontario[8] appointed the Ham Commission to investigate the causes of workplace injury in the province. The Ham Report, issued in 1976, was critical of the efficacy of a regulatory system that relied heavily on standards codified in laws and enforced by an external inspectorate.[9] For Ham, the key weakness of the existing regulatory framework was the ineffectiveness of an underdeveloped "responsibility-system," resulting from the

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7.   See Robert Storey, "Activism and the Making of Occupational Health and Safety Law in Ontario, 1960s-1980" (2005) 3:1 Pol'y & Prac in Health & Safety 41.

8.   In Canada, responsibility for regulating workplace health and safety is largely a provincial matter, although certain classes of workers are regulated by federal legislation.

9.   Ontario, *Report of the Royal Commission on the Health and Safety of Workers in Mines* (Toronto: Ministry of the Attorney General, 1976) (Commissioner: James M Ham) [Ham Report].

inability of labour to voice its concerns and to contribute to making workplaces safer. Ham argued, "[T]he worker as an individual and workers collectively in labour unions or otherwise have been denied effective participation in tackling these problems; thus the essential principles of openness and natural justice have not received adequate expression."[10]

In Ontario, the passage of the *Occupational Health and Safety Act*[11] (Bill 70) in 1978 was the first step in moving to an Internal Responsibility System. As defined in a Workplace Safety and Insurance Board fact sheet, "The Internal Responsibility System is a health and safety philosophy. It is based on the principle that every individual in the workplace is responsible for health and safety. That includes the CEO, executives, management and the workers."[12] The document goes on to state that under this system, workers are expected to know about hazards at work, to participate in workplace health and safety, to practice safe working procedures, and to report unsafe conditions.[13] The system can only function if workers are willing to speak up about hazards and demand changes. They need to exercise voice at work.

To facilitate this new role for workers, Bill 70 mandated the formation of joint health and safety committees in most workplaces, required most companies to allow worker health and safety representatives, gave workers rights to know about the hazards they faced, and gave them the right to refuse dangerous work. Most other provinces adopted similar legislation.[14] To a significant extent, the IRS and worker voice became substitutes for the External Responsibility System. Evidence of this can be seen in the decline of government-regulated workplace inspections in Ontario by the mid-1990s to less than one-third of their level in the early 1970s, despite the growth in the economy.[15] As enforcement activity by

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10. *Ibid* at 6.
11. SO 1978, c 83 (proclaimed on 1 October 1979).
12. Workplace Safety and Insurance Board, *Internal Responsibility System*, Fact Sheet 3171A (WSIB Ontario, 2003) at 1, online: <http://www.wsib.on.ca/files/Content/ Downloadable%20File3171A/3171A_Internal_Responsibility_System.pdf>.
13. *Ibid* at 1.
14. See *e.g.* O'Grady, *supra* note 1; Eric Tucker, "Diverging Trends in Worker Health and Safety Protection and Participation in Canada, 1985-2000" (2003) 58:3 Indus Rel 395; Eric Tucker, "Remapping Worker Citizenship in Contemporary Occupational Health and Safety Regimes" (2007) 37:1 Int'l J Health Services 145.
15. See *ibid*. In 2007, the Ministry of Labour hired two hundred new workplace inspectors, nearly doubling their ranks. See Ministry of Labour, News Release, "McGuinty Government Completes Hiring of New Inspectors" (17 April 2007), online: Canada Newswire <http://

external agencies declines, more of the burden is placed on self-regulation and the willingness of workers to be active members in regulating the conditions that affect their own safety.

From its inception, the IRS in Canada gave workers and unions limited voice with respect to health and safety matters at the workplace. The 1970s round of health and safety legislation defined the right to know weakly and limited joint health and safety committees to consultative and advisory roles. The effectiveness of these instruments, from the perspective of workers, was always contingent on how much pressure workers could apply and this was almost always a function of how strong their union was.[16] On paper, joint health and safety committees were to have access to information associated with potential hazards and actual accidents, had the right to be present when a government inspection took place, and were to participate in investigations of accidents and work refusals. In practice, these paper rights were much more limited. A series of conflicts over health and safety in the 1980s is testament to the ongoing tension between labour and management over the issues of worker safety and the limited effectiveness of the new regulatory framework.[17]

A second wave of health and safety legislation and regulations in the 1980s focussed on strengthening labour's voice in health and safety matters.[18] Federal legislation strengthened the right to know with the creation of the Workplace Hazardous Materials Information System (WHMIS) in 1988.[19] Two years later, changes to Ontario regulations made joint health and safety committees mandatory at more workplaces, required committee members to be trained, and empowered certified committee members to stop work that they perceived to be dangerous. The Workplace Health and Safety Agency, a joint labour-management body to oversee health and safety training in Ontario, was created in 1990.

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www.newswire.ca/en/story/88177/mcguinty-government-completes-hiring-of-new inspectors>. Despite this increase, the province remains committed to the IRS to achieve its goal of improving workplace health and safety.

16. See Lewchuk, Robb & Walters, *supra* note 1; O'Grady, *supra* note 1; Robert Storey & Eric Tucker, "All That Is Solid Melts Into Air: Worker Participation and Occupational Health and Safety Regulation in Ontario, 1970-2000" in Vernon Morgensen, ed, *Worker Safety Under Siege: Labor, Capital, and the Politics of Workplace Safety in a Deregulated World* (Armonk, NY: ME Sharpe, 2006) 157.

