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Outline

- Geographically mobile workforce
- OHS and Workers’ compensation frameworks in Canada
- Challenges to regulatory effectiveness

Conclusion:
- What links with precarious employment and regulatory effectiveness?
- What are the consequences of fuzzy boundaries?
- What are the commonalities between different sectors of the mobile work-force in terms of OHS challenges and effectiveness of regulation
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

- Shifting risks to workers?
Regulatory frameworks X 13 + 1

- 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
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

- Specific challenges
  - Getting to work
  - At work
  - Living at work
  - Living at home (work family balance)
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
  - Strong pressures to go home when you can, regardless of the travel hazards
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...
- At work
  - Exposed continually to ‘new’ workplaces
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 workers’ family 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?
“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 [municipality], get on the bus, and then the company does the rest of the driving all the way up to the mine, from [municipality].

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 [municipality]?

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
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

- Do employers have incentives to prevent dangerous travel?
Conclusion: exposure to hazards

- Commonalities between different sectors employing geographically mobile workers
  - Getting to work
  - Living it work
  - Living at home

- 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: regulatory effectiveness

- Fuzzy boundaries – fuzzy responsibilities
- Fuzzy jurisdictions – fuzzy effectiveness
- Economic incentives for prevention of 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
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