

Trudeau Project:

Canadian Contributions to Social Justice in the World of Work: Transnational Futures of International Labour Law

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Trudeau Project Proposal: Canadian Contributions to Social Justice in the World of Work: The Transnational Future of International Labour Law

Introduction:

In 2019, the International Labour Organization (ILO) - the specialized agency of the United Nations charged with the promotion of social justice and human and labour rights to which Canada is a founding member - will celebrate its 100th birthday. Yet the “decent work” challenges the ILO faces into its second century to make social justice a reality for workers at home in Canada, and abroad, are staggering.

- Consider the young women factory workers in sub-contracted firms in places like Bangladesh, Cambodia and Haiti, producing brand name running shoes they can ill afford to buy. The running shoes are sold by single mothers working near minimum wage in places like Canada, who *do* shop where they work. They need everyday low prices to make ends meet. And as the Rana Plaza disaster in Bangladesh painfully underscores, factory workers in the global South need workers and consumers in the global North to care about working conditions and worker empowerment abroad.
- Consider the temporary migrant workers who fill labour market “shortages” in agriculture, domestic work, restaurants, hotels, and even ski resorts in Canada. They leave families and lower wages abroad in their own homes, but face precarious working conditions – and the threat of repatriation – here in Canada. Moreover, they faced public outcry when Canadian workers claimed they were taking jobs away from citizens...
- And what should be said about French construction workers protected by labour laws banning asbestos use that Canada unsuccessfully challenged before the World Trade Organization (WTO)? These workers are linked to construction workers in many parts of the global South who handle hazardous materials without protective equipment. They are also linked to informal economy waste pickers in the global South, recycling precious metals from high technology shipped from globalized industries in the global North.

These concrete challenges are all transnational: by that I mean that they intricately link work at home, in Canada, and the world of work abroad, including in the global South. They are deeply relevant to Trudeau Foundation themes of Canada in the world, responsible citizenship, and human rights and dignity where they matter most concretely: where most peoples spend much of their lives, at work. These challenges concern a broad range of actors, including but extending beyond individual states. And they require creative responses: approaches that help actors to move beyond zero sum analyses of globalization’s winners and losers. Can trade and decent work be reconciled? Can the univocal focus on growth be rethought and broader benefits promised by globalization shared? How might

actors in states like Canada foster a regulatory climate to promote equitable, sustainable approaches to development? And more specifically, how might international law – in particular international labour law – help a broad range of actors, transnationally, to make globalization fair, for ordinary Canadians, and for working people worldwide?

In the first two examples raised above, international labour law has played a creative role, transnationally, to foster a more sustainable, equitable sharing in the global context:

- International labour law is at the centre of a corporate social responsibility response to the Rana Plaza disaster in Bangladesh, and of country-wide factory monitoring initiatives under a “Better Work” program in places like Cambodia and Haiti.
- International labour law was marshalled by agricultural workers, and home care workers, before Canadian courts to support their freedom of association.

In the third example, the World Trade Organization decision-making and the challenges of the informal economy have forced changes to international labour law, to make it responsive to an increasingly transnational world.

The ILO is not the only actor in any one of these transnational examples. All three examples provide glimpses into the critical role that the organization that won the [1969 Nobel Peace Prize](#) on its 50th birthday in 1969 can and I believe should play, beyond its main office in Geneva, and beyond traditional international law, into its second century. While the ILO must and is reflecting on change from the inside, catalysts from informed, external gadflies are critical. Fortunately, on the international stage, Canada has announced to the world that it is back...

This three-year Trudeau project (2016-19) seeks to offer a timely Canadian contribution to enable a collaborative, data-driven process to provide reliable information about one aspect of the ILO’s changing role. It will contribute targeted policy recommendations on the transnational future of international labour law, to foster social justice in the world of work.

Background:

Created under the Treaty of Versailles in 1919 as part of the League of Nations, the ILO survived to become a specialized agency of the United Nations. Founded on the conviction that “universal and lasting peace can be established only if it is based upon social justice” (ILO Constitution, preamble), the ILO has pursued the improvement of working conditions worldwide, largely – but not exclusively – through international labour standard-setting and monitoring. Canada holds a special place in the ILO’s history: Canada offered the ILO a wartime refuge, from 1940 – 1948; in fact, the ILO was housed in Montreal, at McGill University. During that time, the ILO prepared a post-war future, including paths in which international labour law could accompany decolonization. This work led to the ILO constitutional annex, the Declaration of Philadelphia of 1944 that Franklin D. Roosevelt referred to as “a landmark in world thinking”. It declared that:

- Labour is not a commodity;
- Freedom of expression and of association are essential to sustained progress;

- Poverty anywhere constitutes a danger to prosperity everywhere;
- All human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity.