17. See Doug Smith, *Consulted to Death* (Winnipeg: Arbeiter Ring, 2000).

18. See Storey & Tucker, *supra* note 16.

19. Coordinate federal, provincial, and territorial legislation established WHMIS in law. See Canadian Centre for Occupational Health and Safety, *WHMIS – General: OSH Answers* (18 January 2012), online: <http://www.ccohs.ca/oshanswers/legisl/intro_whmis.html>.

These initiatives had barely begun to function when a new right-wing Conservative government was elected in the province in 1995. On the surface, the workplace regulatory framework of the Internal Responsibility System was largely unchanged. However, the changing ideological orientation of the new government led to greater reliance on employer self-regulation, a lesser role for government intervention, and a weaker commitment to worker participation. Bipartite initiatives were abandoned or scaled back, inspectors were allowed to deal with work refusals over the phone, and it was made clear that labour would have to be more "flexible" to attract new investment to the province.[20]

Recent research supports the view that the focus of the Internal Responsibility System during this period moved away from workers as active participants. Comparing the results of questionnaires completed in 1990 and 2001, Sybil Geldart, Harry S. Shannon, and Lynne Lohfeld argue that senior managers had become less likely to view worker participation as important in improving safety and that workers felt that management cooperation on this issue had declined.[21] They conclude, "Management now perceives workers as less (rather than more) important for helping them make company decisions, while workers now see their joint involvement in company programs as more (rather than less) of a problem for management."[22]

Worker voice and the IRS were adopted in Canada at a unique historical moment. The labour movement was near its post-war peak in terms of influence and the standard employment relationship was widespread. Workers in a number of economic sectors felt sufficiently secure that they were willing to demand changes to protect their health and to play more of a role in voicing their concerns to management. Where unions had effectively organized workers or where management was willing to co-manage the health and safety function with workers, the IRS had the potential to reduce injuries.[23] However, for many workers outside the organized labour movement or working at firms where management kept a firm grip on management rights, the shift from external protection to voice and internal responsibility had more limited effects. The small gains in participatory rights came at the cost of a general retreat by the government from its role as regulator.

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20.   See Storey & Tucker, *supra* note 16.
21.   "Have Companies Improved Their Health and Safety Approaches Over the Last Decade? A Longitudinal Study" (2005) 47:3 Am J Indus Med 227.
22.   *Ibid* at 234.
23.   See Lewchuk, Robb & Walters, *supra* note 1; O'Grady, *supra* note 1; Lévesque, *supra* note 1; Tuohy & Simard, *supra* note 1; Hall et al, *supra* note 1.

More than three decades after the introduction of the IRS, Ontario appointed a review panel to assess the effectiveness of the province's occupational health and safety regulatory framework. In early December 2010, the review panel issued its final report. The report's authors suggested that their recommendations had the potential to "set in place an important cultural shift that could not be achieved through any amount of regulation."[24] In their view, "Dr. Ham got it right" that the government could set standards but could not be in every workplace to enforce them.[25] The IRS would continue to play a key role in making workplaces safer, but there was a need to reinforce the three fundamental requirements of a successful Internal Responsibility System first articulated by Ham: the right to know, the right to participate, and the right to refuse unsafe work.[26] There was to be no return to external regulation. Given this conclusion, it becomes increasingly important to assess the extent to which worker voice can play a role in making workplaces safer and healthier.

B. UNIONS, PRECARIOUS EMPLOYMENT, AND WORKER VOICE IN HEALTH AND SAFETY

The concerns of unionized, male workers in standard employment relationships were central to the introduction of the Internal Responsibility System in the late 1970s. While this class of workers was typical of the Canadian labour force in the 1970s, it is no longer so today when fewer than two-thirds of Canadian workers are in standard employment relationships.[27] Various economic and policy developments over the last three decades have altered the context in which workers are seeking to protect their health. Trade liberalization has exposed Canadian companies to more external competition while at the same time making them more reliant on export markets. In 1970, less than one-fifth of Canadian GNP was destined for the export market. By 2000, this share had peaked at over 45% of GNP before gradually declining to around 35% by 2007.[28]

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24. Ontario, Expert Advisory Panel on Occupational Health and Safety, *Report and Recommendations to the Minister of Labour* (Toronto: Ministry of Labour, 2010) at 2, online: <http://www.labour.gov.on.ca/english/hs/pdf/eap_report.pdf>.

25. *Ibid* at 6.

26. *Ibid*.

27. In a recent report on precarious employment in the GTA–Hamilton region, it was estimated that barely half of all those working in late 2011 had permanent full-time jobs with a single employer who both paid a wage and provided other benefits. See Wayne Lewchuk et al, *It's More than Poverty: Precarious Employment and Household Well-being* (Poverty and Employment Precarity in Southern Ontario, 2013) at 19, online: <http://www.pepso.ca>.

