‘NEW SOCIAL RISKS’ AND NON-STANDARD EMPLOYMENT IN THE CULTURAL SECTOR:
THE CASE OF SCREEN WORKERS IN ONTARIO

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Outline

Context of this work – research on cultural labour policy as an instance of post-industrial labour policy

- How does the spread of non-standard employment create ‘new social risks’?

Operationalize the idea of ‘social risks’ with D’Amours’ risk framework (2009), illustrating and updating it with insights from interviews with 24 Ontario screen workers.

Review actions that might help to correct the ‘demutualization of risk’ in the creative sector with reference to submissions to Ontario’s Changing Workplaces Review.
Rapid rise of non-standard employment

The ‘Hollywood model’ of flexible specialization is often cited as the vanguard of work organization (Grantham, 2000; Leadbeater, 2000).

The work is generally project-based, interspersed with periods of unemployment or partial employment.

An abundant research literature documents the widespread insecurity of work in the creative sector (Eikhof & Warhurst, 2013; Gerhard, Hoelscher & Wilson, 2016; Hennekam & Bennett, 2015; Hesmondhalgh & Baker, 2011; McRobbie, 2015).
Employees and independent contractors

- Employment law makes a key distinction between employee and independent contractor. The latter is considered to be self-employed.
- According to CRA, **indicators showing that the worker is an employee**:
  - The relationship is one of subordination. The payer will often direct, scrutinize, and effectively control many elements of how and when the work is carried out.
  - The payer controls the worker with respect to both the results of the work and the method used to do the work.
  - The payer chooses and controls the method and amount of pay. Salary negotiations may still take place in an employer-employee relationship.
  - The payer decides what jobs the worker will do.
  - The payer chooses to listen to the worker's suggestions but has the final word.
  - The worker requires permission to work for other payers while working for this payer.
  - Where the schedule is irregular, priority on the worker's time is an indication of control over the worker.
  - The worker receives training or direction from the payer on how to do the work. The overall work environment between the worker and the payer is one of subordination.
Employees and independent contractors

• According to CRA, **indicators showing that the worker is a self-employed individual:**
  • A self-employed individual usually works independently.
  • The worker does not have anyone overseeing his or her activities.
  • The worker is usually free to work when and for whom he or she chooses and may provide his or her services to different payers at the same time.
  • The worker can accept or refuse work from the payer.
  • The working relationship between the payer and the worker does **not** present a degree of continuity, loyalty, security, subordination, or integration, all of which are generally associated with an employer-employee relationship.
Rapid rise of non-standard employment

The standard employment relationship (SER) is being overtaken by non-standard employment in many economic sectors in a movement that deregulates, casualizes and informalizes labour (Aloisi, 2015; Drache, LeMesurier & Noiseux, 2015; Sundararajan, 2016; Vosko, 2010; Weil, 2014).

The latest step is the rise of the gig (‘sharing’) economy via online work sites such as Uber, Taskrabbit, and AirBnB.
Rapid rise of non-standard employment

Around 15% of Canadian workers are self-employed.

The Freelancers Union estimates that a third of the US workforce is comprised of freelancers.

57% of workers in the arts, entertainment and recreation sector in Ontario are in non-standard employment relationships (Changing Workplaces Review, 2017: 364).
What are ‘new social risks’?

- “Western welfare states were built during the postwar years, with one key objective: to protect family (male) breadwinners against the consequences of losing their ability to extract an income from the labor market. Structures of social risk, however, have changed dramatically since then, so that current social risks include precarious employment, long-term unemployment, being a working poor, single parenthood, or inability to reconcile work and family life” (Bonoli, 2007). On new social risks see Taylor-Gooby (2004) and Dean & Taylor-Gooby (2014).

- These risks are directly related to erosion of the Standard Employment Relationship (SER)
Social protections and the standard employment relationship

• The social protections and entitlements usually associated with the standard employment relationship include rights to collectively bargain, minimum wage, payment for overtime, compensation for occupational injuries, insurance against unemployment, retirement benefits, protection against discrimination and wrongful dismissal, support for caregiving responsibilities such as parenting, access to training and skills upgrading, and pensions.

• Furthermore, in some countries (notably the United States), access to health care services is largely premised on having an employer.