The contemporary global environment makes the ILO's 1944 social justice objectives seem every bit as relevant, urgent and inspiring now. The tripartite ILO – which has governments, workers organizations and employers organizations as part of its constitutional make up - has launched a range of centenary initiatives that seek to address the changing world of work. Perhaps its most ambitious rethinking is to move beyond a narrow vision of its mandate as regulating labour law through an employment relationship, to promote “decent work *for all*”.

In the world of international labour law, I am an insider-outsider who believes change comes through careful, purposeful action. I spent three (3) wonderful years as a full time international official at the ILO in Geneva, learning how the institution works from the inside. As a professor at McGill, I have retained my commitment to informed, focused activism for social justice. Abroad, I had the privilege to take a leading role ensuring substantive change for domestic workers in international labour law, and to work with workers, employers and government representatives in Haiti to draft a new labour code. At home, I served for seven (7) years as a Quebec Human Rights and Youth Rights Commissioner, offering both policy advice and making decisions on concrete, labour rights cases of transnational importance, that affect our society. I have written extensively about transnational labour law's interface with human rights, and its objective to foster human dignity, in corporate social responsibility, in regional and multilateral trade law, in the regulation of domestic work, and in relation to the challenge of development. I have also repeatedly been invited to comment on the ILO's future. Most recently, I have co-edited with the ILO's former legal advisor, a *Research Handbook on Transnational Labour Law* (2015), which includes forty-one (41) contributors worldwide. The volume seeks to shape the development of an emerging field, by moving beyond traditional understandings of international labour law. It reflects on the changing role of international labour law, transnationally, and several contributors offer crucial examples of the new uses to which international labour law is being put. From the impact of agricultural policies in trade agreements on migrant workers, to corporate social responsibility initiatives on occupational health and safety post Rana Plaza in Bangladesh, from national court decision-making on the freedom of association in Canada to international financial institutions' approach to structural adjustment in Europe, international labour law has played a critical, evolving role. This project will move beyond the individual case studies, to offer a map of international labour law, used transnationally: that is, beyond traditional international law reporting, toward a broad range of socially-responsible initiatives; and beyond individual states, by a range of actors that criss-cross North-South boundaries and emphasize how fundamentally home and abroad are linked. It is a project about the pressing need for social justice at work worldwide. It speaks to Canada's historic and ongoing role in the transnational world of work.

Project Objectives:

1. To celebrate the role that the ILO has played in its first century, fostering social justice in the world of work, while exploring the challenges of the changing paradigm of work.
2. To move beyond the anecdotal, to document and assess the changing, expansive use of international labour law, transnationally (legal mapping).
3. To convene leading stakeholders in Canada and abroad, from within the ILO and beyond, to formulate recommendations on the basis of the legal mapping to the transnational future of international labour law.

1. Celebrating the ILO's social justice role while exploring the challenges: The ILO has played a central role in its first century, fostering social justice in the world of work. The Trudeau Project (2016-2019) seeks first to explain and underscore the role of the oldest UN specialized agency, establishing the norms that are standard features of most labour laws world wide – from weekly rest periods to safety and health protections to the right to organize in free trade unions.

This project inscribes itself within the [ILO Centenary Initiatives](#),¹ including on the Future of Work and the Future of Standards. It builds on the important literature acknowledging the extent of the challenge to the ILO's effectiveness. The world is changing, and so must labour law. In other words, the male breadwinner supporting a stay at home wife and nuclear family with one factory job in the global North can no longer remain the main model of employment. Yet many labour laws are built around it, not only in countries like Canada, but also in countries of the global South where the standard employment relationship was rarely a reality for most workers. Moreover, international labour law is based on – indeed helped to build and extend – that model. This project builds on the extensive literature that underscores the extent to which the change in model poses a fundamental challenge to international labour law.

