
CHILDREN WORKING ALONE IN ALBERTA: HOW CHILD LABOUR AND WORKING ALONE REGULATIONS INTERACT

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ABSTRACT

The Canadian province of Alberta does not effectively enforce its child labour laws. This non-enforcement interacts with the working-alone regulations in Alberta's *Occupational Health and Safety Act* to deny workers under age 15 meaningful solo work protection. As a result, children and adolescents are exposed to the hazards adults face while working alone as well as hazards unique to children and adolescents working alone. This suggests that failing to enforce child labour laws has both obvious and subtle effects. The subtle effects are difficult to identify and remediate, in part because of the initial regulatory failure is politically difficult to acknowledge.

INTRODUCTION

Many Canadian provinces regulate employment to mitigate the hazards facing lone workers. Alberta's working alone regulations are enacted under the *Occupational Health and Safety Act*. These regulations do not address hazards specific to workers under age 15. This omission reflects the assumption that the limitations set out in the *Employment Standards Code* about the type and time of child (age 9-11) and adolescent (age 12-14) employment preclude most instances of workers under age 15 working alone.

Research indicates that Alberta's child labour laws are routinely violated. Further, the most common solo work performed by minors (babysitting) has been excluded from the ambit of the *Employment Standards Code* by bureaucratic policy. For these reasons, the assumption that employment standards regulations preclude most instances of workers under age 15 working alone is false. Consequently, children and adolescents working alone must rely upon Alberta's lone work regulations under the *Occupational Health and Safety Act* for protection from the hazards of solo work.

The question then becomes, are the protections set out in Alberta's working alone regulation likely to be adequate for workers under age 15? An initial examination of Alberta's enforcement of its occupational health and safety (OHS) regimes suggests enforcement is not effective. Further, children and adolescents face different hazards from solo work than adults as a consequence of their physical and intellectual immaturity. Consequently, children and adolescents working alone appear to lack meaningful state regulation and adequate age-specific protection.

WORKING ALONE

REGULATING LONE WORK

Recently, the governments of Alberta, British Columbia, Manitoba, New Brunswick and Saskatchewan have begun regulating solo work. There is no data available regarding injury rates for lone workers, but individual cases resulting from workplace violence have garnered headlines. For example, the 2000 killing of a teenage fast-food worker in Alberta and the 2005 killing of a gas station attendant in British Columbia both resulted in legislative change. The injury and death of lone workers from other causes (e.g., being overcome by fumes) has not attracted similar press coverage (Barab 2006).

The political salience of violence against lone workers may reflect growing concern with workplace violence. There were approximately 356,000 violent workplace incidents in Canada in 2004, representing 17 percent of all self-reports of violent victimization (including robbery, sexual assault, and physical assault). Approximately 20 percent of incidents resulted in injury to the victim (de Léséleuc 2004). The youth of the high profile victims noted above and efforts by their families to alter the regulatory environment may also contribute to legislative change.

Working alone is one of several factors that appear to increase the odds of experiencing workplace violence (Canadian Centre for Occupational Health and Safety (CCOHS) 2009; Alberta Human Resources and Employment (AHRE) 2000). While workplace violence against lone workers has political verve, it is important to be mindful that the biggest risk associated with working alone is simply being unable to obtain timely assistance. For all workers, the absence of rescue and/or treatment for an injury or illness can compound the degree of injury and/or result in death.

ALBERTA'S REGULATORY REQUIREMENTS

No jurisdiction in Canada prohibits working alone. Alberta, British Columbia, Manitoba, New Brunswick and Saskatchewan specifically regulate

such work. Other jurisdictions rely upon employer's general OHS duties to take every precaution to avoid injury in the workplace. Part 28 of Alberta's *Occupational Health and Safety Code* requires employers with employees who work alone at a work site where assistance is not readily available if there is an emergency or the worker is injured or ill to:

- conduct a hazard assessment to identify existing or potential hazards in the workplace associated with working alone;
- implement safety measures to reduce the risk to workers from the identified hazards;
- ensure workers have an effective way of communicating with their employer, immediate supervisor or another designated person in case of an emergency situation; and
- ensure workers are trained and educated so they can perform their job safely (AHRE 2006:1).

These requirements are clearly geared to mitigating the danger posed by the absence of timely assistance. Critics noted some shortcomings to Alberta's approach. Employers retain significant discretion in conducting and responding to the hazard assessment. Employer indifference to the hazards of working alone (or resistance to mitigating them) will affect the degree of protection offered. Further, there is no obligation on employers to review how job design and scheduling could be altered to eliminate working alone (Alberta Federation of Labour (AFL) 2000).

