

Gaining a collective voice for workers in precarious jobs

Spotlight: Reality and Factual TV workers

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**Union Management Relationships Conference
January 25-26, 2017, Toronto**

The Canadian Media Guild is a union representing about 6,000 people who work at big employers such as the Canadian Broadcasting Corporation and emerging employers such as Vice Canada. It also represents workers at a wide array of media companies including those at Canadian Press, Thomson Reuters, APTN and TVO. It also has a thriving independent Freelance branch.

Since 2013, more than 400 Ontario workers who produce unscripted television, which includes lifestyle, reality and documentary programs, have signed up and said they want the Canadian Media Guild to be their voice to improve their working conditions.

The problem is: these workers have no clear path to collective bargaining rights – despite the fact that freedom of association is a constitutional right.

There are hundreds of these workers in Ontario, mostly in the Toronto area. Most are paid by their employers as independent contractors and move from one independent production company to another on a project or short-term contract basis. Their work doesn't fit easily into current labour and employment standards molds.

The Real Picture in Reality and Factual TV

What was once a small niche in the entertainment industry exploded as a genre in the late 1990s and early 2000s. But despite the sheer growth in numbers of workers, employment laws haven't kept up.

There are dozens of productions shot per year in Canada – shows such as 'Love It or List It' to 'Amazing Race Canada' to 'MasterChef Canada'. In

general, people are hired for creative, production and post-production areas of a project. Their positions include Production Manager, Director, Story Producer, and Assistants. The length of a contract can vary anywhere between several weeks and several months and different people are hired at different times. During a contract, it's not uncommon to work 12-14 hour days and people are perceived to be 'on call' during the length of the contract. The workers have very specific job expectations. Here is one description of work life during a contract:

During that time a story producer or editor would be required to prepare an outline of each episode, create shooting scripts (rough scripts used for the purposes of gathering footage), be on set to ensure all beats in the script are captured, write any script contained in the show, sometimes script clips for on-camera talent, paper edit the episode, and ensure that the editor gets the story correct. They may have to make amendments based on network notes...

..The production company will try to make the production period as short as possible, so that they will pay for fewer days with crew and studios. This means that my deadlines are tight, and I would likely have to be working at 3 or 4 episodes at once. It is probable that there is only one story editor on the show, so I am it, and there is no one to provide respite if I get sick, or need a day off for something important.

I can't complain, because I risk being replaced.

The Canadian Media Guild started surveying these workers three years ago to push for changes in workplace conditions. Workers reported feeling squeezed by insecure employment, long working hours, lack of any benefits, workplace hazards and stagnant or falling pay. Many were troubled by the death of two cameramen in two separate helicopter crashes in 2013, both shooting reality TV programs for the Discovery channel.

The Guild, with the help of workers in the factual TV industry, published a Guide to Working in Canadian Factual TV Production in 2015, and the book is distributed widely at production companies in the Toronto area. It's the beginning of a collective approach to improving working conditions, and creating some consistency in employment standards across the sector.

While the Guild is now focusing on securing full collective agreements for these workers, either through certification campaigns at individual production companies or voluntary recognition, it has faced numerous structural challenges. It is the norm for producers in the industry to incorporate a production company for each individual production they create. In turn, this corporation employs workers for the life of the production. After the production is complete, the corporation is dissolved and the producer cuts ties with the workers -- until the next production.

The short shelf-life of these production companies makes it difficult, if not impossible, to organize workers in this industry under the current legislation, let alone reach a collective agreement or voluntary recognition agreement with a producer acting as an employer. What the industry requires is changes to labour legislation and to employment standards legislation to address the unique nature of this industry.

The *Changing Workplaces Review*, now underway in Ontario led by Michael Mitchell and John Murray, provides some hope for change that will make a difference – especially for entire sectors where people are working precariously, simply because the laws are rooted in a decades-old industrial model.

Sectoral Bargaining

In its submission to the *Changing Workplaces Review*, the Canadian Media Guild proposed sectoral bargaining as a model that would benefit this group of workers.

The authors of the *Interim Report* of the Review recognize the value of sectoral bargaining. They consider several different models that could be considered.

We at the Canadian Media Guild strongly endorse the attention given to sectoral bargaining in the *Interim Report*. We suggest adopting a model that would allow for a widening of what's in place for actors and others currently under the federal *Status of the Artist Act* and apply it to all workers in our industry. In particular, a sectoral bargaining arrangement in Factual and Reality TV would include:

- Allowing the OLRB to define the sector and geographic reach
- Multi-employer bargaining (an association of producers and employers – the Canadian Media Producers Association – is already in place)
- Identification of job classifications to be covered (many are listed in our Guide) and allowing the Ontario Labour Relations Board to add further classifications.
- All workers in the sector – including both employees and those who are currently called independent contractors – to be given the right to bargain collectively under labour relations legislation, as they are in the federal sector under the *Canada Labour Code* and *Status of the Artist Act*.