2. Legal Mapping: If - as some suggest - international labour law is out-dated, why is it heavily solicited to build a social justice based transnational future? Sure, the ILO is decentred – it is no longer the only or even the main inter-state actor in a world of many transnational actors seeking to humanize globalization. But does that mean that its role is no longer central, indeed pivotal? This project seeks first to document how international labour law is marshalled in non-traditional, transnational ways, by a broad range of actors, both here in Canada, and abroad across the development divide. It will shed light on how international labour law, used transnationally, is influencing actors who are shaping the direction of globalization. I propose to illustrate this seeming paradox, by undertaking an analytical mapping of the “non-traditional” reach of international labour law in the contemporary

¹ The ILO has identified seven Centenary Initiatives, all of which relate to the Trudeau Project in varying degrees: The Future of Work Initiative, The End of Poverty Initiative, The Women at Work Initiative, The Green Initiative, The Standards Initiative, The Enterprise Initiative and the Governance Initiative.

economy. In other words, rather than rely on the impressionistic, I want to be able to provide a detailed, in-depth set of vignettes of how international labour law is being used to construct transnational alternatives that foster social justice, at home and abroad.

3. *Policy Recommendations on Social Justice in the World of Work:* The final, overarching objective of this project is to formulate policy recommendations to accompany the ILO into its second century. A transnational labour law is being built out of a renewed focus on labour rights as human rights, and out of attempts to centre the concern of human dignity in the notions of “decent work” and social justice. It seeks to identify how citizenship can be exercised responsibly, by fostering fair labour conditions whether products are made and services rendered at home or abroad. It calls for creative thinking, beyond “us and them” mentalities, as the theme of “Canada in the world” suggests. It also stems from the conviction that the ILO’s mandate to foster social justice is not an exclusive mandate, but a mandate that is shared, including by Canada. The project builds on the realization that home and abroad are deeply connected; we are interdependent. It urges all to think about law that way too...

The project will therefore focus on law making, legal interpretation, and law reform in the service of social justice at work, in a globally interdependent world. That is the transnational labour law project, to which the ILO plays a pivotal role. The Trudeau Symposium, held on the eve of the ILO’s 100th birthday, will offer a vehicle through which to convey this distinct Canadian contribution, which has the potential to shape the direction of the ILO into its second century.

Project Deliverables:

This Trudeau project will produce the following deliverables, in keeping with the timeline below:

- A legal mapping of detailed vignettes of international labour law, used transnationally, which will be integrated into the Labour Law and Development Research Laboratory’s CFI-funded database;
- A two-day high-level Trudeau symposium celebrating the ILO at 100, on the transnational future of international labour law;
- Detailed policy recommendations based on the results of the legal mapping and accompanying policy briefs;
- An edited volume based on the papers presented at the symposium, with a detailed discussion of the legal mapping and the recommendations
- Ongoing policy work, public engagements, and academic writing on transnational labour law

1. Legal Mapping:

This project will be built on data, in a way that would be difficult to fund under a traditional research grant. With a team of graduate student research assistants playing a pivotal role in data collection, and based on initial and periodic stakeholder consultations, I will document and analyze the use of international labour law, transnationally, focusing on the period roughly referred to as constituting the emergence of the global era, from 1980 to 2015. The

legal mapping is a mixed quantitative and qualitative survey, with selected qualitative vignettes. It is deliberately ambitious, as I wish to provide a representation of the breadth, and depth of the reliance on international labour law in the construction of transnational labour law. Graduate students will be actively engaged throughout the life of the research projects, and I will be attentive to provide them with publication opportunities and opportunities to present research.

The legal mapping will be focused, both as to the scope of the international labour law (the data sets - A), and the selected institutional arrangements (B).

A. Data Sets: There are over 400 international labour standards, and not all are [up to date](#). The ILO Centenary Standards Initiative includes a standards review mechanism designed to enhance their effectiveness. This Trudeau proposal will intersect with but diverge from the ILO's Standards Initiative. It will discuss some historical instruments, to explain the ILO's influence on most labour legislation in the world, and to underscore the focus on employment. However, in its analysis of emerging ILO roles, it will focus on those instruments that may best illustrate the ILO's potential to shape transnational labour law futures, based on the following three data sets:

1. Core Conventions: The *first data set* will comprise the eight (8) core ILO conventions, which the ILO has prioritized in its [Declaration on Fundamental Principles and Rights at Work, 1998](#). They include

- the freedom of association and the effective recognition of the right to collective bargaining;
- the elimination of discrimination in respect of employment and occupation;
- the effective abolition of child labour, through minimum age for work protections and the elimination of the worst forms of child labour; and
- the elimination of all forms of forced or compulsory labour, through which the ILO has recently started to address “contemporary forms of slavery” and “human trafficking”.