• Independent contractors do not have these entitlements. They instead are regarded as for-profit businesses (with rights to certain tax advantages).
Risks of non-standard employment  
(D’Amours & Deshaies, 2012; D’Amours & Legault, 2013)

- Economic risks
  - Underemployment
  - Income fluctuation
  - Knowledge depletion
  - Enterprise risk

- Social risks
  - Illness and accidents
  - Parenthood and caregiving
  - Age-related risks
  - Discrimination (new risk)
  - Reputational (new risk)
ECONOMIC RISKS
Risk of underemployment

• Underemployment is defined as the possibility of running out of contracts or customers, and therefore income.
  • Contractors report spending significant amounts of time on networking and job-searching, and stated that they did not feel that they could take a vacation or even a day off for fear that their work may run out. The nature of the work – in many cases short-term contracts that are continuously renewed – added to their concerns.
  • Respondents report taking on multiple jobs outside of the industry to make ends meet. They also rely on credit to withstand periods without income.
Risk of fluctuation 1

- **Fluctuation risk** is defined as alternating periods of surplus and labour shortage. That is, either being overloaded and overworked, or scrambling to find work – a series of extremes.
- working 60+ hours per week is common.
- Being on-call 24/7 can be a requirement for positions, often noted verbally by employers.
- Several respondents said that they do not get 12 hours uninterrupted rest between workdays.
- Large fluctuations in their work from contract to contract.
- The isolation and competitive nature of being a contractor/freelancer means that these workers do not typically share information with each other about their rates, so it can be difficult to determine what constitutes a fair and reasonable wage.
Risk of fluctuation 2

- Several interviewees reported a high level of disorganization in the screen industry, which keeps them from having predictable, consistent schedules, or from being able to make longer-term plans or take vacations.
- The start and end dates for contract work can shift by several weeks or months, making it difficult for contractors to determine when they will be paid for their work, and whether or not to set up other contracts.
- Respondents reported being misclassified as contractors rather than employees, exacerbating fluctuation risks.
Risk of knowledge depletion

• Risk of knowledge depletion is defined as the possibility of declining employability if knowledge is not up to date. Also pressure to be constantly learning new technologies, software, etc.

• For various positions that respondents fill, from production to directing and more technical roles, it is an ongoing challenge to keep up with changing technologies. Many respondents reported that skills upgrading programs or courses would help them to learn new technologies, but that they cannot afford these programs and also are unable to commit to them because of their volatile work schedules.

• Automation of certain positions is a concern for many.

• Due to the high volume of job cuts in the screen industry, certain positions have merged together, meaning that contractors are expected to know more about new technologies and also various aspects of work in the industry.

• There is a lack of mobility across roles, as well as a lack of mentorship.
Enterprise risk

• Enterprise risk is defined as the risk of developing a product/service and not knowing whether it will be sold and what price it will go for. Also signing rights over for work done and therefore having no control over where it appears, and no say in what is done to the work (how it is edited and used).

• Respondents reported being asked to sign contracts that remove their rights to the content that they produce, and make their work the sole property of the companies.

• Workers expressed concern because their names were still associated with the work, but companies could alter the content in any way, which can result in a poor quality product that the worker does not want to be known for. This kind of contract arrangement also means workers do not benefit from royalties when their content is more broadly distributed.
SOCIAL RISKS
Risks of illness and accidents

- **Risk of an accident or illness** as a result of one’s work, leading to loss of income linked to physical and/or mental inability to work (or to work at one’s usual level) because of a work accident or occupational disease.
- Of the respondents who handle camera and related equipment (camera people and technicians), the physically demanding nature of the job exacerbated pre-existing health conditions.
- For one respondent, two pre-existing health conditions worsened as a result of the work – since he was a contractor without benefits, he was extremely fearful that the conditions would become debilitating and force him to stop working.
- Safety concerns are often neglected in the name of creativity, and contractors do not feel that they can speak up for fear of losing work and being shut out from future positions.
- Respondents indicated that mental health issues are common in the industry and made worse by toxic work cultures that can be discriminatory, especially toward women and visible minorities. Respondents also indicated that the structure of contract work and the isolation can lead to mental health problems such as depression and anxiety.
Parenthood and caregiving

- **Risk of parenthood and caregiving** is defined as the possibility of loss of income linked to pregnancy and the care of children or other dependent relatives.
- Many female respondents indicated that they are not eligible for maternity leave based on their hours worked, and could not take advantage of the new Special EI benefits for the self-employed (which provide some maternity benefits) because the benefits are only available *after* one year of enrollment.
- Respondents with children indicated how difficult it is to arrange and pay for childcare given their unpredictable schedules and fluctuating wages.
- Respondents reported delaying having children due to the unstable nature of their work. Some respondents indicated that they are considering exiting the industry because they wish to have families, or that they know colleagues who have left the industry in order to have families.
Parenthood and caregiving 2

- Contract workers without benefits could not take sick days for themselves or to stay home with sick children – if they did, it could jeopardize professional relationships and mean that they may not be hired back.
- Respondents reported that women are not given opportunities that men have, and are often overlooked for positions in directing and writing, as well as more technical positions. This could be partially related to a bias around women and parenting. In one case, a female respondent was told by her male superior at a major broadcaster that she should not have any more children. The superior challenged her to take legal action against the firm, commenting that she could never win the case because of her lack of access to a top lawyer.
- Female respondents reported having difficulty re-entering the production world after being away for maternity leave.
Age-related risks 1