Separately, we would like to see improvements in the *Employment Standards Act* that would directly help workers in this sector.

Employment Standards

We consider it somewhat ironic that the *Employment Standards Act* was rooted in regulating hours of work, yet in the industry we know best, the reality and factual TV production industry, there is no such regulation at all.

The Employment Standards Regulations have a special set of Film and Television Industry Special Rules or Exemptions which apply to workers in this sector who are classified as employees. What this means is employers in this sector are not required to comply with the provisions of the *Employment Standards Act* which regulate hours of work, daily and weekly/bi-weekly rest periods, and time off between shifts.

Even more importantly, **the majority of workers in the industry are not classified as employees.** They are classified as independent contractors, and as a result, they don't benefit from even the severely restricted protections afforded to reality and factual TV employees under the *Employment Standards Act*.

Even if no other legislative changes are made, we suggest the *Employment Standards Act* can and must be amended to improve the balance the power when it comes to the precarious workers in our industry.

To start, the Special Rules or Exemption should be removed, and all workers in the sector should be entitled to an 8-hour workday, overtime after 48 hours in a week, paid holidays and earned vacation pay.

Also, as a basic principle, we agree with the *Interim Report* that it would be smart to enact a legislative provision similar to one in the British Columbia *Employment Standards Act* that **no one, can be required to work so many hours that their health is endangered.**

While there is a culture of erratic scheduling and long hours in factual and reality TV, we are certain this can change, with forethought and planning. Some fundamental shifts in *the Employment Standards Act* will force better management of time and people in this sector.

Independent Contractors vs. Employees

We agree wholeheartedly with the Interim Report of the *Changing Workplaces Review* that the massive misclassification of independent contractor is a major

problem. The result is that thousands of people are denied legislative rights because they are not defined as ‘employees.’

Most of the people who work in our sector would consider themselves employees, *for the duration of their contracts*. They supply services for wages, which is the classic definition of employee. But because a culture of temporary numbered-company employers, quick production times and tight deadlines became commonplace in the industry, it became acceptable and easier to employ people as independent contractors.

The reality in the dog-eat-dog world of reality and factual TV production is that workers occupy a **hybrid employment status** – one where they are both an employee and an independent contractor at various times.

By its very nature, working in the reality and factual TV industry means that workers have several characteristics that make them **independent contractors**. For example, their employment relationships with production companies aren’t continuous, loyal, or secure – they move from one production to the next as opportunities arise. Workers have a choice in which work they accept, and which work they don’t. And many workers in the industry are expected to do have their own transportation and, in some cases, equipment and do things that ‘keep them in the market’ and ‘employable’ such as attend industry events and courses. They expect to be paid for these work-related supplies by claiming them as tax-deductible expenses for self-employed workers under the *Income Tax Act*.

But once on a project, most function as **employees** with set expectations, and are fully integrated into production activities that are assigned and directed by the production company through its internal hierarchy.

Wanted: A new hybrid definition

The idea of workers in this sector, and similar other sectors, occupying a hybrid employment status is not new. In 2012, the Nova Scotia Labour Board found that motion picture technicians working for Egg Films Inc., a film production company in that province, are **“non-self-dependent-workers”**. The Board found that the film technicians moved from project to project without depending on any one particular employer for their income, and that they were neither truly independent contractor nor self-employed workers, but instead

were dependent on a number of employers in an industry, the industry as a whole.. As a result, the Board ruled that these workers were employees.

Similarly, the New York Labor Board, when it ruled on the certification rules involving reality TV workers in the state, defined those in the potential bargaining unit as **“freelance employees”**. With that ruling, workers were allowed to vote on a union certification at a production company, if they had worked there for any period in the previous year.

It’s time for such a hybrid definition to be applied to the workplace of today.

Tax Implications

Changes to the *Labour Relations Act* and *Employment Standards Act* that bring all workers in the reality and factual TV industry under a legislative umbrella should not impact how workers are assessed by the Canada Revenue Agency for tax purposes.

Rather, these changes would afford all workers in the sector access to a collective bargaining regime and minimum employment standards, but would keep intact the workers’ independent contractor status where that status best describes the worker’s situation.

Tax law should not dictate labour rights.

Gaining bargaining rights in our sector now

As a union we intend to work on several different fronts to gain bargaining rights for these workers. We agree with and support several changes proposed by *Interim Report of the Changing Workplaces Review* and we look forward to its final recommendations and trust that some of our issues are reflected in it.

But barring a change in the provincial law in the near future, we are at the mercy of voluntary agreements with individual production companies. There are massive challenges involved in speaking as a collective voice in an industry that is almost entirely unregulated, and employers have little loyalty or responsibility to workers. The employers are numbered companies that dissolve after each production is complete. That can be a few weeks to many months. The names of workers on each production are not precisely known.

We don't think this working life in factual and reality TV is in line with the intent of the Charter of Rights of Freedoms, and its distinct inclusion of the Freedom of Association.

The power equation needs to be balanced, for all precarious workers, and for the economy as a whole.

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