

Diverging Trends in Worker Health and Safety Protection and Participation in Canada, 1985-2000

Tendances divergentes dans la protection et la participation des travailleurs en santé et sécurité au travail au Canada, 1985-2000

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Résumé de l'article

Le néo-libéralisme est à la fois une idéologie caractérisée par des valeurs de responsabilité individuelle et de liberté de choix et par une pratique institutionnalisée via une réaffirmation des relations de marché et un retrait graduel de l'intervention directe d'un gouvernement. Malgré l'ampleur de la restructuration néo-libérale au Canada, celle-ci ne s'est pas produite de façon uniforme au plan de la chronométrie et de ses résultats à travers les domaines de régulation et les juridictions politiques. La législation encadrant la santé et la sécurité au travail est très révélatrice à ce sujet.

Cet essai se veut une comparaison des développements récents dans la législation en santé et sécurité au travail dans cinq juridictions au Canada : l'Alberta, la Colombie-Britannique, la Nouvelle-Écosse, l'Ontario et le Fédéral pour la période allant de 1985 à l'an 2000. Le centre de l'analyse porte sur les régimes de citoyenneté des travailleurs, lesquels à leur tour se concentrent sur les droits de participation et de protection des travailleurs dans le domaine de la santé et de la sécurité au travail. On a retenu quatre types de citoyenneté propre à ces régimes dans ce domaine et on a retracé brièvement, il va sans dire, leur développement historique. Au cours des années antérieures à celle de 1985, toutes les juridictions canadiennes renforçaient les droits de protection et de participation, mais le régime qui en a découlé, mieux décrit en termes d'autorégulation partielle sous mandat, en était un d'une grande flexibilité qui comportait beaucoup de variations au plan de sa mise en oeuvre.

L'analyse des développements de la législation depuis 1985 révèle une divergence croissante entre les juridictions en ce qui concerne ces aspects de l'implication des travailleurs en matière de santé et de sécurité au travail. Alors que l'Alberta et le Fédéral réduisaient de façon draconienne leur intervention, chaque juridiction adopta une approche nettement différente à l'endroit des droits de participation sur les lieux de travail. Au moment où le gouvernement fédéral renforçait récemment les droits de participation des travailleurs en modifiant le *Code canadien du travail*, l'Alberta demeurait la seule province où les comités de santé et de sécurité au travail n'étaient pas obligatoires dans les établissements de vingt travailleurs ou plus. En Colombie-Britannique, avec un gouvernement NPD au pouvoir durant la majeure partie de la décennie 1990, les droits de participation des travailleurs furent modestement bonifiés, en incluant une législation en matière d'ergonomie et en augmentant les amendes lors de la violation des règles de santé et de sécurité, mais on nota moins de progrès au plan de la bonification des droits de participation sur les lieux de travail. La Nouvelle-Écosse n'était pas seulement la seule des dernières juridictions canadiennes à adopter de façon formelle une autorégulation partielle sous mandat, mais sa loi présentait une des participations et des protections les plus faibles en termes de droits. Ces lacunes devinrent évidentes au moment où la mine Westray connut une explosion en 1992, qui créa en fait une occasion de bonifier de façon significative la citoyenneté des travailleurs en matière de santé et de sécurité. Alors qu'une commission royale condamnait les opérateurs de mine incompetents et insouciantes et les inspecteurs du gouvernement, elle faisait sienne la philosophie interne sous-jacente de responsabilité sans cependant aborder le sujet des intérêts conflictuels et de l'inégalité des rapports de pouvoir entre les employeurs et les syndicats. En bout de ligne, les réformes de la législation ont peu contribué à la bonification des droits de citoyenneté des travailleurs en santé et sécurité au travail. De plus, on possède quelques indications à l'effet que la mise en oeuvre de cette législation demeure faible. Enfin, les travailleurs de l'Ontario ont fait des gains en termes de droits de participation et de protection renforcés sous un gouvernement libéral à la fin des années 1980, mais sous le gouvernement NPD suivant, les actions visant à bonifier ces droits diminuèrent de façon significative et des aménagements institutionnels bipartites ont battu de l'aile. Entre 1995 et 2000, un gouvernement conservateur était au pouvoir. Il a contribué à affaiblir les droits de travailleurs dans chaque secteur, sauf en matière de santé et de sécurité, où il a augmenté l'ampleur de l'activité de mise en oeuvre des droits, alors qu'il réduisait les niveaux permisibles d'exposition aux substances toxiques pour une première fois au cours de la décennie.

Pour rendre compte de cette variation dans la politique en matière de santé et de sécurité, nous retons les facteurs suivants : le parti politique au pouvoir, la taille de l'établissement et la densité syndicale selon la théorie modifiée du pouvoir comme ressource. La faiblesse relative des mouvements ouvriers et les partis d'opposition sympathiques à la cause ouvrière en Alberta et en Nouvelle-Écosse par comparaison avec ceux de la Colombie-Britannique nous aident à saisir pourquoi les droits des travailleurs sont moins reconnus dans ces deux premières provinces. La faiblesse relative du mouvement ouvrier dans la sphère fédérale et l'incidence comparativement plus élevée de gros établissements nous aident à comprendre pourquoi les droits de participation sur les lieux de travail sont plus prononcés dans cette sphère. La théorie du pouvoir comme ressource ne réussit pas à expliquer le niveau comparativement élevé d'activité de mise en oeuvre de la législation en matière de santé et de sécurité en Ontario. La prise en compte du discours public comme ressource au sein du modèle permet d'expliquer pourquoi les droits de travailleurs en matière de santé et de sécurité ont connu un meilleur sort que d'autres droits sous les gouvernements néo-libéraux; de plus, cela apporte un brin de nuance à la comparaison.

Enfin, cet essai se termine en faisant trois mises en garde. D'abord, il présente une garantie à l'effet que la variation entre les provinces est significative, sans perdre de vue que cette variation entre les juridictions demeure à l'intérieur d'un corridor étroit. Ensuite, l'objet de l'essai porte sur le changement institutionnel et cela ne nous permet pas d'apprécier complètement la perspective de la base ouvrière. Enfin, cet essai ne contribue pas directement au débat sur l'efficacité des stratégies particulières de régulation.

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Diverging Trends in Worker Health and Safety Protection and Participation in Canada, 1985-2000

ERIC TUCKER

Despite the comprehensiveness of neo-liberal restructuring in Canada, it has not proceeded uniformly in its timing or outcomes across regulatory fields and political jurisdictions. The example of occupational health and safety (OHS) regulation is instructive. This article compares recent OHS developments in five Canadian jurisdictions, Alberta, British Columbia, Nova Scotia, Ontario and the Federal jurisdiction. It finds that despite the adoption of a common model by all jurisdictions, there has recently been considerable divergence in the way that the elements of worker participation and protection have been combined. Modified power resource theory is used to explain a portion of this divergence.

Neo-liberal values of individual responsibility and freedom of choice have risen to near hegemonic status and have been broadly institutionalized in legislation and government policy. As Jenson and Phillips (2001) have noted, this development represents a sea change in the Canadian citizenship regime, moving it from a regime of equitable citizenship in which the values of social justice and equity provided the justification for an expansion of social rights toward a marketized regime. The “lean citizens” (Mooers 1999) who inhabit this world are expected to develop their own skills and strategies to resolve the problems they confront with a minimum

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of direct state assistance. Neo-liberal restructuring and the model of lean citizenship extend into the field of labour and employment regulation as many Canadian jurisdictions have rolled back employment standards in the name of promoting greater flexibility (Fudge 2001) and have also stripped down collective bargaining laws making it more difficult to unionize or to engage successfully in collective action (Martinello 2000; Jain and Muthu 1997).

However, as Burke, Mooers and Shields (2000: 16) observed, “Despite the comprehensive nature of neoliberal restructuring, it does not proceed in the same fashion or at the same pace in every policy sector.” This phenomenon of diversity within a broader process of restructuring is well illustrated in the field of occupational health and safety regulation (OHS), as this study of five Canadian jurisdictions (Federal, Alberta, Ontario, Nova Scotia and British Columbia) will demonstrate. While all these jurisdictions moved towards a model of mandated partial self-regulation in the 1970s and 1980s (Rees 1988: 8-12), combining worker participation in firm-level OHS management systems with direct state protection, significant differences are developing in respect of the strength of and balance between these elements, resulting in very different OHS worker citizenship regimes.