28. Statistics Canada, *National Income and Expenditure Accounts Quarterly Estimates: Fourth*

During the same period, union density fell by almost one-quarter from a peak of nearly 40% of the non-agricultural workforce in the mid-1980s to around 30% by 2010.[29]

Of equal relevance to this article are the changes in the structure of Canadian labour markets.[30] The proportion of the workforce listed as self-employed has more than doubled since the mid-1970s and now represents over 15% of the workforce.[31] Part-time employment has increased and now represents about one-fifth of all employees, double the proportion that existed when the IRS was first introduced.[32] Finally, there has been an increase in the prevalence of temporary employment, which has risen from around 14% of the workforce in the late 1980s to 20% by the mid-2000s.[33] Research suggests that workers in precarious employment relationships are likely to face a number of factors that both increase the risk of injury and illness and make voice and existing regulatory frameworks less effective in protecting their health at work.[34]

Quarter 2007, vol 55, no 4 (Ottawa: Minister of Industry, 2008) at 104-107, online: <http://www.statcan.gc.ca/pub/13-001-x/13-001-x2007004-eng.pdf>.

29. Commission for Labor Cooperation, *Briefing Note: Recent Trends in Union Density in North America* (Washington: Commission for Labor Cooperation, August 2003), online: <http://www.naalc.org/english/pdf/april_03_english.pdf>; Sharanjit Uppal, "Unionization 2010" in Statistics Canada, *Perspectives on Labour and Income*, vol 11, no 10 (Ottawa: Minister of Industry, October 2010) 18.

30. See Frank T Denton, "Section D: The Labour Force" in Statistics Canada, *Historical Statistics of Canada*, No 11-516-X (Ottawa: Government of Canada, 1983), series D236-259, online: <http://www5.statcan.gc.ca/bsolc/olc-cel/olc-cel?catno=11-516-X&lang=eng>; Judy Fudge, Eric Tucker & Leah Vosko, *The Legal Concept of Employment: Marginalizing Workers* (Ottawa: Law Commission of Canada, 2002), online: Government of Canada Publications <http://www.publications.gc.ca>; Statistics Canada, *Labour Force Survey* 1976-2012, Public-use Microdata Files (Ottawa: Minister of Industry) [Statistics Canada, *Survey*].

31. *Ibid*. See *e.g.* Statistics Canada, *Labour Force Information: December 2 to 8, 2012*, No 71-001-X (Ottawa: Minister of Industry, 2013) at 28 [Statistics Canada, *Information*].

32. Statistics Canada, *Survey*, *supra* note 30. See *e.g.* Statistics Canada, *Information*, *supra* note 31 at 26, 29-30.

33. Leah F Vosko & Lisa F Clark, "Canada: Gendered Precariousness and Social Reproduction" in Leah F Vosko, Martha MacDonald & Iain Campbell, eds, *Gender and the Contours of Precarious Employment* (Abingdon, UK: Routledge, 2009) 26 at 30. As is common, temporary employment includes full-time, part-time, and solo self-employed.

34. See David Weil, "Rethinking the Regulation of Vulnerable Work in the USA: A Sector-based Approach" (2009) 51:3 J Indus Rel 411; David Weil, "Enforcing Labor Standards in Fissured Workplaces: The US Experience" (2011) 22:2 Econ & Lab Rel Rev 33; Neil Gunningham, "Occupational Health and Safety, Worker Participation and the Mining Industry in a Changing World of Work" (2008) 29:3 Econ & Indus Democ 336; Marlea Clarke et al, "'This Just Isn't Sustainable': Precarious Employment, Stress and Workers' Health" (2007) 30:4-5 Int'l J L & Psychiatry 311; Stephanie Bernstein et al, "Precarious Employment

Differences between the labour relations contexts of permanent full-time workers and workers in precarious employment relationships are critical to understanding the efficacy of voice in protecting the latter workers' health and safety. The precariously employed have relatively weak entitlements to further employment with their current employer and have little recourse in labour law if their employment is terminated. They are less likely to be unionized and less likely to have an ongoing relationship with either an employer or a group of co-workers. Lower rates of unionization and weaker ongoing links to co-workers make those in precarious employment relationships more vulnerable to retribution for defending their legal rights. As summarized by John O'Grady:

> Without the protection of a grievance system, few workers will be inclined to exercise their statutory right to refuse to perform unsafe work. Similarly, only a small minority of non-union members of health and safety committees will summon inspectors to rectify persistent non-compliance with standards. While near universal unionization was not a presumption of the internal responsibility system, widespread unionization—at least in high incidence sectors—was an unstated premise of that system. Indeed, trying to understand the system of internal responsibility and the role of the right to refuse without recognizing the central importance of unions is like trying to put on a production of *Hamlet*, but leaving out the ghost. … For an increasing number of workers—increasing both absolutely and relatively—the unstated premise of the internal responsibility system, that is, the presence of a union, no longer holds.[35]

A study of Swedish workers reported that workers in precarious employment relationships were less likely to be knowledgeable about their work environment, felt they were less likely to receive training, and felt it was more difficult for them to be critical at work.[36]

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and the Law's Flaws: Identifying Regulatory Failure and Securing Effective Protection for Workers" in Leah F Vosko, ed, *Precarious Employment: Understanding Labour Market Insecurity in Canada* (Montreal: McGill-Queen's University Press, 2006) 203; David Walters & Kaj Frick, "Worker Participation and the Management of Occupational Health and Safety: Reinforcing or Conflicting Strategies?" in Kaj Frick et al, eds, *Systematic Occupational Health and Safety Management: Perspectives on an International Development* (Amsterdam: Elsevier Science, 2000) 43; Michael Quinlan & Claire Mayhew, "Precarious Employment, Work Re-Organization and the Fracturing of OHS Management" in *ibid*, 175.