Secondly, an effective communication system was vaguely defined. This was remedied in 2009 by requiring employers to both provide workers with a means of contacting help and requiring employers to periodically check-in with employees working alone (D'Aliesio 2009). Thirdly, workers cannot normally refuse working alone as unsafe if working alone is a part of the normal duties of the job (AHRE 2006). Fourthly, there are no circumstances where working alone can be prohibited, despite a 2008 joint labour-industry recommendation that the Minister responsible for the *Occupational Health and Safety Act* be given the power to prohibit working alone in unsafe worksites (Markusoff 2008). The decision not to empower the Minister to prohibit working alone was justified because no studies demonstrated such discretionary prohibitions improve safety (D'Aliesio 2009). It is, of course, difficult to show evidence that prohibiting working alone in certain industries will improve safety if there are no instances where working alone is indeed prohibited.

CHILDREN WORKING ALONE

It is commonly thought that inexperience, physical immaturity and poor judgment are important factors in higher rates of injury found among workers aged 15 to 24 (WorkSafeBC 2007; AEII 2007; Luke and Moore 2004; Levine 2003; Valentina 2002; Institute of Medicine 1998). These factors are also present—and perhaps even more pronounced—when children and adolescents are employed. Specifically, working without adult supervision requires minors to rely upon their own experience, abilities and judgment to manage tasks and situations.

The literature specific to children and adolescents who work alone is relatively thin. Working alone exposes minors to hazards typically associated with solo work, such as workplace violence in the retail and service industry (Loomis, Wolf, Runyan, Marshall, and Butts 2001). These hazards may be greater for child and adolescent workers due to their relatively lower physical and intellectual capacity. Minors may also face hazards specific to their relative vulnerability. A lack of empirical data on this topic makes this conclusion a tentative one, although one that accords with common sense. An example is helpful to illustrate this point.

An unreported interview with an 11-year-old (conducted as part of research for Barnetson 2010) revealed the child delivered flyers alone in a residential neighborhood. The child faced hazards typical of the occupation, such as aggressive dogs, vehicle traffic, and icy walkways. The child's intellectual immaturity increased the likelihood of each hazard resulting in an injury because the minor did not demonstrate the application of adult-level experience and/or ability which would have identified and successfully mitigated the hazards. The child was also subject to some risks caused by his physical immaturity. For example, the carrier bag supplied did not fit the child's frame appropriately and thus created a tripping hazard, especially on the stairs each home had leading to the mailbox. The volume of the carrier bag combined with the size of the route also meant the child had to carry more weight than he could safely manage (and, as a result, he injured his back). Finally, the minor faced the probability of abduction—a hazard largely unique to children.

The frequency of minors working alone is also difficult to establish. Runyan, Schulman, Dal Santo, Bowling, Agans and Ta's (2007) survey of American teens (14-18) working in the service sector found 22 percent of females and 30 percent of males reported working without adult supervision one or more days in a typical work week. And 19 percent of these workers reported working without supervision two or more days per week. The jobs performed by children (9-11) and adolescents (12-14) are likely to differ from those typical of teens thus the supervisory arrangements might differ.

Zieold, Garman and Anderson's (2004) study of employment among Wisconsin minors (aged 10-14) found babysitting and yard work to be among

most common jobs performed, both inside and outside the home. While the frequency with which these minors worked alone was not determined, babysitting is a task that (by definition) is almost always done without adult supervision and yard work (e.g., mowing lawns, trimming hedges, removing weeds) is commonly done without supervision. In a small study of child and adolescent employment in Alberta (Barnetson 2010), 31.2 percent of respondents indicated they babysat and 15.6 percent indicated they delivered newspapers or flyers. Other forms of possible solo work included janitorial work 7.8 percent, work on a golf course (5.2 percent), agricultural work (5.2 percent), and yard work (5.2 percent).

The crux of this analysis is that children and adolescents do work alone. Those that work alone face hazards similar to those of adults. They also face hazards created by their physical and intellectual immaturity. Children are typically protected from many workplace dangers (including those caused by working alone) by restrictions in the type and time of work found in child labour laws. The effectiveness of this protection turns on compliance with these laws.

CHILD LABOUR LAWS

REGULATION OF CHILD AND ADOLESCENT EMPLOYMENT

Historically, Canadian children and adolescents have worked and, in doing so, helped to support their families and developed their own vocational skills (Parr 1980; Sutherland 1990; Bullen 1986; Cunningham 2000). The regulation of child and adolescent employment by Canadian governments began with mining laws during the late 19th century. These were followed by the development of factory acts that set minimum age limits, restricted hours of work, and prohibited work where there was a significant source of danger, although the enforcement of these acts was uneven. Child protection, temperance, municipal, and shop legislation also regulated child and adolescent employment (Loretsen and Woolner 1950; Tucker 1990; Finkel 2006). The work of children around the home (e.g., chores, attending to siblings) is typically differentiated from work undertaken for remuneration or on goods destined for the market (Ashagrie 1993; Basu 1999).