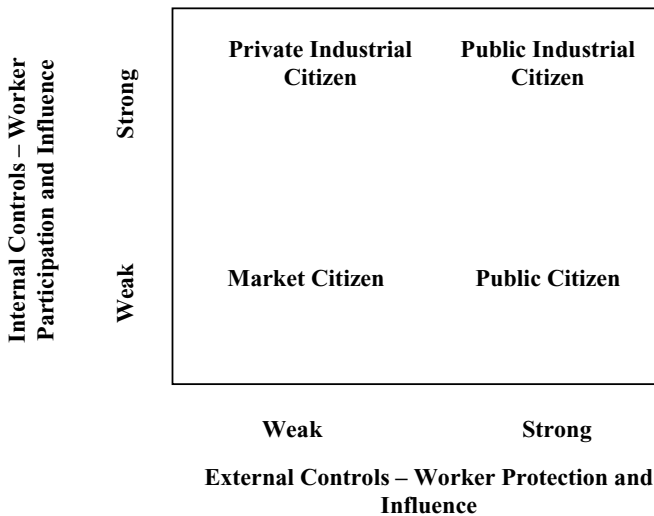
This article’s objective is both analytical and comparative. In the first part, drawing on work developed at greater length in Tucker (2004), it outlines a conceptual map of worker citizenship in regimes of OHS regulation, focusing on the dimensions of protection and participation, and briefly traces the historical trajectory of these regimes in Canada from the 1880s to the 1980s. The second part analyzes OHS developments in five Canadian jurisdictions from the 1980s to the present, and concludes by mapping and comparing their regulatory trajectories along these two key dimensions of OHS citizenship. Finally, it attempts to explain this growing divergence using power resource theory (Korpi 1978; O’Connor and Olsen 1998), with its focus on trade union density, political party in government, and employer size, modified by an additional focus on the role of ideology (Hobson 1999), both as a power resource and as a means of emphasizing the role of agency in the deployment of power resources.

WORKER CITIZENSHIP IN OHS REGIMES

In the context of OHS regulation, there are two principal dimensions of worker citizenship rights: protection and participation. Protection rights in this context refer to state established and enforced standards of workplace health and safety. In contemporary Canadian OHS parlance, this is often referred to as the external responsibility system (ERS). Participation rights

refer to the right of workers to participate in the management of workplace hazards. Participatory rights are a constitutive element of the so-called internal responsibility system (IRS) or, following more recent international trends, the occupational health and safety management system (OHSMS), which simply refers to the system established by an employer to manage OHS (Frick et al. 2000). The strength of each of these dimensions of worker citizenship rights can vary greatly, producing very different citizenship regimes. Figure 1 maps four ideal types.

FIGURE 1
Conceptual Map of Worker OHS Citizenship Rights



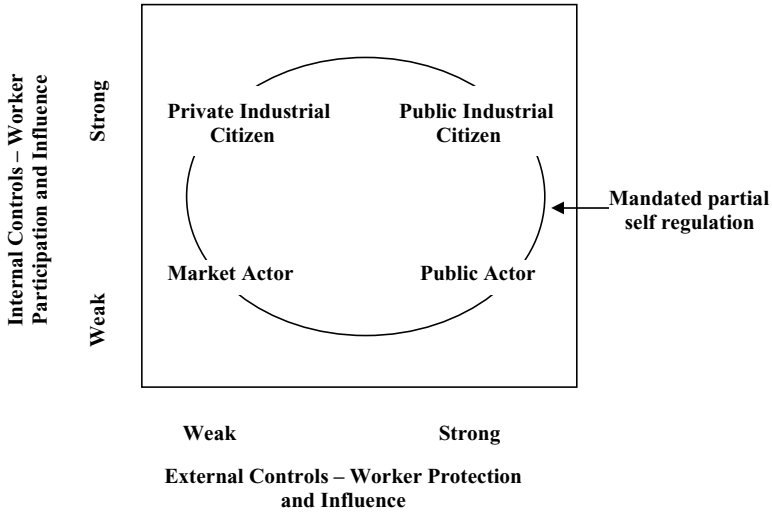
The first regime, market citizenship, is characterized by weak direct state regulation with worker participation limited to the negotiation of individual contracts of employment. In theory, workers influence firm-level decision making individually, demanding risk premiums to incur hazardous working conditions. Employers faced with such demands respond by making marginal judgments about whether it is cheaper to pay the premium or to remove the risk, thereby generating efficient levels of safety (Viscusi 1983). This was the first regime of OHS regulation, selected by the courts in the nineteenth century when faced with employer liability actions (Tucker 1990: ch. 3). Market citizenship was never widely accepted by workers who perceived that OHS risks were not voluntarily assumed but rather imposed in the context of a labour market in which they enjoyed

little bargaining leverage. The result, from their perspective, was excessively hazardous working conditions that all too often materialized in uncompensated deaths or injuries.

In the late nineteenth century, workers successfully pressured governments to move toward public citizenship by granting workers a right to state protection against unacceptably hazardous conditions. These laws, however, not only were partial in their coverage, ambiguous in their requirements, and poorly enforced, but they did not provide workers with any rights to participate in OHS management, commonly leaving workers to fend for themselves as market citizens. As a result, the passage of no-fault workers' compensation laws in the early decades of the twentieth century may have done more than direct regulation to protect workers by increasing the cost to employers of workplace injuries and deaths (Aldrich 1997).

This state of affairs persisted through most of the first three-quarters of the twentieth century, except that with the expansion of collective bargaining, particularly after World War II, some workers (mostly men in manufacturing and resource industries) entered the world of private industrial citizenship in which some workers enjoyed participation rights through negotiated health and safety committees and arbitral recognition of the right to refuse unsafe work (Bacow 1980; Gunderson and Swinton 1981). However, by the mid- to late-1960s, worker discontent was rapidly escalating and workers were demanding, without using this terminology, to be written into a reformed regime of OHS regulation as public industrial citizens, entitled to strongly protective laws and greater participatory rights. Beginning in the 1970s, a new generation of OHS legislation was being enacted, distinguished by its combination of stronger external controls with mandated internal control systems which required worker participation, including rights to know, to representation through joint health and safety committees, and to refuse unsafe work. Inherent in these regimes, however, was the potential for conflict over the strength of and balance between participation and protection. On the one hand, there were those who believed that workers and employers had fundamentally common interests in OHS so that with weak participatory rights, the parties could be entrusted to self-regulate with the state acting primarily as a facilitator and resource. On the other, there were those who saw OHS as an arena of conflict, requiring a combination of strong state regulation and high levels of worker participation. In practice, then, mandated partial self-regulation could be designed to accommodate various OHS regimes, depending on the strength and combination of participation and protection rights (Figure 2).

FIGURE 2
Possible Configurations of Worker OHS Citizenship in Mandated Partial Self-Regulation



***THE POLITICS OF PROTECTION AND PARTICIPATION:
DIVERGING TRENDS IN CANADIAN OHS REGULATION***

While the general thrust of this new wave of legislation was upward and to the right, the strength of worker rights to protection and participation varied. Moreover, through legislative amendment, administrative action or workplace implementation, the trajectory of regulation could shift. As a result, the politics of protection and participation operated on different levels. This article focuses principally on the politics of legislative and administrative change, analyzing and comparing developments which have taken place in five Canadian jurisdictions since the mid-1980s.

Developments in Five Canadian Jurisdictions

Alberta

Alberta was among the first provinces to adopt mandated partial self-regulation, but the participatory rights granted to workers were weak. Joint health and safety committees (JHSC) were only required when ordered by

the Minister, and the right to refuse unsafe work was framed as a duty that arose only in cases of “imminent danger.”¹ Efforts to strengthen worker participation and self-protection rights since that time have had limited success. Regulations promulgated in 1977 and 1978 required 110 work sites to establish JHSCs, and a 1977 regulation provided that worker members were to be elected by the non-managerial employees, that committees were to have worker and employee co-chairs, that committees were to meet at least monthly, and that they were to carry out regular workplace inspections. The province has consistently rejected demands to make JHSCs mandatory in larger (20 or more employees) workplaces, and no new ministerial orders requiring JHSCs have been issued. Under the draft OHS Regulation and Code currently being prepared, existing designations will be repealed and JHSCs will only be made mandatory for work sites on the request of an inspector who finds repeated OHS violations and worker complaints, a higher than average lost-time injury rate, and poor employer-employee communication on OHS issues.² To some extent, the weakness in the law has been ameliorated by the ability of some unionized workers to bargain for JHSCs, including an agreement between the Alberta Union of Public Employees and the Alberta government that covers some three thousand work sites. Still, this leaves the large majority of the province’s workers without employee OHS representation.

The right to know was strengthened, largely as a result of the Canada-wide agreement to introduce the Workplace Hazardous Materials Information System (WHMIS) in 1987. Alberta’s version, however, is particularly restrictive, providing limited worker entitlements to training and involvement.³ The right to refuse has been strengthened slightly by two amendments in the 1980s,⁴ and by work refusal decisions issued by the Occupational Health and Safety Council (Gereluk 2001), but its scope remains narrow.

The Alberta labour movement had some success strengthening workers’ protection rights. In 1980 the act was amended to impose duties on suppliers and principal contractors, to enlarge inspectors’ powers, and to triple

1. *Occupational Health and Safety Act*, S.A. 1976, c. 40.