35.   *Supra* note 1 at 191.
36.   Gunnar Aronsson, "Contingent Workers and Health and Safety" (1999) 13:3 Work, Employ & Soc'y 439.

II. METHODS

A. AIMS AND HYPOTHESES

In Part I, I described how the health and safety regulatory framework imple-mented in the 1970s in Ontario gave workers a role in minimizing health and safety risks at work. The three key pillars of that framework— the right to participate, the right to know, and the right to refuse—all assumed that workers, as individuals, would be willing to exercise these rights. I described this as individual workers using voice to affect health and safety improvements. The decline in union power since the 1970s and the rise of precarious employment suggest that a renewed evaluation of the effectiveness of the Internal Responsibility System is necessary.

Part III, below, uses data from a 2005 study on the health impacts of different types of employment relationships to evaluate the overall effectiveness of voice and the IRS in light of the changes in employment relationships. I focus on respondents' answers to a key question in that survey: whether raising a health and safety issue with one's current employer would negatively affect one's future employment.[37] Participants were instructed to select one of the following responses: very likely, likely, somewhat likely, not likely, or not likely at all. Responses were coded as "yes" where participants answered either very likely, likely, or somewhat likely and "no" where participants answered either not likely or not likely at all. It was assumed that workers who anticipated negative effects would also be less likely to use voice. I hypothesize that being in a precarious employment relationship increases a worker's likelihood of agreeing that raising a health and safety concern would negatively affect his or her future employment. I also test whether concern about raising a health and safety issue is associated with different health outcomes.

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37. Specifically, participants were asked the following question: "If you were to raise a health and safety concern with your current employer(s) would this negatively affect your future employment?"

B.   SURVEY DESIGN AND DATA SOURCES

The data were collected through a fixed response, self-administered questionnaire conducted between September and December of 2005.[38] The questionnaire measured participants' work conditions, employment relationships, and health indicators. The questionnaires were initially solicited from sixty Toronto-area census tracts representing 145,109 households. All households in the selected census tracts received a multilingual postcard inviting all members of the household over the age of eighteen who had worked in the previous month to participate. Participants were offered 10 CAD for completing the questionnaire, which they could mail in, submit by e-mail, or complete online. Questionnaires were available in English, Mandarin, and Tamil. Posters with tear-off information sheets were posted in public spaces in the targeted areas to encourage more individuals to participate. Those who completed the questionnaire were asked to distribute additional postcards to people who they thought might be interested in completing the questionnaire. As a result, the sample expanded to include several hundred individuals living outside Southern Ontario.

The analysis in Part III, below, uses the 3,280 surveys received from individuals who worked for pay in the month prior to the survey. Over 80% of the sample lived in the Toronto–Hamilton corridor. The sample includes surveys from individuals who described themselves as employed in one of six employment relationship categories: less permanent[39] (n=666), fixed contract of one year or more (n=177), self-employed with employees (n=23), self-employed without employees (n=225), permanent part-time (n=449), and permanent full-time (n=1,740).

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38.   For more on this survey, see Wayne Lewchuk, Marlea Clarke & Alice de Wolff, "Working Without Commitments: Precarious Employment and Health" (2008) 22:3 Work, Employ & Soc'y 387; Wayne Lewchuk, Marlea Clarke & Alice de Wolff, *Working Without Commitments: The Health Effects of Precarious Employment* (Montreal: McGill-Queen's University Press, 2011) [Lewchuk, Clarke & de Wolff, *Without Commitments*].

39.   Defined as employed through a temporary employment agency or on a short-term contract of less than one year. Employment could be either full-time or part-time, but in either case the relationship is temporary.

III. RESULTS AND ANALYSIS

A.   WHO IS ABLE TO USE VOICE TO EXPRESS HEALTH AND SAFETY CONCERNS AT WORK?

Figure 1 reports the percentage of respondents who agreed that raising a health and safety concern, making a WSIB claim, or raising a concern about employment rights with their current employer would negatively affect their future employment. About one-third of respondents reported that raising a health and safety issue at work would negatively affect their future employment. Participants were even more likely to see making a WSIB claim or raising a concern about employment rights as leading to negative effects on employment.

FIGURE 1: TAKING THIS ACTION WITH CURRENT EMPLOYER WOULD NEGATIVELY AFFECT FUTURE EMPLOYMENT (% AGREEMENT)[40]
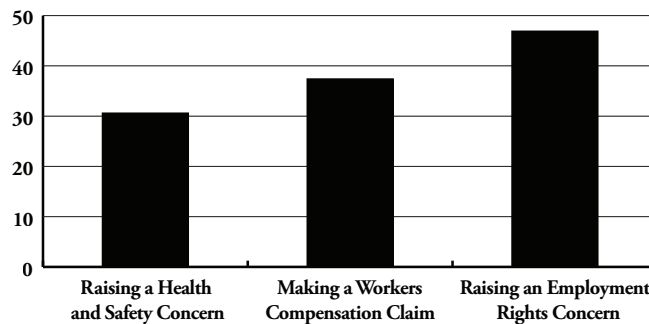

NOTES: Raising a Health and Safety Concern (n=3,277), Making a Worker Compensation Claim (n=3,272), and Raising an Employment Rights Concern (n=3,277). Suggested examples of employment rights concerns included concerns about minimum wage, overtime pay, length of breaks, parental leave, harassment, holiday pay, and notice of layoffs.