The regulation of child labour is premised upon a particular social construction of childhood. Although a full review of the sociological literature on the social construction of childhood (cf., Jenks 2006; Matthews 2007) is beyond the scope of this paper, a few points are helpful on contextualizing this study. Over time, the primary acceptable focus of children in the developed world has transitioned from work to education (Madge 2006). Consequently, modern children have a narrow set of experiences and are framed (perhaps correctly) as a vulnerable and dependent population (Qvorturp 2002). Many factors, including

a desire to constrain the size of the labour force and the legacy of Victorian values inform this view which, in turn, have shaped child labour laws (James and James 2004; Tucker 1990). Developing countries do not necessarily restrict child labour in these ways (Forastieri 2002). As Roberts (2010) notes, the restriction of child labour in developing countries is sometimes met with moral approbation in the developed world, although this may ignore that much child labour in the developing world is linked to demands from the developed world.

The employment of minors is currently regulated at the international level. Convention 138 of the International Labour Organization (ILO) seeks to abolish the employment of those under age 15 and excludes those under age 18 from hazardous work. Exceptions in developed countries are for light work (with few negative physical, social or educational consequences) or for work connected to vocational training (Forastieri 2002). Canada is not a signatory to Convention 138 but Canada has signed the United Nations' *Convention on the Rights of the Child*. Article 32 requires Canada "recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development" (p.14) and take action to regulate and enforce legislation to this end. Alberta endorsed this 1989 convention in 1999, but government support has been tepid (Pellatt 1999).

The characterization of children as dependent and vulnerable appears to inform Alberta's child labour laws (set out below) but this view is not necessarily universally accepted. Many individuals (including parents) find value in their own childhood work experiences (unreported interviews for Barnetson 2010) and thus discount or ignore the prohibitions and social approbation around child labour. The acceptance of some forms of child labour seems to rest upon the view that child labour is useful preparation for adulthood in the developed world. This vocational justification is in keeping with the increasing emphasis on labour market outcomes in public education (Sears 2003; Slaughter and Leslie 1999). The rehabilitation of child labour in the developed world also provides employers with access to an inexpensive and easily managed workforce.

ALBERTA'S CHILD LABOUR LAWS

In recognition of the vulnerability of children and adolescents, all Canadian provinces regulate their employment via an amalgam of employment/labour standards, school attendance, child welfare, and occupational health and safety legislation (Human Resources and Skills Development Canada (HRSDC) 2006; England 2008). Alberta primarily regulates child labour through the *Employment Standards Code* (ESC) and its attached *Employment Standards Regulation* (ESR).

Section 65(1) of the ESC prohibits the employment of children under 12, when read in conjunction with s.52 of the ESR. The ESR (ss.51-54) allows adolescents (12-14 years old) to be employed outside of school hours for up to two hours on a school day and eight hours on a non-school day, but never between 9 p.m. and 6 a.m. Section 52(1) specified work must occur in four defined occupations (delivery of small wares for a retail store, clerk or messenger in an office, clerk in a retail store, and delivery of newspapers, flyers and handbills) as well as any occupation approved by the Director of Employment Standards (most commonly restaurant and food-service work). Employment must also not be injurious to the life, health, education or welfare of the adolescent, and the adolescent's parent must consent in writing to the employment.

The occupations in which adolescents may legally work limit the exposure of adolescents to the risks of working alone. Delivery of small wares may entail working alone, but few stores provide this service (i.e., it is an archaic provision). Newspaper and flyer delivery also likely entails solo work, although daily newspaper delivery in large, urban areas is mostly performed by adults with access to vehicles.

Two common forms of work undertaken by both children and adolescents are babysitting and yard work. These types of work are not legal forms of employment under the ESR for either children or adolescents. Nevertheless, bureaucratic policy is that this work falls outside of the ambit of the ESC. The precise reason for this exclusion is elusive but the answer typically given is that these forms of work are not employment because there is no intention to establish an ongoing employment relationship. A blanket exclusion that does not inquire into the specifics of the work arrangements is clearly specious and runs contrary to the intent of the legislation: minimizing employment risks for children and adolescents (Barnetson 2010).

