The hazards of mobility: who assumes the consequences of injuries sustained by workers on the move in Canada?

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Outline of presentation

• Spectrum of employment-related geographic mobility
• OHS and Workers’ compensation frameworks in Canada
• When is a mobile worker at work for compensation and prevention purposes?
• Conclusion:
  • What links with precarious employment and regulatory effectiveness?
  • What are the consequences of fuzzy boundaries?
### Spectrum of employment related geographic mobility (E-RGM)

- Commuting between clients on a daily basis
- Short term commute (+-3 hours/day)
- Long commute within province
- Long commute to another province
- International commutes
  - Temporary foreign workers
  - Canadian workers working in another country temporarily
- What links with precarious employment?
- Shifting risks to workers?

### Regulatory frameworks X 13

- Workers’ compensation
  - “no-fault” systems funded by employers
  - Employers protected from law suits by workers
  - Coverage for injury “arising out of and in the course of employment”
    - Commuting accidents?
    - Accidents while on a mission for the employer?
    - Injury while in work camps
- OHS legislation
  - Right to refuse dangerous work
  - General duty of employers to provide safe working conditions
  - Are commuting conditions part of working conditions?

METHODS: Classic legal analysis and key informant interviews
Travelling
Weather does not always make travelling easy in Canada...

Getting to and from work: who assumes the risk of shifting status?

- Road travel
  - Vehicle safety
  - Driver safety
  - Road conditions
  - Road safety
- Other means of transportation
  - Helicopter
  - Air travel
  - Bicycles (TFW)

- If conditions of travel are dangerous
  - Right to refuse?
  - Risk-taking at the worker’s expense
  - Strong pressures to take risks because of economic incentives to get to work, or psychological incentives to care for patients
Home care workers

- Travelling from home to first client or home from last client
  - Not covered
- Travelling between clients
  - Depends on province
  - Depends on contract
  - Depends on invisible rules...

Injury travelling between clients

- "WCB: It varies. That’s why I was hesitating a bit with your example of the homecare worker. Because if the homecare worker is just a worker and not a supervisor, it could be different. So the homecare worker might have three clients in three locations, and I wouldn’t be covered going to and from any of those clients, not until I get there.
- Interviewer: Why is that?
- WCB: But if I’m a supervisor, and I have to visit all three clients because I’m supervising whoever that worker is at that place, then my employment is considered to be including the travel to three places." ...
Injury travelling between clients

• “...It’s just the default to the general principle that commuting to and from work is not the responsibility of the employer. So if you have two clients, then it’s your responsibility when you accepted that employment to get to that place of employment, whereas the employer who’s a supervisor who is assigning supervision in different locations to that person, it’s more within the contract requirements and requirements...”

Temporary farm labour

• When is a fatal accident during transport of farm workers considered a work accident?

• Employers will fight to have transport accidents considered to be work accidents if they can be sued for the consequences of the accident.

• Sometimes, the worker may need to fight to obtain workers’ compensation benefits.
Drive in Drive out: mine workers

- Union rep: “Fatigue is a giant issue. It’s incredible how fatigue is a massive issue, especially in any of the resource extraction industries, […] Quite often, you know, with the serious fatalities and serious incidents, when we take a look at the investigations, fatigue is always a factor, you know?”

Commuting and fatigue

- Interviewer: What part of that fatigue is attributable to commuting, if any?

- Union rep: Well, I mean that is contingent upon the job, right? And a lot of people always be sleeping on the buses. You know, when I was talking about [name of mine destination] everybody sleeps on that bus. That’s good sleep time, right? And most people will try and sleep on the commute, as long as they’re not the one who has to drive or something. But that’s not always possible, right?
Intensive shifts

• "Union rep: Three and a half days. So three work days in and three out. But they'll get in a car and drive over night into Prince George, get on the bus, and then the company does the rest of the driving all the way up to the mine, from Prince George.
• Interviewer: Okay, so they’ll get in the car and they’ll drive overnight.
• Union rep: Yeah.
• Interviewer: On their own dime. So if they’re injured in that drive…
• Union rep: They’re not covered, no.
• Interviewer: And then the company picks them up at Prince George?
• Union rep: Yeah, and they get on a bus, yeah.
• Interviewer: And do they start right away, or?
• Union rep: Oh yeah, you get off the bus and you’re pretty much on shift, right? You drop your stuff off and, uh, there you go."
Gold collar mobility

An engineer travels from Québec to France to consult on a construction project. During his stay he visits an ancient ruin during his free time and is seriously injured.

- Compensation granted
- Hrynkiw et Alcan Aluminium Ltée, [2006] C.L.P. 729

Opposite conclusion:
- Bombardier aéronautique inc. et Forbes, 2014 QCCLP 2512

E-RGM and precarious employment: regulatory effectiveness

- The precariously employed are largely invisible to regulators and traditional OHS actors like unions.
- So are, to some extent, internally mobile workers
- If you can’t count them, do they count?
  - Tracking exposures
  - Injury data/claims data
  - Injury sustained in non-compensable activities like travelling or living in temporary housing.
  - Invisibility of travel time neutralizes fatigue prevention strategies
- Do employers have incentives to prevent dangerous travel?
Conclusion

- Fuzzy boundaries – fuzzy responsibilities
- Economic incentives for prevention of travel-related hazards are non-existent.
- Economic and moral incentives for risk-taking by workers are significant.

- Flexible interpretations allow
  - for inclusion of “people like us”
  - Inclusion when coverage protects employers from liability
  - Exclusion when the more powerful party has no vested interest in coverage.

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