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40.   Responses to each question were scaled and coded as "yes" or "no" in an identical fashion. See Part II(A), above.

Figure 2 explores how gender, race, and unionization are associated with concern that raising a workplace health and safety issue would negatively affect future employment.[41] While white workers were less concerned than non-white workers that raising a health and safety issue with their current employer would negatively affect their future employment, it was men rather than women and unionized workers rather than non-unionized workers who were most likely to report that voicing a health and safety concern would have negative implications for future employment. The high percentage of men and unionized workers expressing concern about using their voice in health and safety matters will be discussed in more detail in Part IV, below.

FIGURE 2: RAISING A HEALTH AND SAFETY CONCERN WITH CURRENT EMPLOYER WOULD NEGATIVELY AFFECT FUTURE EMPLOYMENT BY GENDER, RACE, AND UNIONIZATION (% AGREEMENT)
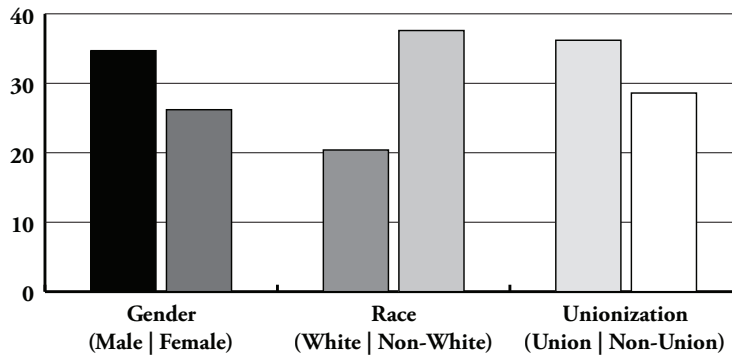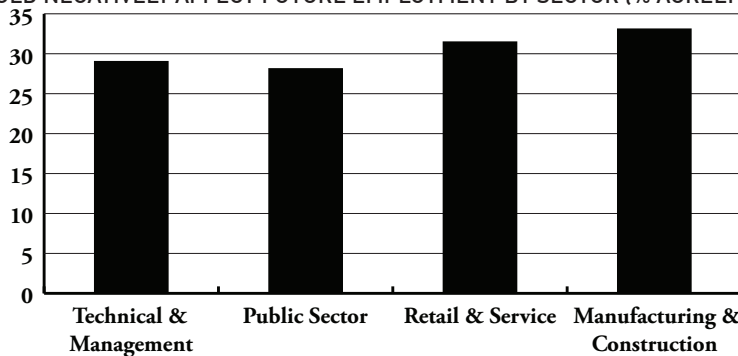

NOTE: The reported differences between Male (n=1,572) and Female (n=1,702), between White (n=1,889) and Non-White (n=1,385), and between Union (n=794) and Non-Union (n=2,480) are all statistically significant at p<.001 (Pearson's Chi-squared).

41. Respondents were asked to define their race from a list of nine options. Respondents were coded as Non-White if they answered anything other than White. Respondents were coded as Union if they reported being union members at all or at some of the places where they work. The Union category includes 566 (17.3%) respondents who reported that all places where they currently worked were unionized. Another 228 (6.7%) reported that only some of the places where they currently worked were unionized.

Figure 3 reports concern that raising a health and safety issue would negatively affect future employment by sector. While those in the public sector were marginally less likely to report this concern and those in manufacturing and construction were marginally more likely, these differences were not statistically significant. As I show in Part III(B), below, there is a much stronger association between reported levels of employment insecurity and reported concern that raising a health and safety issue with a current employer would negatively affect future employment than there is between the latter and any of the other explanatory variables.

FIGURE 3: RAISING A HEALTH AND SAFETY CONCERN WITH CURRENT EMPLOYER WOULD NEGATIVELY AFFECT FUTURE EMPLOYMENT BY SECTOR (% AGREEMENT)

NOTE: The reported differences among Technical & Management (n=1,317), Public Sector (n=588), Retail & Service (n=445), and Manufacturing & Construction (n=926) are not statistically significant at p>.10 (Pearson's Chi-squared).

Figure 4 reports workers' agreement that voicing a health and safety concern with their current employer would negatively impact their future employment by degree of employment precarity. I use a measure of precarity that I developed with Marlea Clarke and Alice de Wolff.[42] It includes an Employment Relationship Uncertainty Index constructed from thirteen questions that measure uncertainty about future employment, uncertainty about future income, and scheduling uncertainty. The measure also includes an Employment Relationship Effort Index constructed from sixteen questions that measure time spent looking for work, working in multiple locations, and level of monitoring of employee performance. Participants were placed into one of four

42. Lewchuk, Clarke & de Wolff, *Without Commitments*, *supra* note 38.

categories based on their scores on these indices. Those in the High Precarity category had high levels of both Employment Relationship Uncertainty and Employment Relationship Effort. Those in the High Security category scored low on both indices. Those in Moderate Precarity had low scores on the Employment Relationship Uncertainty Index but high scores on the Employment Relationship Effort Index. Those in the Moderate Security category had high scores on the Employment Relationship Uncertainty Index but low scores on the Employment Relationship Effort Index.[43]

More than half of all respondents in the High Precarity category reported that using voice to express concerns about health and safety matters at work would have negative consequences for their future employment. Only one in ten respondents in the High Security category expressed the same view. These findings suggest that for many workers in precarious employment relationships voice is an ineffective means of resolving workplace health and safety concerns and that expressing health and safety concerns is itself a hazardous strategy.