ENFORCEMENT OF ALBERTA'S CHILD LABOUR LAWS

There is widespread violation of Alberta's occupational prohibitions and minimum age limits for child and adolescent workers. Alberta makes no effort to identify child and adolescent employment rates or employer compliance rates with child labour provisions of the *Employment Standards Code* (Barnetson 2009a). Survey data pegged the child (age 9-11) employment rate in 2009 at 6.3 percent (about 8200 children) with 78 percent of respondents employed in illegal forms of employment while the legality of the remainder is unclear. The adolescent (age 12-14) employment rate was 19.4 percent (about 26,000 adolescents) with 21.4 percent employed in illegal forms of employment and the legality of 50 percent being unclear (Barnetson 2010). Interview data suggested that employers routinely violate maximum hours of work limits and minimum wage

requirements as well as make illegal deductions for both child and adolescent workers. There is also some indication that reporting requirements for restaurant employment are violated.

The degree of violation may be partly explained by Alberta's complaint-based approach to compliance (Barnetson 2009a). Relying upon children, adolescents and their parents to trigger enforcement appears to founder on the inability of these individuals to identify violations and a general unwillingness to report them to the government (Barnetson 2010). In addition to having little chance of being caught violating child labour laws, employers face no real risk of being penalized for such a violation beyond having to pay what was owed in the first place.

At present, there is little attention paid to the issue of child labour in Alberta, although the Alberta Federation of Labour expects to issue a short report (based on Barnetson 2010) in the spring of 2011. That Alberta's enforcement efforts fall short of the requirements of International Labour Organization (ILO) and United Nations (UN) conventions is clear and well known (McKay-Panos 2006; Canadian Labour Congress (CLC) N.d.). It may be that Alberta's inadequate or poorly enforced child labour laws are simply lost amid the broader non-enforcement of employment laws (e.g., AFL 2010). The Canadian Labour Congress has recently launched a national campaign to bring Canadian jurisdictions into compliance with ILO Convention 138 (CLC 2010), but so far this has generated no notice in Alberta, which along with BC is one of the two worst offending provinces.

EFFECTIVENESS OF WORKING ALONE REGULATIONS

Alberta's working alone regulations in the *Occupational Health and Safety Code* contain no provisions specific to children or adolescents. This omission reflects the assumption that the limitations set out under the *Employment Standard Code* about what work children and adolescents may do and when they may do it largely precludes children and adolescents from working alone. The failure of Alberta employers to observe (and the government to enforce) the legislative prohibitions around the employment of children and adolescents means children and adolescents performing solo work must rely on working alone regulations for protection from the hazards of solo work.

The effectiveness of the working-alone provisions is also predicated upon enforcement as well as appropriateness. Alberta does not collect statistics about the enforcement of working alone regulations, but some sense of the overall effectiveness of enforcement can be developed by examining OHS input, process and outcome indicators. These indicators were selected based upon their availability and, when combined, allow us to draw inferences about the degree of enforcement of working alone regulations.

SPENDING

In 1991, Alberta spent \$11.14 per worker (constant 2002 dollars) on OHS activity. In 2009, it spent \$10.13. By contrast, Ontario spent \$10.80, Nova Scotia spent \$13.61 and Manitoba spent \$11.73 (AFL 2010). Approximately \$21.7 million of Alberta \$23.3 million OHS budget comes from transfers from the workers' compensation board (i.e., employer premiums) to the government. Direct taxpayer funding of OHS in 2008/09 was approximately \$1.6 million (Alberta Auditor General 2010).

INJURIES

Alberta consistently reports higher than average workplace fatalities, perhaps reflecting high employment levels in dangerous industries (AFL 2010). Alberta also has a high number of absolute injuries. In 2007, the WCB accepted 175,297 new injury claims (WCB 2008). Accounting for 10 percent of the workforce not being covered by workers' compensation and the approximately 40 percent of injuries that are not reported (Shannon and Lowe 2002) means the total number of injuries was approximately 321,000—about 1 in 5 workers if injuries were distributed evenly. This revised estimate still excludes injuries requiring only first aid as well as most occupational diseases.

INSPECTORS AND INSPECTIONS

In 2008, Alberta had 84 health and safety inspectors, 144,000 employers and 2,013,300 employees (Alberta Ministry of Justice and the Attorney General 2008; Alberta Employment and Immigration (AEI) 2010a). This means there was 1 inspector for every 1714 employers (many of whom have more than one worksite) and every 23,968 workers. There were 9600 site visits by inspectors in 2008, although many of these inspections were repeat visits to the same employer (Alberta Auditor General 2010). It may be more accurate to look at 2005 data on the number of *worksites* inspected—some 5237 (Canadian Broadcasting Corporation (CBC) 2007). Charitably assuming each of Alberta's 140,000+ employers had only one worksite, at that rate it would take about 26 years for every worksite to receive a single visit. A 2010 inspection blitz of 73 commercial construction sites resulted in 214 OHS orders, including 39 stop work orders and 12 stop use orders. Over one-quarter of worksites were subject to a stop-work order indicating there was imminent danger present (AEI 2010b).