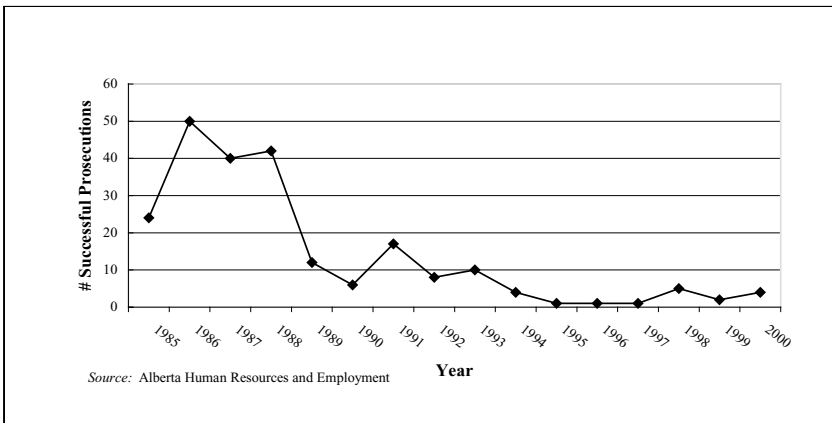
2. Alberta Reg. 197/77 (JHSC reg.); AR 218/77, 306/77 and 91/78 (designations). The survey is referred to in AHRE, “Discussion Paper: Review of the Joint Work Site Health and Safety Regulations”; AHRE, *Consolidated Draft Occupational Health and Safety Regulation and Code* (November 29, 2002 Release), Section 202.

3. “Our Canada - Not Theirs... The Struggle Continues” (33rd Annual Convention of the AFL, 1989), D-27 - D-38 (OHS Resolutions), E-4 - E-7 (Occupational Health and Safety Policy Paper, “Back-to-the-Basics”).

4. S.A. 1983, c. 39; S.A. 1988, c. 36.

penalties, and in 1988 penalties were increased tenfold, to a maximum of \$150,000 for a first offence and \$300,000 for a second or subsequent one.⁵ As well, the resources available for health and safety regulation were increased,⁶ and the number of successful prosecutions between 1985 and 1988 was comparatively high (Chart 1), although the average fine was quite low (\$815) or five percent of the maximum.

CHART 1
Successful OHS Prosecutions, Alberta 1985-2000



These small advances, however, ground to a halt by the end of the 1980s, as the government embraced the ideology and practice of neo-liberalism with a passion (Denis 1995; Panitch and Swartz 1993: 105-108). The election of the Klein government in 1993 set the stage for dramatic changes to Alberta's health and safety regime, epitomized by the "partnership" approach. According to the 1995 OHS Business Plan, "A key goal... focuses on moving the Department of Labour away from an interventionist/regulatory role to facilitation and partnerships in areas of service delivery... This approach emphasizes consultation, collaboration, and voluntary compliance."⁷

Employers who participate in the Partners in Injury Reduction (PIR) obtain a Certificate of Recognition by implementing an occupational health

5. R.S.A. 1980, c. 15 (Supp.); S.A. 1988, c. 36.

6. Alberta Federation of Labour, *The Struggle for a Safe and Healthy Workplace* (1992).

7. Alberta, *Occupational Health and Safety Business Plan 1995 to 1997* (1995), 3.

and safety management system that is audited by a Certified Independent Auditor, who might be an employee of a Certifying Partner (an organization that is recognized by Alberta Resources and Employment for their leadership in OHS) or an independent consultant. The Certifying Partner then reviews the audit to insure that it has been done properly. Employers are encouraged to become Partners in Reduction by the promise of reduced accident costs, improved worker productivity and morale, and lower workers' compensation premiums. As well, employers holding certificates are subject to paper reviews of their programs, rather than traditional inspections.

This approach emphasizes employer and industry self-regulation, with little or no role for worker participation. The certification requirements do not require enhanced worker participation rights. The hazard identification component (worth 15%) does not specifically reward employers whose programs involve workers in inspections, while the "management, leadership and organizational commitment" section (also worth 15%), merely stipulates there must be an informal system for two-way communication. As well, workers are not part of the audit process. They do not have a right to know the results of the audit or to review or challenge the scores that have been assigned. Workers participate primarily by conducting themselves according to company policies and procedures.⁸

Consistent with this approach, government expenditures on OHS (adjusted for inflation) dropped 40% over the 1990s. The government emphasizes flexibility in its regulations, preferring "industry developed and supported standards" taking the form of "Codes of Practice, Recommended Practices, Safe Operating Procedures, and Safety Manuals." Compliance activities emphasize consultation and cooperation, using legal sanctions only as a last resort. This policy has been pursued with a vengeance. Prosecutions dropped off precipitously after 1988. Between 1985 and 1988, there were on average 39 prosecutions a year; 10 between 1989 and 1994 and 2 between 1995 and 1999 (Chart 1). Moreover, although the average fine since 1989 has increased to \$7,670.00, this amount represents about seven percent of the maximum for a first offence.⁹

There are, however, some signs that labour opposition to this turn in government policy is having some effect. A government-appointed labour-management task force reviewed OHS regulations, and a bipartite Council on Workplace Safety reviewed its recommendations. Labour participants in this process report the consensus process has worked surprisingly well, although agreement was not reached on some key issues. Bill 37, passed

8. AHRE. 1999. *Partnerships in Injury Reduction – Audit Instrument*.

9. Kevin Flaherty, "Presentation Made to WHSC Planning Retreat" (Nov. 2000).

in 2002, institutionalized this process by giving the Council the power to make codes that may become legally binding by order of the Minister after consultation with representatives of affected employers and workers.¹⁰ As well, from 1997 to 2000, the number of inspections increased from 1,233 to 5,998, the number of orders issued rose from 127 to 1,564, there were more prosecutions, and the average fine per prosecution rose to nearly \$27,000 or seventeen percent of the maximum.¹¹ While these changes must be viewed against the massive drop-off in enforcement activity in the 1990s, they represent a slight shift in the trajectory of OHS regulation in the province. Moreover, Bill 37 increased fines for first offences to \$500,000.00, and for second and subsequent offences to \$1,000,000.00. In addition, judges have been given the power to issue directions to convicted employers to establish or revise OHS policies and training programs, and to impose other conditions they consider appropriate.

British Columbia

British Columbia's scheme of OHS regulation has a number of distinctive features. First, its workers' compensation board was given the responsibility for occupational safety, which, in the absence of specific OHS legislation, it exercised through regulation making. Second, for reasons that are not fully documented, industrial workers gained participation rights in B.C. before they did so in other Canadian provinces. The B.C. Industrial Health and Safety Regulations required worker safety committees beginning in 1920, and in 1944 the regulations were amended to require the establishment of JHSCs with powers to inspect and make recommendations. Third, during the first NDP government, from 1972 to 1975, Terence Ison, the chair of the WCB, strengthened the board's enforcement capacity by hiring more inspectors and by adopting a system of penalty assessments that allowed the board to raise the premiums of employers whose operations were found to be hazardous upon inspection (Rest and Ashford 1992: ch. 3).

Ison's tenure as board chair came to an end shortly after the election of a Social Credit government in 1975. It was during this period that the Industrial Safety and Health Regulations underwent a major overhaul, but little was done to strengthen workers' participatory rights. JHSC requirements and powers remained unchanged and the right to refuse was limited to situations of "imminent danger," but failed to protect workers who were penalized by their employer for their action.¹² At the same time, the board's

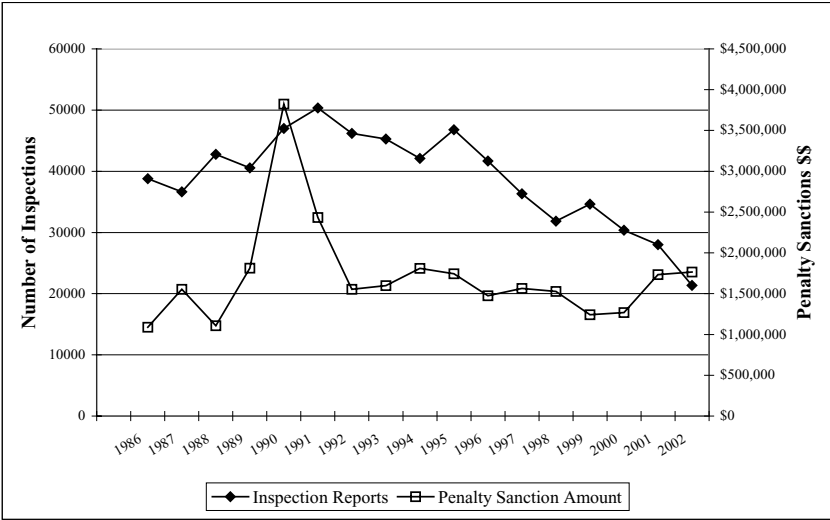
10. *Occupational Health and Safety Act, 2002*, S.A. 2002, c. 31 (Bill 37).