FIGURE 4: RAISING A HEALTH AND SAFETY CONCERN WITH CURRENT EMPLOYER WOULD NEGATIVELY AFFECT FUTURE EMPLOYMENT BY DEGREE OF EMPLOYMENT PRECARITY (% AGREEMENT)
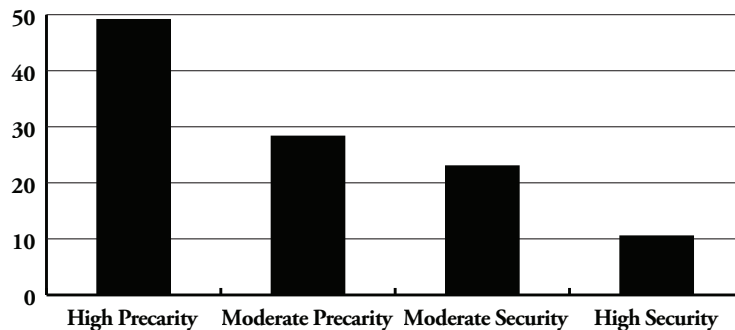

NOTE: The reported values for High Precarity (n=1,230), Moderate Precarity (n=446), and Moderate Security (n=774) are all statistically different from the reported value for High Security (n=827) at p<.001 (two-sided t-Test for Equality of Means).

The preceding discussion does not make any distinction between those exposed to health and safety risks at work and those not so exposed. Knowing if

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43. For a fuller discussion of the construction of the indices, see *ibid* at 297-99. The original analysis, which focussed on health issues related to precarity, used different titles for the four categories: High Employment Relationship Strain, High Effort, High Uncertainty, and Low Employment Relationship Strain.

there are differences in using voice between those exposed and those not exposed to risks can help us assess the overall effectiveness of the Internal Responsibility System. It may also help us assess if the IRS is more effective for certain classes of risk. Data were collected on four major risk factors: uncomfortable temperature, poor air quality, noise, and exposure to toxic substances. Figure 5 reports findings for those exposed and not exposed to each of these four categories of risk.[44]

FIGURE 5: RAISING A HEALTH AND SAFETY CONCERN WITH CURRENT EMPLOYER WOULD NEGATIVELY AFFECT FUTURE EMPLOYMENT BY RISK EXPOSURE (% AGREEMENT)
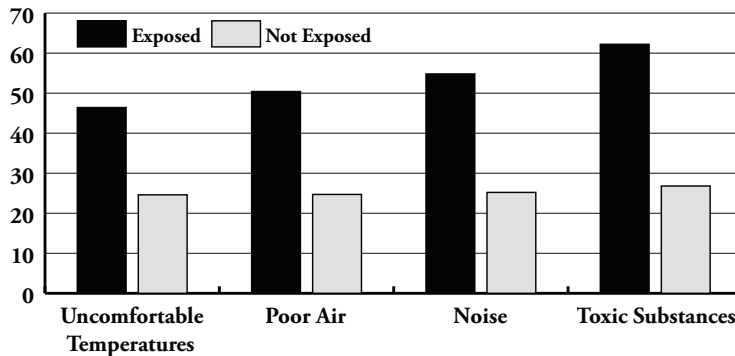
NOTES: Uncomfortable Temperatures (Exposed, n=869; Not Exposed, n=2,407), Poor Air (Exposed, n=723; Not Exposed, n=2,553), Noise (Exposed, n=571; Not Exposed, n=2,703), and Toxic Substances (Exposed, n=333; Not Exposed, n=2,942). In all four cases, the difference between Exposed and Not Exposed is statistically significant at p<.001 (Pearson's Chi-squared).

Participants who reported that they were exposed to any one of the four groups of workplace hazards were significantly more likely to reply that raising a health and safety concern would have negative effects on their future employment. This suggests that while about one-third of the entire sample were concerned about the effects of using voice to affect health and safety improvements at work, among those who are actually exposed to these risks, the

44. Respondents were asked to respond to the following questions: (a) "In the last month at work, how often did you work in uncomfortable temperatures?"; (b) "In the last month at work, how often did you experience discomfort because of air quality (dust, molds, smoke, chemicals, et cetera)?"; (c) "In the last month at work, how often was it necessary to raise your voice to be heard by a person next to you?"; and (d) "In the last month at work, how often was it necessary for you to use toxic substances?" For each question, respondents could select one of the following answers: all the time, three-quarters, half the time, one-quarter, or never. Respondents were deemed to be exposed to the risk if they reported being exposed half the time or more.

proportion is closer to half of all exposed workers. For workers who reported exposure to toxic materials, closer to two-thirds reported that raising concerns about this exposure would negatively affect future employment. These results suggest that workers not exposed to risks find it easier to claim that voicing such a concern would not affect future employment. However, for the group facing these risks, whose members have to weigh more carefully the consequences of demanding changes, there appears to be much greater reluctance to use voice.

B.   WHO IS LIKELY TO USE VOICE TO EXPRESS HEALTH AND SAFETY CONCERNS AT WORK?

I now examine how the different factors introduced in Part III(A), above, interact to influence fears about using voice to raise health and safety concerns at work. I estimate a number of different models of increasing complexity to assess how sex, race, unionization, sector, and employment precarity affect the probability of a participant reporting that voicing a health and safety concern at work would negatively affect his or her future employment.