ORDERS

It takes the government up to 18 days to respond to a complaint about an unsafe workplace. Compliance is generally achieved through the issuance of orders. In 2007/08, inspectors issued 3392 orders (approximately one per 100 workplace injuries). The average time between the issuance of the order and compliance was 86 days. Alberta's Auditor General (2010) also concluded Alberta did not effectively address persistent non-compliance, in part because it did not have a clear mechanism for escalating enforcement activities.

PROSECUTIONS

In 2008, Alberta reported 22 successful prosecutions for violations going as far back as 2004. During this time, Alberta recorded approximately 700 occupational fatalities (AEI 2008). To be fair, prosecutions for some of these fatalities may be ongoing or previously concluded. The largest fine was \$419,250 for a 2004 violation. That sounds impressive, but when compared to the company's annual revenues of \$47 million in 2007, such fine is akin a person with an annual income of \$50,000 getting a \$440 ticket—about same fine you'd get for doing 80km/h in a construction zone. Prosecution numbers dropped in 2009, with only 9 prosecutions and the highest fine being \$300,000.

These indicators raise significant question about the effectiveness of OHS enforcement activity. Alberta employers are unlikely to be inspected even if there is an injury on their worksite, they face little chance of prosecution even if they kill or seriously injure a worker, and prosecution results in a relatively small fine. Assuming the working alone provisions of the *Occupational Health and Safety Act* are enforced in a similar manner, it is reasonable to conclude they provide little protection to workers, including those under age 15.

Further undermining the potential effectiveness of lone-worker protections for children and adolescents is their (in)applicability to workers under age 15. Alberta's working-alone provisions are clearly designed to mitigate the danger posed by the absence of timely assistance in the event of injury. This risk is one faced by both adult and child workers. The regulation contains no consideration of hazards specific to child and adolescent workers that emerge from their physical or intellectual immaturity. This immaturity may make hazardous for children and adolescents tasks or substances that are not (very) hazardous for adults (Forastieri 2002). This omission is may reflect the assumption that these risks are mitigated through the occupational prohibitions and limitations present in the ESR. That these regulations are routinely violated is neither evident (they are administratively invisible) nor explicitly contemplated in the working alone regulations.

CONCLUSION

There is a significant gap between the rules about and the reality of child labour in Alberta. Children and adolescents are employed in significant numbers and frequently the type and time of employment is illegal. Alberta makes no effort to identify child and adolescent employment rates or employer compliance rates with child labour provisions of the *Employment Standards Code*. Further, Alberta's compliance strategy is demonstrably ineffective at identifying and remedying these violations. The result is the appearance of a high degree of compliance that belies a high degree of illegal child labour.

One effect of erroneously assuming compliance with child labour laws is that other regulatory regimes can ignore some risks that are faced by children and adolescents whose employment is not in compliance with child labour laws. Indeed, it becomes politically difficult to not ignore these risks. This is because addressing such risks requires bureaucrats and politicians to realize (and publically admit) that the child labour provisions of the *Employment Standards Code* are widely violated. The result is that children and adolescents often work alone, facing the same hazards as adult workers but also unique hazards caused by their physical and intellectual immaturity.

The solution to this circumstance is not additional working-alone regulations in the *Occupational Health and Safety Code*, but rather the effective enforcement of existing employment standard provisions regarding child labour. It may be possible to increase compliance by supplementing complaint-driven enforcement with significant numbers of random inspections. Over time, such random inspections would provide a fuller picture of industries with high levels of non-compliance. The government could also increase the visibility of child labour infractions, both through increased prosecution and by publically naming employers who violate child labour laws. To date, little concerted public pressure has been exerted by any group towards this end.

Further, although research is still preliminary, there appears to a group of workers that is being excluded from basic statutory employment rights through direct exclusion, poor enforcement or a combination of the two. These workers hold childcare, food services, housework, yard work and agricultural jobs (Barnetson 2009a, 2009b, 2010). This group includes a significant proportion of workers from relatively vulnerable populations (e.g., minors, women, and/or immigrants) and these jobs often have a significant degree of precariousness to them (Vosko 2006). Assuming this preliminary pattern can be substantiated, it raises difficult questions about whose interests are being prioritized by the content and application of employment laws in Alberta and whether there is systemic discrimination occurring on the basis of age, gender and race.

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