11. Data provided by Alberta Human Resources and Employment.

12. B.C. Reg. 585/77; *Re Industrial Health and Safety Regulations*, B.C. Workers' Compensation Reporter, Decision No. 349 (19 May 1982).

approach to enforcement shifted strongly from deterrence to persuasion. In sum, the first Socred government institutionalized a version of mandated partial self-regulation that granted workers limited participation rights and low levels of state protection (Manga, Broyles and Reschenthaler 1981: 173-199). Matters grew even worse after the 1983 elections, as the Socred government embraced neo-liberalism (Palmer 1987). A study of regulatory enforcement during the years 1984-1986 found that many employers repeatedly committed the same offence, but that few were ever punished (Brown 1994), although labour protests eventually resulted in some increases in enforcement activity during the later part of the 1980s (Chart 2).

CHART 2
Enforcement Activity, British Columbia, 1986-2002



The election of an NDP government in the fall of 1991 created the opportunity to strengthen OHS citizenship rights. Initially employers participated in a consensus process that produced the first new regulations in a decade, dealing with workplace violence and reducing exposure to hazardous substances.¹³ Employer resistance soon stiffened and the BC Federation of Labour sought *legislative* reform.¹⁴ Following its re-election in 1996, the NDP government appointed a royal commission to review

13. BC Regs. 266/93 (violence) and 267/93 (exposure limits).

14. BC Federation of Labour, "A Legislative Agenda for Workplace Health and Safety" (1994).

workers' compensation and OHS regulation. The BC Federation of Labour's key demands were for workers to be given stronger participation rights and better protection.¹⁵ In the midst of the commission's review, the BC Workers' Compensation Board completed the long-delayed review of OHS regulations that it had started in 1992, and in July 1997 issued a new comprehensive OHS regulation. It contained North America's first ergonomics regulation, requiring employers to identify and eliminate or reduce risks to workers of musculoskeletal injuries.¹⁶

The royal commission reported on OHS matters in November 1997 and the government moved quickly to implement the commission's recommendations in Bill 14 which enhanced worker protection rights through the articulation of specific duties for employers, workers, supervisors, owners, directors and officers, and suppliers (Division 3), and increased the Board's enforcement powers. It also protected the incomes of workers temporarily laid off as a result of a stop work order. (ss. 190-193), increased the scale of administrative penalties to \$500,000 (s. 196), made available court injunctions to stop ongoing contraventions (s. 198), and raised the maximum fine to \$500,000 and/or imprisonment for 6 months following a first conviction and to \$1 million and/or a 12-month jail term following a subsequent conviction (ss. 213-217), as well as subjecting offenders to a variety of other orders aimed at preventing future violations (s. 219).

In regard to participation, the law broadened and better institutionalized worker representation (ss. 125-140), but did little to strengthen the right to refuse. The standard of "imminent risk" was replaced by "significant risk" (s. 141) and workers received limited wage protection in the event of lay-offs arising from a work refusal (s. 147). Most importantly, the statute expressly prohibited discriminatory action against workers who exercised their rights and duties under the act (ss. 151-153). The law came into force on October 1, 1999 with the exception of the work refusal provisions that still have not been proclaimed.¹⁷

The actual effect of these changes, however, remains to be seen. At the same time that the NDP government was strengthening worker

15. BC Federation of Labour, *Submission to the Royal Commission on Workers' Compensation in British Columbia* (3 July 1997), 68-84, 102-111. Also see, Canadian Auto Workers, *Submission to Royal Commission on Workers' Compensation in British Columbia* (3-5 July 1997).

16. BC Reg. 296/97 (15 July 1997).

17. *Workers Compensation (Occupational Health and Safety) Amendment Act*, S.B.C. 1998, c. 50. The legislative debates were lengthy and reflected the intensity of the employer opposition. See, British Columbia, *Debates of the Legislative Assembly*, 28 April, 5-7, 21, 25-27 May, 1-2 June 1998.

protection and participation rights, it was also reducing the enforcement effort (Chart 2). Furthermore, in 2001 an ideologically right-wing Liberal government was elected, and although OHS laws have not been weakened, the enforcement continues to decline and unions are generally on the defensive as other labour laws are weakened.

Nova Scotia

Nova Scotia was not only among the last provinces to adopt mandated partial self-regulation, but its version, enacted in 1985, provided workers with only weak protection and participation rights. The act established the same basic infrastructure of internal responsibility as other jurisdictions, but took a particularly restrictive approach to the right to refuse, providing that workers could not refuse dangers that were “inherent” in the job. As well, confusion about the right to be paid during a work refusal further reduced workers’ willingness to act.¹⁸ The legislation also rationalized the external responsibility system but not as thoroughly as in other jurisdictions. Older mining safety statutes remained in force, as did older industrial and construction safety regulations, and the maximum fine was on the low end of the spectrum (\$10,000).

Enforcement depended almost exclusively on persuasion: between 1985 and 1990, there were only 14 prosecutions of OHS violations and the largest fine was \$2500 (Glasbeek and Tucker 1993: 25). The Westray mine explosion on May 9, 1992 that killed 26 miners made these practices a matter of public concern when it was revealed that the mine had been permitted to operate despite the failure of the employer to comply with numerous inspection orders (Jobb 1994). In response to the public outcry over the clear failure of the OHS regime to protect the Westray miners, the government established a commission of inquiry (chaired by Mr. Justice Richard), laid criminal charges, and initiated a review of OHS legislation by the Nova Scotia OHS Advisory Council, a bipartite body established by the 1985 legislation.

The public inquiry report, issued in December 1997 more than five years after the explosion, was scathingly critical of the Westray mine management, but cast it as a deviant. This was because the public inquiry assumed that normally any conflict that emerged between safety and profit would be resolved in a manner that did not imperil workers’ safety. As a result, the inquiry could characterize poor safety management practices as deviant, the result of incompetence, mismanagement, or some other irrational behaviour, rather than as motivated by self-interest. From this

18. *Occupational Health and Safety Act*, S.N.S. 1985, c. 3; Interview with Robert Wells, CUPE Health and Safety Representative, 11 November 2000.

perspective, the way in which mandated partial self-regulation had been previously institutionalized was viewed as being fundamentally sound, and so there was no need to strengthen worker participation or self-protection rights. As well, because the government was not faced with the challenge of regulating self-interested firms motivated to break the law, an enforcement strategy centred on promotion and support for enlightened internal responsibility was eminently sensible, leaving punishment as a last resort for the odd bad apple. The inquiry, therefore, did not recommend more stringent OHS enforcement, although it did recommend that officers and directors needed to be made more accountable under provincial OHS laws, and possibly the *Criminal Code*, for failures to maintain safe workplaces (Tucker 1998).

Although there were some dissenting voices (Dodd 1998), the inquiry's re-affirmation of the existing ideology and practice of OHS regulation meant that little substantive reform was required. Even before the commission of inquiry reported, a 1995 discussion paper issued by the Advisory Council failed to put onto the agenda the question of worker's unequal power. Rather, it focused on issues of process, communication, and support for internal responsibility, although it recommended that the right to refuse be modestly strengthened and that penalties be raised to bring them in line with the prevailing standard in other Canadian provinces.¹⁹ These recommendations were embodied in Bill 13, and passed by the Liberal government in 1996.²⁰

The inability of labour or the Westray families to shift the regulatory paradigm in the years immediately after the Westray disaster has produced a situation in which workers' rights to protection are still weak. As in some other Canadian jurisdictions, Nova Scotia has adopted a labour-management consensus process for the development of new regulations, but progress has been slow. In 1996 the government announced that new regulations covering a variety of matters including workplace violence, joint health and safety committees, indoor air quality, and exposure limits were in the works. As of December 2002 the only regulations that has been completed and promulgated were ones relating to blasting, scaffolding and first aid (all in 1996) and a general safety regulation that came into effect on 1 May 2000. According to one labour participant in the process, employer opposition and the lack of government support are the chief obstacles to the

19. Nova Scotia Occupational Health and Safety Advisory Council, *The Nova Scotia Health and Safety Act: A Discussion Paper* (Halifax, 1993); *Taking Responsibility: A Report from the Nova Scotia Occupational Health and Safety Advisory Council* (Halifax, 1995).

