Occupational health and safety challenges for the mobile workforce:
policy and practice in Canadian jurisdictions

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Outline

- Targeted geographically mobile workforce

- Methods

- OHS frameworks in Canada

- Challenges to regulatory effectiveness

- Conclusions:

  - Links with precarious employment and regulatory effectiveness

  - Consequences of fuzzy boundaries

  - Commonalities between different sectors of the mobile work-force

  - Policy recommendations

The geographically mobile workforce

- 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

- Double mobility
  - Travelling to access ship, plane, truck, bus
- Mobile workplaces

  - Pilots
    - René David-Cooper
  - Seafarers
    - Desai Shan

Methods

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- Classic legal analysis in 6 provinces
  - BC
  - Alberta
  - Ontario
  - Québec
  - Nova Scotia
  - Newfoundland and Labrador

- Key informant interviews (2015-2018)
  - 20 interviews in 5 provinces
  - 47 people
    - Regulators (OHS/WC)
    - Representatives of employers and unions
    - Legal counsel
    - NGOs
  - Some regulators preferred to answer in writing

Poll question 1

- How are you, if at all, connected to mobile work ? select all that apply
  - I am a mobile worker
  - I employ mobile workers
  - I manage mobile workers
  - I advise mobile workers
  - I provide care for mobile workers

Regulatory frameworks X 13 + 1

- OHS legislation
  - General duty of employers to provide safe working conditions
  - General duty of workers to protect their health
  - Are commuting conditions part of working conditions?
  - Are housing conditions part of working conditions?
  - Workers' voice in OHS
  - Right to refuse dangerous work
  - ...

Challenges for regulatory effectiveness

- Overarching challenges
  - Invisibility
  - Cultural isolation
- Vulnerabilities specific to each category of the geographically mobile workforce and within categories
  - Eg. Temporary foreign workers: 'deportability'
  - Eg. Gold collar vs blue collar mobile workers
- OHS
  - Getting to work
  - At work
  - Living at work
  - Living at home (work family balance)

Getting to work

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

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 [community near mine], get on the bus, and then the company does the rest of the driving all the way up to the mine.

- **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 [community near mine] ?

- **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."

Factors contributing to pilot fatigue

- Multiple jurisdictions regulate flying time and duty time and compliance is variable.

- Effectiveness of regulations varies depending on the type of aircraft and the size and visibility of the employer.

- Incentives for the least experienced pilots to accept back-to-back-to-back shifts to gain seniority.

  - Pilot Fatigue – A Study on the Effectiveness of Flight & Duty Time Regulations for Professional Pilots in Canada,
    - René David-Cooper, 2018

Protections in work-camp facilities? Maybe, maybe not

- Workers' compensation if injured in a work camp or hotel? Fuzzy boundaries
- Little OHS regulation on work camps

Gold collar mobility

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- 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

Poll question 2

- Do you have experience with occupational health and safety related to mobile work?

- Yes

- No

Health and Safety committees

- Health and safety inspectorates and health and safety committees need to adapt their practices when workers are engaged in E-RGM.

- Innovative strategy
  - Use the time when workers are being bussed to the site for OHS
  - Text messaging as an OHS communications strategy

Geographically mobile workforce: regulatory effectiveness

- The precariously employed are largely invisible to regulators and traditional OHS actors like unions.

- So are, to some extent, internally mobile workers, while temporary foreign workers are overly visible and overly invisible depending on the context

- 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

Conclusion # 1: hazard exposures

- Commonalities between different sectors employing geographically mobile workers

  - Getting to work
  - Living it work
  - Living at home

- Shifting risks to workers

- Commonalities of exposure to hazards at work:

  - Mostly depends on the work BUT

  - Fatigue in safety sensitive jobs is cross-cutting
    - Seafarers
    - Pilots
    - Construction
    - Mining
    - Home-care

Conclusion # 2: regulatory effectiveness

- Fuzzy boundaries – fuzzy responsibilities
- Fuzzy jurisdictions – fuzzy effectiveness
- Economic incentives for employer prevention measures for travel-related hazards are non-existent.
- Economic and moral incentives for risk-taking by workers are significant.
- Remoteness:
  - contributes to exposure to hazards
  - compromises regulatory effectiveness

Policy recommendations:
Occupational Health and Safety

- Targets
  - Provincial regulators
  - Federal regulator
  - Employers
  - Unions

- Jurisdictional issues
  - ie right to refuse
- Worker voice
- Regulatory gaps
  - ie housing conditions
- Addressing Fatigue and travel related hazards
  - Seafarers and Pilots
  - Other workers...risks and benefits of recommending greater oversight...

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