TABLE 1: LIKELIHOOD OF AGREEING THAT RAISING A HEALTH AND SAFETY CONCERN WITH CURRENT EMPLOYER WOULD NEGATIVELY AFFECT FUTURE EMPLOYMENT (ODDS RATIOS)

	1[a]	2	3[b]	4	5	6	7
Female	0.72***	0.74***	0.77**	0.76**	0.80**	0.78**	0.81**
White	0.43***	0.43***	0.50***	0.49***	0.49***	0.50***	0.49***
Public Sector	1.13	1.00	0.90	0.90	0.90	0.89	0.93
Retail Hospitality	1.19	1.20	0.89	0.86	0.88	0.84	0.92
Manufacturing/Construction	1.32**	1.31**	1.07	1.01	0.99	0.94	1.06
Union		1.48***	1.50***	1.31**	1.31**	1.28**	1.26**
High Precarity			7.56***	6.73***	6.72***	6.47***	6.61***
Moderate Precarity			3.06***	2.88***	2.91***	2.84***	3.03***
Moderate Security			2.50***	2.43***	2.43***	2.38***	2.44***
Exposed to Temperature				2.17***			
Exposed to Poor Air					2.42***		
Exposed to Noise						2.52***	
Exposed to Toxic Substances							3.00***
R²	.03	.04	.12	.14	.14	.14	.14

NOTE: The dependent variable takes the value of 1 for responses coded as "yes" to the question of whether raising a health and safety concern with one's current employer would negatively affect one's future employment.

[a] Sector coefficients are relative to jobs classified as science, technology, or management.

[b] Precarity coefficients are relative to High Security.

**p<.01   ***p<.001

Each column in Table 1 represents a single estimation model where the dependent variable takes the value of 1 if the participant agreed that raising a health and safety concern would negatively affect future employment and 0 otherwise. The independent variables take the value of 1 if the individual has the characteristic indicated and 0 otherwise. Logistic regression analysis was used. Coefficients less than 1 indicate that individuals with these characteristics have a lower probability of reporting that voicing health and safety concerns would negatively impact future employment. Coefficients greater than 1 indicate a higher probability of reporting that voicing concerns about health and safety at work would negatively affect future employment.

Column 1 explores how sex, race, and sector affect the use of voice. Confirming the findings above, women were about 25% less likely than men to be concerned about using voice, while white workers were half as likely as workers from racialized minorities to be concerned about using voice. Workers in manufacturing and construction were marginally more likely than workers in all sectors to report that raising a health and safety issue would negatively affect future employment. Column 2 adds whether the respondent was unionized. This factor had an insignificant impact on the sex, race, and sector coefficients. Being in a union made it about 50% more likely that a respondent would report that raising a health and safety concern would negatively affect future employment.

Column 3 adds measures of employment precarity. The excluded category is High Security employment relationships, and the precarity coefficients are probabilities relative to this excluded group. There were only marginal changes in the probability that women, white workers, or unionized workers might be concerned about using voice. Sector is no longer statistically significant. Far more important is the sizeable effect associated with not being in a High Security employment relationship. Even those in Moderate Security relationships were more than twice as likely to report that voicing concerns about health and safety matters at work would negatively affect future employment. Respondents in the High Precarity category were more than seven times as likely to report that using voice would negatively affect future employment. The degree of employment precarity is far more important than sex, race, sector, or union status in shaping workers' probability of agreeing that exercising voice with their current employer would negatively affect their future employment. It seems reasonable to infer that those who agree that raising a health and safety concern with their current employer would negatively affect their future employment are also less likely to exercise voice.

Columns 4 through 7 introduce the level of exposure to one of the four categories of risk into the models. Controlling for exposure to risks leaves the sex, race, and sector effects virtually unchanged. Controlling for exposure reduced the effect of being unionized by about 50%. This suggests that a significant component of the union effect results from unionized respondents' greater likelihood of exposure to health and safety risks compared to non-union respondents. Being exposed to a risk generally increased the likelihood of reporting a negative effect from raising a health and safety issue. The impact of being in a precarious employment relationship is also somewhat muted, but even after controlling for exposure, respondents in precarious employment relationships were more likely to be concerned about the effect of voice on future employment than workers in High Security relationships.

While these findings on their own are of concern given the important role of voice in the Internal Responsibility System, the survey data also suggest that this reluctance to use voice is negatively affecting health outcomes (see Figure 6).

FIGURE 6: SELF-REPORTED HEALTH STATUS BY AGREEMENT THAT RAISING A HEALTH AND SAFETY CONCERN WITH CURRENT EMPLOYER WOULD NEGATIVELY AFFECT FUTURE EMPLOYMENT (%)
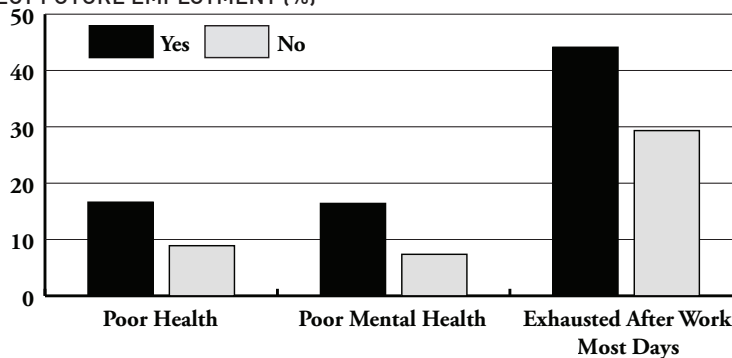
NOTES: Poor Health (Yes, n=993; No, n=2,282), Poor Mental Health (Yes, n=994; No, n=2,279), and Exhausted After Work Most Days (Yes, n=995; No, n=2,281). In all three cases, the difference between Yes and No is statistically significant at p<.001 (Pearson's Chi-squared).