20. *Occupational Health and Safety Act*, S.N.S. 1996, c. 7.

completion of the regulations.²¹ The impact of Bill 68, which requires that all regulations made pursuant to the *Occupational Health and Safety Act* contain a sunset clause and deems that all existing regulations will be repealed at specified dates, remains to be seen. While such a measure might be defended as a means for ensuring that OHS regulations do not become outdated, the result of inaction will be no regulations, not imperfect ones.²²

Concerns have also been raised about the department's lack of commitment to enforcement and prosecution, although the recent data is mixed (Table 1). Since 1996-1997 (the first year for which systematic data are available) there has been nearly a 50% increase in the number of inspections, and more than a three-fold increase in the number of orders issued. These are at best crude measures of enforcement since it is easy enough to show statistical improvements of these kinds without any real intensification of the enforcement effort. The fact that the number of prosecutions has remained fairly steady and that the number of stop work orders has only slightly increased supports a cautious assessment of the significance of these changes.

TABLE 1

Nova Scotia, Department of Labour, Occupational Health and Safety Division, Enforcement Activity, 1996-1997 – 2000-2001

	1996-1997	1997-1998	1998-1999	1999-2000	2000-2001
General Inspections	1368	1288	1022	1563	1897
Orders Issued	2684	3754	4276	6976	8817
Stop Work Orders	126	80	167	202	144
Prosecutions	12	8	14	32	14
Work Refusals	10	19	24	18	8

Source: Nova Scotia, Department of Environment and Labour, *Annual Report of the Occupational Health and Safety Division for the Year April 1, 2000 to March 31, 2001*.

The need for care is reinforced by the 2001 report of the Nova Scotia Auditor General, which raised numerous concerns about the division's enforcement practices: the division has a little more than one-third of the businesses in the province in its tracking system; at the current rate of

21. NS Regs. 1/96 (Blasting); 2/96 (Fall Protection and Scaffolding); 155/96 (amended by NS Reg. 104/201) (First Aid); and NS Reg. 44/99 (amended by NS Reg. 52/2000) (General).

22. S.N.S. 2000, c. 38.

inspections, it would take ten years to complete a full cycle of inspections; the division lacks a rigorous approach to targeting higher-risk workplaces; there is inadequate follow-up of compliance orders; resource limitations may result in suspected offenders not being prosecuted; and there are not adequate procedures in place to monitor the work activity of inspectors.²³ One wonders what lessons about enforcement, if any, were learned from Westray.

Concern does not diminish when one turns from enforcement to worker participation and self-regulation. During the 2000-2001 year, the division completed an Internal Responsibility System checklist during general inspections. It found that in workplaces employing twenty or more employees, less than 60% met the Act's requirements both with respect to the dissemination of information, or the establishment and operation of safety committees.²⁴

In sum, notwithstanding the highly publicized failures of both the external *and* internal responsibility systems at Westray, the ideology and practice of OHS regulation in Nova Scotia seems to have changed little. Worker protection rights remain weak and poorly enforced, and participatory rights are weakly institutionalized in an environment in which most workers lack strong unions that might compensate for these deficiencies.

Ontario

The passage in 1978 of the *Occupational Health and Safety Act*²⁵ formally marked the transition to a regime of mandated partial self-regulation in Ontario, but from the outset, there was conflict over the respective roles of participation and protection. The Ministry of Labour viewed its primary mandate to be support for the development of internal responsibility, but OHS activists and the NDP continually took the government to task for its failure to enforce the law (Fidler 1986).²⁶ The election of a minority Liberal government in 1985 strengthened the NDP's influence, leading to increased enforcement activity. Between 1979 and 1986 inspections increased (Chart 3), as did the number of prosecutions (Chart 4). Continuing worker militancy also pushed the then majority Liberal government to increase the maximum penalties for *OHS*A violations

23. Nova Scotia, Auditor General, *Annual Report, 2001*, ch. 9.

24. Nova Scotia, Department of Environment and Labour, *Annual Report of the Occupational Health and Safety Division for the Year April 1, 2000 to March 31, 2001*.

25. S.O. 1978, c. 83.

26. *Not Yet Healthy, Not Yet Safe* (Ontario NDP Task Force on Occupational Health and Safety, Elie Martel, Chair, 1983), 10.

by corporations from \$25,000 to \$500,000 and made corporate directors and officers more personally accountable.²⁷

CHART 3
Inspections, Ontario MOL, Industrial Branch, 1970-1971 – 2001-2002

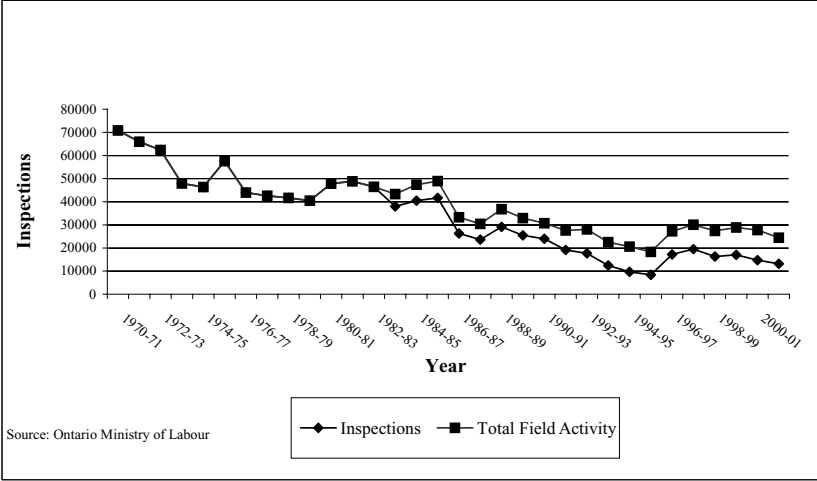
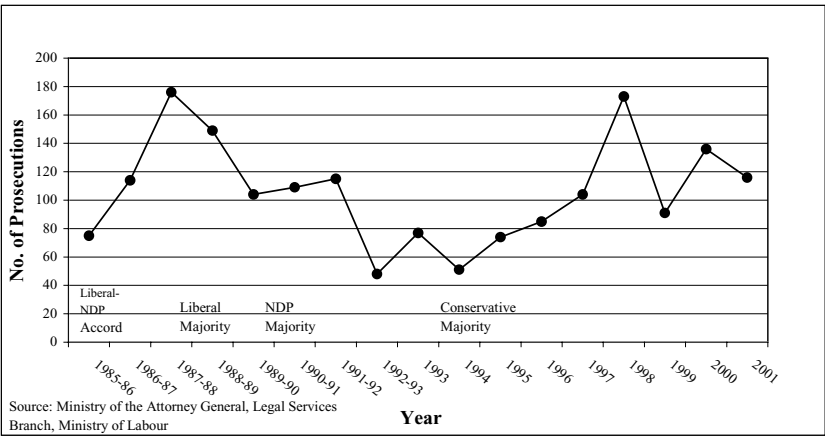


CHART 4
OHSA Prosecutions, Ontario, 1985-1986 – 2001

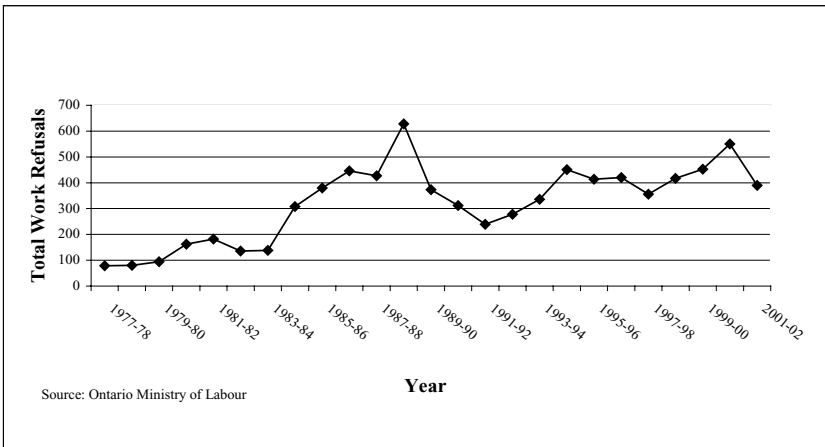


27. An Act to Amend the Occupational Health and Safety Act and the Workers' Compensation Act, S.O. 1990, c. 7 (Bill 208).

Workers also pressed for more protective regulations, particularly in respect to hazardous substances, and this led to establishment of the bipartite Joint Steering Committee on Hazardous Substances (JSCHS) in 1987.²⁸ Regulatory bipartism was attractive both to the government, because it shifted contentious political issues into an institutional setting where the workplace parties had to accept responsibility for outcomes, and to the labour movement, because it believed that this arrangement increased its influence (Waldie and Taylor 1994).

At the same time that workers pressed for better protection, they also demanded stronger participation rights. Apart from problems institutionalizing JHSCs in many workplaces, workers often encountered resistance to their demands. As a result, some unionized workers adopted collective bargaining strategies to pursue their goals, and the number of work refusals increased (Chart 5) notwithstanding governmental and administrative opposition to these developments (e.g., Walters 1991). As worker militancy increased, the Liberal government even considered giving certified worker representatives a unilateral right to shutdown unsafe operations, but in the end the government backed down and instead expanded and better institutionalized JHSCs.

