

## Relations industrielles Industrial Relations



Geoffrey ENGLAND : *Part-time, Casual and Other Atypical Workers: A Legal View*. Research and Current Issues Series No 48, Kingston, Industrial Relations Center, Queen's University, 1987, 81 pp., ISBN 0-88886-154-0

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Mais, si des considérations plus substantielles doivent emporter le débat judiciaire, selon ce que suggère le professeur Beatty, ne devient-il pas tragiquement inquiétant pour le citoyen que la détermination des grandes formules de rapports professionnels soit ainsi le produit d'une action à deux temps, judiciaire — législateur, à partir d'un document constitutionnel qui ne dépasse pas tellement les valeurs libérales, et non pas l'expression plus directe de consensus sociaux provoqués par l'action des milieux en cause?

**Pierre VERGE**

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**Part-time, Casual and Other Atypical Workers: A Legal View**, by Geoffrey England, Research and Current Issues Series No. 48, Kingston, Industrial Centre, Queens University, 1987, 81 pp., ISBN 0-88886-154-0

For the last decade Canada as well as most of the industrialized nations has been facing serious economic problems ranging from structural changes to high unemployment rates. Many economists, employers and politicians believe that the labor market should become more flexible in order to overcome these problems especially the unemployment. One of the most discussed issues in achieving this aim is to diminish legal controls on hiring and firing by passing new laws and rearranging the legislation. There is no doubt that there are winners and victims of this flexibility process since it means segmentation of the work force: on the one hand there is a shrinking number of core workers in the enterprises, well furnished with job security rules, reasonable wages and comfortable fringe benefits. But on the other hand there is a growing number of contingent or atypical workers with rights and status lower than their full-time permanent colleagues.

There are a lot of studies describing this phenomenon but only few researching the legal treatment of those workers who do not fit the mould of the traditional employment relationship. One of them is the study by G. England, Professor of Labour Relations at the School of Management of the University of Lethbridge. It doesn't only give an overview about the several types of contingent workers but focusses on the legal treatment of atypical workers. In so far the author fits — in a gap existing in canadian literature about their particular legal situation.

The author develops six categories of atypical employment relationships. Firstly there are part-time workers working fewer hours per week than full-time workers. Secondly there are casual workers regularly hired for a short term period in order to meet a seasonal or sudden business demand for increased labor. Thirdly there are workers hired under fixed term contracts which provide for automatic termination upon the expiry of a certain period or upon the occurrence of a specified event. Then there are workers engaged by a temporary help service agency who are leased to user firms for a fee. Another category are homeworkers performing their employment duties in their private home. And the last group consists of workers who in whole or in part from a government subsidy under provincial job creation programs.

England describes the specific legal conditions and problems of all those employees as based on their legal status within common law employment standards and collective bargaining legislation. The author draws the conclusion that under all the three major legal regimes governing work relations the workers are subjected to a broad range of inferior treatment compared with traditional employees: In a lot of cases they are excluded from collective bargaining agreements and separated from the bargaining unit of the permanent staff with the argument

of a lack of a sufficient community of interests in relation to permanent workers. They are not entitled to some of the benefits of employment standard legislation the application of which requires the accrual of a defined period of continuous employment (e.g., termination of employment notice, unemployment insurance benefits — see also the criticism of the Forget Commission). In many provinces the legislation does not establish a pro rating system which could at least provide them with some proportion of the benefits in question.

England examines the arguments justifying an inferior treatment of atypical workers relating to the principles of equality laid down not only in several philosophical and Christian ethic systems but also in the Canadian Charter of Rights and Freedoms and human rights legislation. The Charter does not provide «pure» equity because section I does envisage it protected rights being overridden on exceptional circumstances. The inferior legal treatment of atypical workers must pass now the relatively rigorous acid test of justification under section I of the Charter. England demonstrates in details that in most cases this justification will fail.

Due to the requirements of human rights and constitutional law but also to a matter of «fair» public policy, England submits several reforms to the present Canadian labour law. These proposals are very close to the recommendations of the Wallace Report and the Equal Rights Commission particularly in regard to part time workers (e.g., equal wages for all performing work of equal value all fringe benefits available to all employees on a pro rated basis to account for reduced working hours). For other atypical workers, namely temporary workers supplied by an agency, the author pleads for the enactment of a specific legislation. Such a legislation only exists in British Columbia.

There, farm labor contractors are required to obtain an agency licence and to maintain a payroll list. The payment of wages is also subject to a specific regulation. If a client enters into an arrangement with a contractor whom he knows to be unlicensed, he is deemed to be the employer of the employees. Such type of legislation is well known in some European countries (e.g., France, Germany).

England's study does not only provide a concise view on the deteriorated social and economic situation of atypical workers but also demonstrates their disadvantages within present law and sets forth some proposals to resolve the inequalities. One should wish this book a broad and attentive audience especially on the legislator's side who could profit from these proposals.

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**Le projet d'entreprise**, par Luc Boyer et Noël Equilbey, Paris, Les Éditions d'organisation, 1986, 135 pp., ISBN 2-7081-0749-6

La rapidité avec laquelle s'effectuent les changements et les mutations au sein de l'environnement socio-économique des entreprises pose un défi constant aux cadres supérieurs des organisations. Ils ont à composer avec des cycles de changement de plus en plus courts dans le temps et à réorienter rapidement leurs entreprises vers de nouveaux choix stratégiques qui leurs seront davantage profitables.

Les notions liées à la planification stratégique des entreprises ont sensiblement évolué au cours des cinq dernières années. La notion de stratégie d'entreprise est devenue plus transparente. D'une vision classique où l'entreprise est considérée en tant qu'organisme technico-