Figure 6 shows that respondents who reported that voicing health and safety concerns would negatively affect future employment were more than twice as likely to report poor or fair health, more than twice as likely to report poor or fair mental health, and almost twice as likely to report feeling exhausted most days after work compared to those who did not report that voicing concerns

would negatively affect future employment.[45] Part of this difference may reflect the greater probability of being exposed to health risks at work among those concerned about raising health and safety issues. Nonetheless, the findings still suggest that not exercising voice can have negative health consequences.

IV. DISCUSSION: THE LIMITS OF VOICE

The objective of this article is to use survey data to assess the willingness of workers to use voice at work to raise concerns about health and safety matters. Voice is a key pillar of the Internal Responsibility System. The article uses responses to a question that asked survey participants if raising a health and safety issue with their current employer would have negative future employment consequences. It was assumed that workers who were concerned about the impact on future employment would also be less likely to use voice in health and safety matters.

One of the limits of this article is that the sample is restricted to currently employed workers aged twenty-five to sixty-five. The inclusion of younger workers, who on average tend to be employed in less secure forms of employment, may exaggerate reluctance to use voice at work. On the other hand, limiting the sample to those employed may underestimate the likelihood of workers agreeing that using voice at work would negatively affect future employment, because voicing health and safety concerns may have put some of the unemployed out of their previous job.

The overall finding of the article is that a significant number of survey participants feared that raising a health and safety concern would have negative employment effects. In the sample as a whole, about one-third expressed such a concern and, among those who also reported being exposed to health and safety risks at work, more than half reported that raising health and safety concerns would have negative employment consequences. Particularly troublesome was the number of participants exposed to toxic substances who also reported that using voice would have negative employment consequences. This suggests that

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45. Respondents were asked to rate both their health and mental health either as excellent, very good, good, fair, or poor. They were classified as having poor health or poor mental health if they reported that their health or mental health was less than good. Respondents were also asked: "In the last month, how often have you felt exhausted after your workday?" They could select one of the following answers: every day, most days, half the days, a few days, or never. Respondents were classified as exhausted after work most days if they answered every day or most days.

some of the most troubling health and safety risks at work are also those that workers are the least likely to use their voice to try to resolve.

The finding that union members and men were more likely to report that voicing concerns about health and safety matters would have negative employment consequences is contrary to general assumptions that unions and men are in stronger positions to voice such concerns at work. About half of the union effect was explained by the higher probability of exposure to health risks in unionized workplaces. However, even after correcting for this factor, unionized workers were still about 25% more likely than non-unionized workers to report that raising a health and safety risk would negatively affect future employment. It is beyond the scope of this article to explain this finding. Clearly, the overall decline of union power since the 1990s, downsizing in both the private and the public sectors, and efforts to reduce the wages and benefits of unionized workers may all be creating a context in which unionized workers have become more willing to accept health hazards rather than risk losing what has become relatively privileged employment.

It is worth noting that unions were the leading critics of the IRS during the recent expert panel review of occupational health and safety in Ontario. Several unions that submitted briefs to the review panel called for increased external enforcement of health and safety regulations in light of their growing inability to effect change through the IRS.[46] Neil Gunningham has reported a similar development in Australia, where unions have become weaker in the mining sector and more reticent to raise health and safety issues.[47]

Finally, the finding that respondents in highly precarious employment relationships were more likely to report that raising health and safety concerns would have negative employment consequences is not surprising. Perhaps what is surprising is the magnitude of the difference between those in precarious and those in secure employment relationships. The precariously employed were six to seven times more likely to report that raising health and safety issues would have negative employment consequences.

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46. See Wayne Lewchuk, "The Limits and Possibilities of the Structures and Procedures for Health and Safety Regulation" in Theo Nichols & David Walters, eds, *Governance, Change, and the Work Environment: Safety, Profit and the Conventional Wisdom* (Amityville, NY: Baywood) [forthcoming in 2013].

47. *Supra* note 34.

V.   CONCLUSION: A NEED FOR EXTERNAL REGULATION AND OVERSIGHT IN THE MOST INSECURE SECTORS

The findings reported above raise serious questions regarding the ability of the Internal Responsibility System to deliver safer and healthier workplaces in the context of growing employment insecurity. If in the 1970s it was true that workers could be expected to voice their concerns by participating in health and safety committees, by demanding to know about the risks they were facing, and by refusing dangerous work, this seems to be less true for a growing number of workers in Ontario today. I have shown that for many of the precariously employed, exercising these rights comes with a significant perceived risk of negative effects on future employment, possibly including losing their jobs. These findings suggest that serious consideration needs to be given to increasing reliance on external regulation and inspection of workplace health and safety issues and decreasing reliance on the IRS in sectors where employment is most insecure.