CHART 5
Total Reported Work Refusals, Ontario MOL, 1977-2002



28. Ontario Federation of Labour, "Towards a More Comprehensive Approach to Regulating Workplace Health Hazards" (February, 1984); *The First Report of the Joint Steering Committee on Hazardous Substances in the Workplace* (Ontario Ministry of Labour, 1991).

While a Liberal majority government passed Bill 208, its implementation was left to the NDP government elected in 1990. Given the history of the NDP's involvement in OHS issues, the prospects for stronger and better-enforced protection rights seemed good, but this did not occur. Inspections and prosecutions declined to their lowest levels and the fate of protective regulations was tied up with regulatory bipartism. Although employer representatives initially evinced some willingness to compromise (Penney 1991), within a short period of time resistance mounted. By then the NDP government had shifted its focus to deficit reduction and was unwilling to advance OHS reform. Also, throughout this period OHS activists were discouraged from pressing their concerns lest they embarrass the government.

The election of an ideologically right-wing Conservative government in June 1995 caused many to fear that both worker protection and participation would be severely weakened. These outcomes, however, have not materialized. Indeed, government enforcement of health and safety laws—as measured by inspections and prosecutions—has increased under the Conservatives. Moreover, despite dismantling the institutions of regulatory bipartism, the government lowered approximately 200 occupational exposure limits in 2000, the first significant improvements since the mid-1980s. Other worker participation rights remain in force. More recently, in 2001 the government amended the *OHS Act*, and although some of the changes were problematic, none significantly altered worker protection and participation rights. The most serious change allows inspectors to investigate work refusals without having to be physically present, provided they consult with the employer, the refusing worker, and the worker's representative. This approach to work refusal investigations will likely undermine workers' confidence that they will receive outside support when confronted with conditions they perceive to be hazardous, and may discourage some from exercising their rights.

Federal Jurisdiction

As in other jurisdictions, the shift to mandated partial self-regulation began in the late 1970s, but worker participation rights were particularly weak. Joint health and safety committees were only required where ordered, and the right to refuse was restricted to situations where there was an "imminent danger."²⁹ Federally regulated workers found the law unsatisfactory and their unions, with the assistance of the federal NDP, pushed for stronger participation rights, and more and better enforced protective

29. *An Act to Amend the Canada Labour Code*, S.C. 1977-78, c. 27.

regulations.³⁰ After much delay, the Liberal government passed Bill C-34 which removed the “imminent danger” requirement (but kept other language restricting the scope of the right to refuse), required JHSCs in workplaces with twenty or more employees, more specifically spelled out employer duties, and provided for higher fines.³¹ The election of the Conservatives shortly thereafter raised some concern about the new law, but it was eventually declared in force in 1986. The only other change made during the period of Conservative rule was the implementation of the national WHMIS (right-to-know) laws.

Late in its mandate, however, the government initiated a tripartite review of its health and safety laws. This review continued after the Liberals took office in 1993 and early in 1995 a set of consensus recommendations emerged, centered around support for a strengthened internal responsibility system. The most significant recommendation was that bipartite policy health and safety committees be established for large (300+ employees) firms with a mandate to participate in the development and monitoring of the firm’s health and safety policies, and authority to hear and resolve complaints from local health and safety committees. It was also recommended that the role of local committees be enlarged to include monthly workplace inspections and involvement in planning workplace changes affecting OHS, and that the right to refuse be broadened and strengthened in a number of ways. Subsequent discussions generated additional consensus recommendations related to internal controls, including: a requirement for employers to establish and maintain a specific OHS prevention program; a fully developed internal complaints procedure that permitted employee and employer investigators to stop the hazardous work until the situation was rectified; and clarification of the right of workers adversely affected by a work refusal to be paid. Some recommendations were also made to strengthen worker protection by increasing the size of maximum penalties to \$100,000 for violations of the act and to \$1 million where contraventions resulted in death or serious illness or injury, or were willful and with the knowledge that death or serious injury or illness would likely result. After much delay, these recommendations were enacted into law in 2000.³²

At every stage of the process, the government emphasized that one of its principal objectives was to mandate and promote more self-regulation. For labour, the acceptability of this agenda was contingent on having

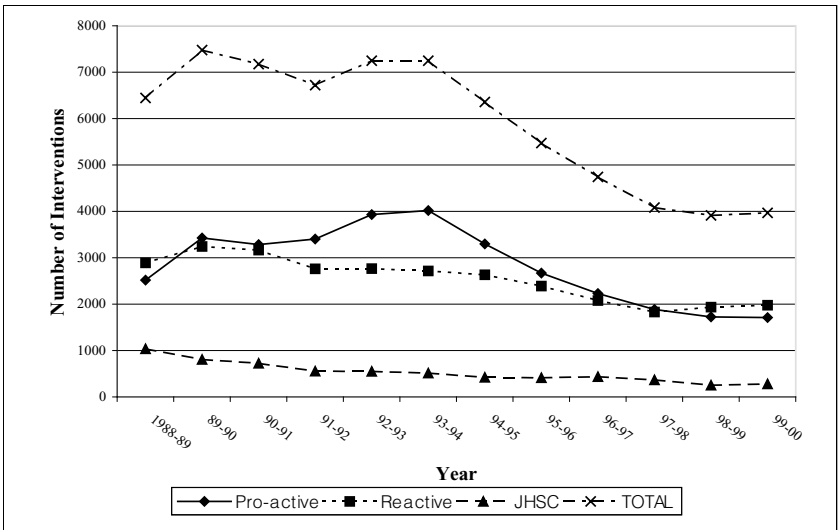
30. *Graveyard Shifts[:]* *Life and Death on the Job in Canada* (Ottawa: NDP Special Taskforce Report, 1982).

31. S.C. 1983, c. 39.

32. S.C. 2000, c. 20.

workers' participatory rights strengthened, and their success in this regard is notable in a time when worker rights are generally under attack. There was, however, a clear disjuncture between what the labour movement agreed to, and the approach recommended by their leading OHS strategists. A November 1996 report approved by the CLC's Health and Safety Committee was concerned that the practice of worker participation had led to a depoliticization of worker health and safety representatives and that direct government regulation was declining.³³ Indeed, as Chart 6 indicates, federal enforcement activity has dropped significantly since the Liberals took office in 1993.

CHART 6
Federal Jurisdiction Enforcement Activity, 1988-1989 to 1999-2000



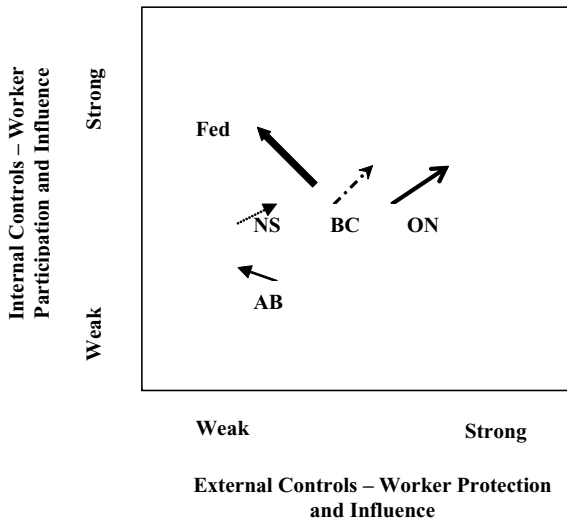
In sum, federal OHS policy is being articulated as part of an effort to increase self-regulation with enhanced worker involvement. As private industrial citizens, workers are more dependent on their own resources, and OHS outcomes may increasingly depend on contextual factors influencing the balance of power between labour and capital. Moreover, there is concern that by casting OHS more as a private matter, workers lose the ideological resource entailed in public rights claims.

33. *New Strategies for Health, Safety and Workers' Compensation – Final Report* (1996), www.clc-ctc.ca/health-safety/finalrpt.html (accessed 22 November 1999).

Mapping and Comparing Regulatory Trajectories

Comparing regulatory regimes is a difficult exercise that requires numerous choices to be made. Unlike Block and Roberts (2000) who constructed indices to compare labour standards in the United States and Canada at a moment in time, the methodology chosen here focuses on trajectories over time in relation to the dimensions of protection and participation (see Figure 3). The estimation of the size and direction of change is based on the prior analysis, which, like Quinlan and Saksvik (2003) is, in turn, based on an examination and synthesis of published material and interviews with key participants. Necessarily these depictions are simplifications of complex and often contradictory processes that sometimes involved several changes in direction over this period. As well, the focus is primarily on changes to laws, regulations and enforcement practices, rather than on the capacity of workers to assert their rights to protection and participation at the point of production.