• these are risks related to belonging to a specific age group (young, middle-age, senior)
• Middle-age respondents reported being discriminated against on the basis of age, which may have led to lower wages for work and being shut out of certain opportunities.
• Respondents reported that production companies do not want to hire those with many years of experience because they expect a higher wage, or may be less willing to be exploited in this way.
• Respondents indicated a race-to-the-bottom in the screen industry where senior staff are being cut in favour of younger and inexpensive employees, and many positions are being combined. The result is poor quality content and less experienced workers.
Age-related risks 2

- There is a bias that older people are unable to work quickly and with new technologies, whereas younger people are viewed as better able to master technologies but are often exploited e.g. low wages, working above the role.

- Respondents often reported that they never expect to retire. The more fortunate ones say that they plan to sell their personal homes to fund their retirement. Many reported that these homes were only purchased with parental assistance.

- Some respondents indicated that they are planning to exit the industry due to fear of being ‘aged out’.
Risk of discrimination 1

- Defined as discrimination based on race, gender, age, disability, class, and/or sexuality.

- Respondents reported that bullying is common, employees are treated as disposable, and there is no process in place to report discriminatory or otherwise harmful behaviour.

- Young people often exploited: lower wages, and taking on roles not qualified for resulting in disorganization and production quality issues.
Risk of discrimination 2

- Gender discrimination is rampant, especially on set - sexist and often sexually harassing comments and jokes.

- Respondents mentioned that men in senior positions use their power to coerce women into sex. One respondent mentioned that this often goes unreported because it is women in dire financial situations who are preyed on, and who see it as a feasible option.

- Visible minorities report being pigeonholed based on racial or cultural assumptions.

- Respondents from lower income backgrounds have significant barriers to entry, lack access to networks. For contractors from lower or lower-middle class backgrounds, large portions of their income may go toward paying off student debt or lines of credit.
Reputational risk

• Reputation is one’s currency in the screen industry. Fear of negative repercussions on one’s reputation has consequences on how industry workers navigate their careers.

  • Endure discrimination, bullying, low pay, unsafe environments.
  • Many report being ‘blacklisted,’ narrowing the pool of potential work.
  • Lack of resources, uncertainty about the legal process, fear of being shut out from future work, and fear of retaliation from companies prevents workers from pursuing legal action.
Reputational risk – Interviewee Perspective

- Interview 6: “As a freelancer…they can abuse you whatever way they want, and you can't stick up for yourself because who's going to give you a reference when you leave? You're only as good as your last contract...it's a very small industry, you burn bridges, they burn you.”
Changing Workplaces Review: Special Advisors Michael Mitchell and John C. Murray

“We recommend that Ontario conduct an inquiry and consultation with all affected interest groups to examine potential changes to the laws, which affect how personal services and labour are provided in the arts and entertainment sectors of the economy, for the purposes of supporting the artistic endeavour in those sectors and those who work in them.”
Review of remedies that are being proposed to mitigate the risks of non-standard employment in the creative sector

- **Universal basic income**
  - Only affects income, with indirect effects on other risks

- **Entrepreneurship training and infrastructure**
  - Can spur job creation and economic self-sufficiency but is not a general solution to social risk

- **Flexicurity policies**
  - Skills upgrading and industry transition programs into new areas of the industry (e.g. digital)
  - Promising but is employer-focused, so non-standard workers are unaffected
  - Does somewhat decrease the attractiveness of using contingent workers since hiring/firing employees is easier
Review of remedies that are being proposed to mitigate the risks of non standard employment in the creative sector 2

- **Broaden definition of “employee”**
  - Could provide greater access for contingent workers to social protections currently available only to employees

- **Sectoral programs such as Status of the Artist Act**
  - Certified associations of workers may bargain on behalf of all workers in a sector.
  - Sectoral approaches are promising and precedents exist. However, they are opposed by employer organizations

- **Collective action**
  - Work stoppage is difficult; collective bargaining may require legislative mandate
  - Guilds and unions are delivering services to members and advocating for workers in general, not just members
Conclusions

- Expansion of non-standard work raises major issues regarding social protection.
- Creative work’s glamour and excitement must not displace attention from the consequences of the “demutualization of risk”, that is, the growing shift of risks and responsibilities onto individual workers.
- The cost of social protections will challenge the 21st-century welfare state.
- Although all proposed solutions are only partial, an accumulation of partial solutions could add up to a significant improvement.
- Selectively extending the definition of ‘employee’ to include non-entrepreneur self-employed workers could significantly expand protections.
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Works cited


Works cited

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