The core conventions in the first data set have come to be included by reference in a number of specialized labour dispute resolution measures, including in regional human rights bodies. They have also been referenced in a range of regional trade agreements worldwide.

2. Governance Plus Standards: The *second data set* will concern the ILO's [governance instruments](#) on full employment policies, labour inspection, and tripartite consultation, along with the Termination of Employment Convention (No. 158), 1982, and selected Occupational Safety and Health conventions and recommendations. These instruments have been the subject of significant challenge and interface with international financial institutions and a range of austerity measures both in developing countries and in Europe.

3. Key Technical Standards: The *third data set* will include specific instruments that have had a significant policy impact, including the recent ILO Convention (No. 189) and Recommendation (No. 201) on Decent Work for Domestic Workers, 2011, and the highly original, widely ratified (including by Canada) Maritime Labour Convention, 2006. The Revised Indigenous Peoples' Convention, 1989 (No. 169) offers another striking example of

an instrument that has had a broad and lasting transnational impact, beyond the ILO's mainstreamed constituency.

B. Institutional Arrangements: The Trudeau project will also necessarily focus on select state and institutional arrangements, given its focus on transnational futures. It will draw on publicly available sources including the ILO's compendium of court cases citing international labour law, McGill Faculty of Law's Preferential and Regional Trade Agreements Database and the Labour Law and Development Research Laboratory's database.

1. Regional Human Rights Agreements: The project will first compile data on the use by the main regional human rights tribunals (European Court of Human Rights, African Court on Human and Peoples' Rights, Inter-American Court on Human Rights) of the data sets of international labour law.

2. Regional Trade Agreements: Second, it will canvass data on the use of the identified standards in regional trade agreements. The recently revealed text of the [Trans-Pacific Partnership](#) (TPP) to which Canada is a signatory and whose Chapter 19 on labour specifically refers to the ILO, will be the basis of an in-depth vignette.

3. Corporate Social Responsibility Instruments: Third, it will consider the use of international labour law in emerging, thickened corporate social responsibility initiatives, including the [Accord on Fire and Building Safety in Bangladesh](#), standards developed by the [International Organization for Standardization](#) (ISO), and mixed trade – social responsibility mechanisms like the ILO and World Bank financed [Better Work](#) initiative.

4. Country Vignette on Labour Law Reform Abroad: Fourth, it will offer a vignette of one selected country, upon consultation with relevant stakeholders. My preliminary proposal is to focus on the use by social movements of the international labour standards on decent work for domestic workers.

5. Country Vignette on International Labour Law at Home in Canada: Fifth and finally, back “home” in relation to Canada, the mapping will turn inward and will quite specifically chronicle the frequency and nature of use by labour relations commissions, human rights tribunals and arbitral panels of international labour law in decision-making focusing on selected Canadian jurisdictions. It will offer a close analysis of selected key cases, focusing on the context in which international labour law was brought forward, and the use made of international labour law by the adjudicators.

2. High-Level Trudeau Symposium:

A strength of this project is my ability to draw heavily on existing networks in international organizations and in a number of domestic jurisdictions, including with concerned social movements.

In 2009, I organized a one-day symposium on the regulation of decent work for domestic workers at McGill that constituted Canada's celebration of the ILO's 90th year of existence with colleagues at the Inter-University Research Centre on Globalization at Work (CRIMT)

and the Labour Law and Development Research Laboratory. My goal in 2019 would be to convene a two-day Trudeau symposium in Montreal, to which I would expect to invite senior representatives of the ILO. Members of the Trudeau community of fellows, scholars and mentors will also be invited to play a critical role in this symposium. The workshop will provide simultaneous English-French-Spanish interpretation, to foster the involvement of a range of actors internationally, with close attention to developing country participation. It will bring together participants across the disciplines of law, history, political economy, labour relations and international relations. It will involve academics, judicial and quasi-judicial decision-makers in the field of labour law, as well as officials and experts of international organizations and regional trade agreements, alongside members of social movements actively engaged in shaping and ensuring the application of the law.

3. Policy Recommendations:

The ILO is actively planning its next century. It is open to informed, targeted scholarly reflection and guidance, to shape its future direction. The Trudeau symposium provides an opportunity to present and finalize the policy recommendations, directed in the first instance to the ILO but ultimately to the broader community of transnational actors concerned with the role of law in achieving social justice in the world of work. This initiative will continue an important tradition of Canadian leadership in shaping the ILO into its future.

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