FIGURE 3
Trajectories of OHS Regulation in Selected Canadian Jurisdictions,
1985-2000



Workers in Alberta started with the weakest participation rights and have seen little or no improvement over the period in question. As well, they do not enjoy offsetting strong protection rights and have seen a sharp decrease in prosecutions since 1988, although there has been a recent

increase in the number of inspections and orders issued. As a consequence, Alberta workers are the closest to having the status of market citizens among this sample of Canadian jurisdictions. The federal jurisdiction provides an interesting contrast; it too has moved strongly away from direct protection to more self-regulation, but it has enhanced worker participation rights. Although these rights do not give workers control over the work environment, they provide a platform from which workers can assert their interests in employers' management systems. Thus, federally regulated workers might best be seen as moving towards private industrial citizenship. The situation in Nova Scotia is also one in which there is weak enforcement of OHS laws and slow development of new regulations, even after the Westray disaster. The emphasis on self-regulation continues, and although worker participation rights were marginally strengthened, they have not been fully implemented and worker influence remains weak. British Columbia has followed a somewhat more balanced approach in the way it combines worker participation and protection rights. The duties of employers, supervisors and workers have been more clearly defined, multiple and cascading duties better protect contingent workers, new ground has been broken with an ergonomics regulation, and enforcement powers have been strengthened. As well, joint health and safety committees were better institutionalized, although changes to the right to refuse remain unsettled. Finally while Ontario's worker protection rights are comparable to those of British Columbia, its most striking characteristic is the high level of enforcement activity, particularly prosecutions. Surprisingly, this record has been strengthened under a government that has weakened worker rights in every other area of labour and employment law.

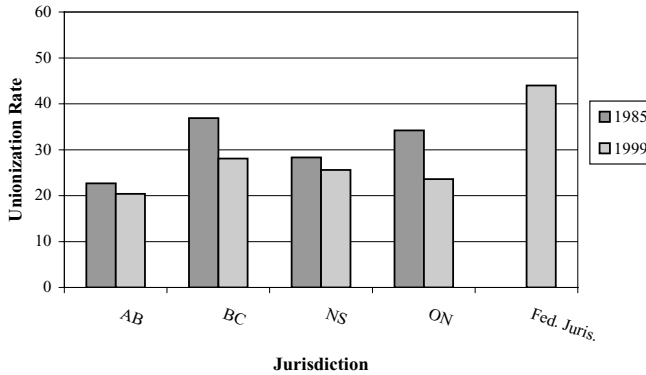
EXPLAINING DIVERGENCE

The power resources model provides a promising framework for explaining divergent OHS trajectories in different jurisdictions because of its identification of key factors (union density, political party in power, employer size) that plausibly explain policy outcomes.

Unionized employees are more likely to enjoy industrial citizenship/participation rights than their unorganised counterparts because of their superior bargaining strength and political influence. Chart 7 depicts changes in union density for the five jurisdictions in 1985 and 1999 and roughly correlates with the strength of participation rights.

The orientation of the political party in power (Table 2) can be expected to influence both the strength of legislated participation rights as well as the strength of protection rights. The two jurisdictions that have had the longest serving conservative governments (Alberta and Nova Scotia) also

CHART 7
Union Density by Jurisdiction, 1985 and 1999*



* Statistics Canada data is collected by province, not by regulatory jurisdiction. Therefore, federally regulated workers are included in the province in which they are employed. As a result, there is no separate data on union density in the federal jurisdiction. The rate used here is an estimation by HRDC.

Source: Statistics Canada.

have the weakest worker citizenship rights, while those jurisdictions that have had a least one term of NDP social democratic government (British Columbia and Ontario) have moved most strongly in the direction of public citizenship.

TABLE 2
Political Parties in Government, by Jurisdiction (Number of Years) 1985-2000

	<i>Progressive Conservative/ Socred*</i>	<i>Liberal</i>	<i>New Democratic</i>
Alberta	15	0	0
British Columbia	6	0	9
Federal Jurisdiction	8	7	0
Nova Scotia	9	6	0
Ontario	5	5	5

* British Columbia only

Source: Canadian Parliamentary Guide (2001).

Employer power resources will also obviously influence the shape of the regulatory regimes, but there is no simple proxy measurement that would allow for cross-jurisdictional comparisons. Moreover, the direction of employer influence is not a given. For example, employer approaches to OHS may vary by economic sector, production technique, likelihood of disastrous consequences, and internal organization (Greenlund and Elling 1995; Hall 1993; Genn 1993). Size of employer may affect power resources and their orientation, as small employers have generally been more resistant to both participation and protection rights. Cross-jurisdiction data for this measure is available (Table 3); however, with the exception of the Federal jurisdiction, differences between the provinces are small.

TABLE 3

Size of Employer by Number of Employees, Percentage of Total Establishments in Each Category, 1988 (in parentheses) and 1999

	<i>1 to 19</i>	<i>20-49</i>	<i>50-99</i>	<i>100-199</i>	<i>200-499</i>	<i>500 +</i>
Alberta	(89.1) 87.6	(6.9) 8.2	(2.1) 2.5	(1.1) 1.1	(0.6) 0.4	(0.2) 0.2
British Columbia	(91.4) 88.7	(6.8) 7.7	(2.1) 2.2	(0.9) 0.9	(0.4) 0.4	(0.2) 0.2
Federal Jurisdiction*	59.3	18.4	8.8	5.3	4.3	3.8
Nova Scotia	(88.8) 88.4	(7.0) 7.8	(2.4) 2.1	(1.0) 1.1	(0.5) 0.4	(0.3) 0.2
Ontario	(86.6) 85.5	(8.0) 9.2	(2.8) 3.0	(1.5) 1.5	(0.7) 0.6	(0.4) 0.3

* Data from the federal jurisdiction is from 1997, the most recent year available. Data from 1988 is not available. On the basis of previous trends, it is likely that the percentage of smaller employers has increased, but it is unlikely that the change was of such a magnitude so as to fundamentally alter the results.

Source: Statistics Canada, Canadian Business Patterns and HRDC, Labour Operations.

Taken together, these standard power resource variables provide a partial explanation for diverging OHS trajectories, although this is truer for participation rights than for protection. The federal jurisdiction, which has the strongest participation rights, has the highest union density, and the highest proportion of large firms, and has been governed for nearly an equal number of years by the Progressive Conservative and Liberal parties. Ontario, the next highest in participation rights, has the second highest large business sector and has had periods of Liberal, minority, and NDP government. Although its union density rate is comparatively low and dropping, industrial unions are still strong in some key economic sectors. British Columbia, next in line, enjoys above average union density and had a long period of NDP government. Union density in Nova Scotia is in the mid-range, but it has had the second longest period of Progressive

Conservative government. Finally, Alberta, the jurisdiction with the weakest participation rights, has the lowest union density, continuous Progressive Conservative government, and a comparatively large small business sector.

Power resource variables are less able to account for differences in protection rights. For example, in Ontario, enforcement activity dropped to its lowest levels under an NDP government, while under a Progressive Conservative government, enforcement activity increased. Currently Ontario prosecutes OHS offences far more aggressively than other jurisdictions. The record of the Progressive Conservative government in Ontario stands in stark contrast with that of its Alberta counterpart, which has one of the weakest enforcement records. The power resource factors also do not obviously explain the low level of Federal enforcement activity.

Thus, while the power resource model provides a partial explanation of the variation in OHS trajectory, two limitations must be recognized. First, there is sometimes a tendency within power resource theory to make assumptions about the ideological orientations and strategic calculations of the parties. This is problematic. For example, as we noted earlier, different groups of employers may have divergent views on the direction of OHS policy. Similarly, it is no longer safe to make assumptions about the influence of having a social democratic party in power in light of their shift away from policies that, in their stronger incarnations, challenged capitalist hegemony and insulated workers against the vicissitudes of capitalist labour markets, towards policies that accept capital's dominance and employers' demands for flexibility (Howell 2001). Similarly, a strong union presence does not guarantee that OHS issues will be vigorously pursued or that, if they are, that the goal will be to promote public industrial citizenship. It is crucial, therefore, that the shifting ideological orientation of parties, unions, and employers be taken seriously in the analysis. Second, attention must also be paid to public discourses as a power resource in its own right (Hobson 1999). In the OHS context, for example, it is salient that most people reject the idea that workers should have to accept more than a minimal risk of being killed, injured or made sick by their work. This remains true despite economists' attempts to argue that workers voluntarily accept greater risks in exchange for higher wages. Because of this deep moral intuition that lives and health should not be a commodity to be bought and sold like others, it has been easier to mobilize support for government policies and interventions that ostensibly provide all workers with socially acceptable health and safety conditions (Dorman 1996). As well, in more recent times, it has also been possible to gain popular support for the view that workers enjoy a 'natural right' to participate in their employers' health and safety management, even while denying them participation in other dimensions of firm management (Tucker 1996). Discourse

as a power resource, however, is hardly autonomous from other social forces. Those who promote market citizenship on the basis that workers and employers have common interests find powerful allies in business and government while trade unions struggle to make visible workers' experiences of conflict when seeking health and safety improvements.

CONCLUSION

This analysis of the trajectories of contemporary OHS regulation demonstrates not only that neo-liberalism and the citizenship regimes associated with it can be variously configured (Larmer 2000), but also, and more importantly, that because the neo-liberal project itself is a contested one, the specific arrangements that have emerged in different Canadian jurisdictions are shaped by the balance of power (political and economic) between organized workers and employers, their ideological orientations, and popular discourses. Mandated partial self-regulation is a particularly flexible platform upon which has been built an increasingly diverse set of regulatory arrangements characterized by different combinations of worker protection and participation rights. This analysis also emphasizes that workers have, in the past, and can, in future, influence the trajectory of OHS regulation through grassroots mobilization and political campaigns that make visible the human cost of profit-driven decision making by employers, and challenge the legitimacy of a regulatory system that fails to protect or give more effective control to those who bear its costs.

Three caveats, however, are in order. First, despite the divergence, it is important to keep in mind that the variation is narrow. For example, nowhere in Canada do workers enjoy rights of participation that give them a real measure of control over decisions about what to produce, where to produce, how to produce, etc. Workers only have a voice in the management of the risks generated by these prior, profit-driven decisions. Similarly, no jurisdiction takes the view that when harms materialize as a result of employer risk taking, that this is a matter for criminal, not regulatory law (Glasbeek 2002: ch. 9). Although the range of possible outcomes is limited by structural conditions, this should not lead to the mistake of "conflat[ing] current predominant forms of regulation with 'feasible' forms of regulation" (Pearce and Tombs 1999: 281). Not every alternative can be realized, but without a vision that another alternative is possible, there is no possibility of change.

Second, this article has focused on changes in laws, institutions, and policies. As such, it misses the shop-floor perspective that might produce a different view of the trajectory of health and safety regulation. In particular, more work is needed to assess how change in the economic

climate affects the ability of workers to exercise participatory rights effectively. For example, Gray (2002) demonstrates that workers' willingness to exercise their right to refuse unsafe work is highly sensitive to workplace power dynamics.

Finally, no effort has been made to determine the efficacy of any particular configuration of worker protection and participatory rights. Measuring OHS outcomes in a particular jurisdiction is notoriously difficult because of the absence of reliable measures that are not plagued by reporting problems; these difficulties multiply when comparing jurisdictions that have different injury-reporting systems. Although there is empirical support for the view that the combination of strong participation and protection rights improves health and safety performance (e.g., Adler et al. 1997) this article does not contribute directly to the debate over the optimal design of OHS regulation (e.g., Gunningham and Johnstone 1999).

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RÉSUMÉ

Tendances divergentes dans la protection et la participation des travailleurs en santé et sécurité au travail au Canada, 1985-2000

Le néo-libéralisme est à la fois une idéologie caractérisée par des valeurs de responsabilité individuelle et de liberté de choix et par une pratique institutionnalisée via une réaffirmation des relations de marché et un retrait graduel de l'intervention directe d'un gouvernement. Malgré l'ampleur de la restructuration néo-libérale au Canada, celle-ci ne s'est pas produite de façon uniforme au plan de la chronométrie et de ses résultats à travers les domaines de régulation et les juridictions politiques. La législation encadrant la santé et la sécurité au travail est très révélatrice à ce sujet.

Cet essai se veut une comparaison des développements récents dans la législation en santé et sécurité au travail dans cinq juridictions au Canada : l'Alberta, la Colombie-Britannique, la Nouvelle-Écosse, l'Ontario et le Fédéral pour la période allant de 1985 à l'an 2000. Le centre de l'analyse porte sur les régimes de citoyenneté des travailleurs, lesquels à leur tour se concentrent sur les droits de participation et de protection des travailleurs dans le domaine de la santé et de la sécurité au travail. On a retenu quatre types de citoyenneté propre à ces régimes dans ce domaine et on a retracé brièvement, il va sans dire, leur développement historique. Au cours des années antérieures à celle de 1985, toutes les juridictions canadiennes renforçaient les droits de protection et de participation, mais le régime qui en a découlé, mieux décrit en termes d'autorégulation partielle sous mandat, en était un d'une grande flexibilité qui comportait beaucoup de variations au plan de sa mise en œuvre.

L'analyse des développements de la législation depuis 1985 révèle une divergence croissante entre les juridictions en ce qui concerne ces aspects de l'implication des travailleurs en matière de santé et de sécurité au travail. Alors que l'Alberta et le Fédéral réduisaient de façon draconienne leur intervention, chaque juridiction adopta une approche nettement différente à l'endroit des droits de participation sur les lieux de travail. Au moment où le gouvernement fédéral renforçait récemment les droits de participation des travailleurs en modifiant le *Code canadien du travail*, l'Alberta demeurait la seule province où les comités de santé et de sécurité au travail n'étaient pas obligatoires dans les établissements de vingt travailleurs ou plus. En Colombie-Britannique, avec un gouvernement NPD au pouvoir durant la majeure partie de la décennie 1990, les droits de participation des travailleurs furent modestement bonifiés, en incluant une législation en matière d'ergonomie et en augmentant les amendes lors de la violation des règles de santé et de sécurité, mais on nota moins de progrès au plan de la bonification des droits de participation sur les lieux de travail. La Nouvelle-Écosse n'était pas seulement la seule des dernières juridictions canadiennes à adopter de façon formelle une autorégulation partielle sous mandat, mais sa loi présentait une des participations et des protections les plus faibles en termes de droits. Ces lacunes devinrent évidentes au moment où la mine Westray connut une explosion en 1992, qui créa en fait une occasion de bonifier de façon significative la citoyenneté des travailleurs en matière de santé et de sécurité. Alors qu'une commission royale condamnait les opérateurs de mine incompetents et insoucians et les inspecteurs du gouvernement, elle faisait sienne la philosophie interne sous-jacente de responsabilité sans cependant aborder le sujet des intérêts conflictuels et de l'inégalité des rapports de pouvoir entre les employeurs et les syndicats. En bout de ligne, les réformes de la législation ont peu contribué à la bonification des droits de citoyenneté des travailleurs en santé et sécurité au travail. De plus, on possède quelques indications à l'effet que la mise en œuvre de cette législation demeure faible. Enfin, les travailleurs de l'Ontario ont fait des gains en termes de droits de participation et de protection renforcis sous un gouvernement libéral à la fin des années 1980, mais sous le gouvernement NPD suivant, les actions visant à bonifier ces droits diminuèrent de façon significative et des aménagements institutionnels bipartites ont battu de l'aile. Entre 1995 et 2000, un gouvernement conservateur était au pouvoir. Il a contribué à affaiblir les droits de travailleurs dans chaque secteur, sauf en matière de santé et de sécurité, où il a augmenté l'ampleur de l'activité de mise en œuvre des droits, alors qu'il réduisait les niveaux permisibles d'exposition aux substances toxiques pour une première fois au cours de la décennie.

Pour rendre compte de cette variation dans la politique en matière de santé et de sécurité, nous retenons les facteurs suivants : le parti politique

au pouvoir, la taille de l'établissement et la densité syndicale selon la théorie modifiée du pouvoir comme ressource. La faiblesse relative des mouvements ouvriers et les partis d'opposition sympathiques à la cause ouvrière en Alberta et en Nouvelle-Écosse par comparaison avec ceux de la Colombie-Britannique nous aident à saisir pourquoi les droits des travailleurs sont moins reconnus dans ces deux premières provinces. La faiblesse relative du mouvement ouvrier dans la sphère fédérale et l'incidence comparativement plus élevée de gros établissements nous aident à comprendre pourquoi les droits de participation sur les lieux de travail sont plus prononcés dans cette sphère. La théorie du pouvoir comme ressource ne réussit pas à expliquer le niveau comparativement élevé d'activité de mise en œuvre de la législation en matière de santé et de sécurité en Ontario. La prise en compte du discours public comme ressource au sein du modèle permet d'expliquer pourquoi les droits de travailleurs en matière de santé et de sécurité ont connu un meilleur sort que d'autres droits sous les gouvernements néo-libéraux; de plus, cela apporte un brin de nuance à la comparaison.

Enfin, cet essai se termine en faisant trois mises en garde. D'abord, il présente une garantie à l'effet que la variation entre les provinces est significative, sans perdre de vue que cette variation entre les juridictions demeure à l'intérieur d'un corridor étroit. Ensuite, l'objet de l'essai porte sur le changement institutionnel et cela ne nous permet pas d'apprécier complètement la perspective de la base ouvrière. Enfin, cet essai ne contribue pas directement au débat sur l'efficacité des stratégies particulières de régulation.