

Occupational Safety and Health and Canada's Mobile Labour Force

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Obstacles to Regulatory Effectiveness

Katherine Lippel, Barbara Neis,
Maxine Visotzky-Charlebois, and
Dalia Gesualdi-Fecteau

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Preface

As the principal author of this volume, the late Katherine Lippel, Distinguished Chair in Occupational Health and Safety Law at the University of Ottawa, conceived and began this project as part of her substantial contributions to the On the Move Partnership. On the Move was a groundbreaking Canadian interdisciplinary research program directed by coauthor Barbara Neis that explored the impact of employment-related geographic mobility on workers, families, employers, and communities across Canada.

Katherine's role in On the Move was central. As the lead of the policy component, she showed how regulatory frameworks interact with the complex realities of mobile workers' lives, including how their mobility intersects with occupational safety and health, workers' compensation, employment standards, and other policies to create regulatory gaps that can put their health and welfare at risk. These workers and the mobility-related hazards they experience are often made invisible by the frameworks and institutions meant to protect them.

Throughout her involvement with On the Move, Katherine oversaw and conducted empirical research and legal analysis to provide a comprehensive, justice-oriented examination of the protections—or lack thereof—afforded to mobile workers within Canada's regulatory landscape. Her research and that of her team members showed the important challenges faced by mobile workers and the structural barriers to justice they often encounter.

Tragically, Katherine passed away in 2021 before she and Barbara could complete the manuscript. In the wake of her loss, Dalia Gesualdi-Fecteau and Maxine Visotzky-Charlebois, legal scholars and former

students of Katherine's, worked with Barbara to pursue her intent and bring this important work to publication. Drawing on Katherine's extensive research, notes, drafts, and prior writings, they have sought to remain faithful to her voice and vision while broadening the focus and updating the legal analysis and literature on which it draws.

The coauthors hope that readers—whether scholars, students, practitioners, or policymakers—will find here a book that has retained the depth of Katherine Lippel's scholarship. May the book contribute to sustaining the insightful conversations she brought to the On the Move Partnership and to all the other conversations and research collaborations she supported and led in Canada and globally. May it also provoke new questions and continue to guide, inspire, and empower generations to come.

Acknowledgements

The On the Move Partnership was supported by the Social Sciences and Humanities Research Council through its Partnership Grants funding opportunity (Application ID 895-2011-1019), InnovateNL, the Canada Foundation for Innovation, and numerous community partners. This book was also partially supported by the Policy and Practice in Return-to-Work After a Work Injury: Challenging Circumstances and Innovative Solutions research partnership funded by the Social Sciences and Humanities Research Council of Canada (895-2018-4009), the Canadian Institutes of Health Research (159064), the University of Ottawa's Office of the Vice-President, Research and Innovation, and multiple universities and partners.

This book and the core research on which it draws would not have been possible without the insight, guidance, and careful engagement of Katherine Lippel in her roles as the policy component lead of the On the Move Partnership for almost ten years and as lead researcher and author of the original partial manuscript that the coauthors have developed since her death. There was no more accomplished and knowledgeable Canadian sociolegal researcher in the areas of occupational safety and health and workers' compensation in Canada at the time of her passing. As coauthors, we have done our best to remain true to her high standards, methodological rigour, and deep sociolegal insights. We can only hope she would approve of the final product.

On the Move coinvestigator David Walters worked with Katherine on conceptualizing the relationship between employment-related geographical mobility and occupational safety and health and its implications for policy effectiveness on some of the early research and coauthored at least

one publication. Many other On the Move researchers, graduate students, and postdoctoral fellows did focused work on occupational safety and health (OSH) policy and work-related mobility that resulted in publications we have cited in this book. We thank these researchers for their engagement with On the Move and relevant topics. Janet Oliver was the project manager for On the Move and, in that role, managed the finances and helped organize many of the key meetings and dialogues that helped On the Move achieve its goals and objectives. Lesley Butler provided tremendous editorial support in formatting and proofing the manuscript. Ellen MacEachen and Stéphanie Premji took over responsibility for Katherine's Policy and Practice in Return-to-Work After a Work Injury partnership grant after she passed and continue to lead that initiative. We thank them for providing some financial support from that partnership to help carry the manuscript over the finish line and for support for some of the research on return to work within the mobile labour force cited in this book. We also thank Monique Lefebvre, project manager for Policy and Practice in Return-to-Work After a Work Injury, for her dedication to this project. Fred Sweet provided gentle and engaged support in his role as friend and as the late Katherine Lippel's partner and manager of her estate. Connor Houlihan at Athabasca University Press demonstrated amazing patience while we found a way to turn a rough and incomplete draft report into a finished book. Geneviève Richard, Majda Lamkhioued, Guillaume Trifiro, Jérôme Bélanger, and Jean-Paul Dautel did some of the background legal research needed to update the policy and case law information from the original research. The two anonymous reviewers, along with Karyn Wisselink at AU Press and copyeditor Danny Constantino, provided extremely helpful comments and suggestions for improvements to the original submitted draft. Thanks to all.

Abbreviations

AWCBC	Association of Workers' Compensation Boards of Canada
BC	British Columbia
CEEDD	Canadian Employer-Employee Dynamics Database
CNESST	Commission des normes, de l'équité, de la santé et de la sécurité du travail
CSST	Commission de la santé et de la sécurité du travail
DIDO	drive-in/drive-out
ELD	electronic logging device
ERGM	employment-related geographical mobility
ESDC	Employment and Social Development Canada
FIFO	fly-in/fly-out
IAVGO	Industrial Accident Victims' Group of Ontario
IJA	Interjurisdictional Agreement on Workers' Compensation
IJE	interjurisdictional employment
ILO	International Labour Organization
IMP	International Mobility Program
IMW	international migrant worker
IRCC	Immigration, Refugees and Citizenship Canada
LMIA	Labour Market Impact Assessment
MWAC	Migrant Workers Alliance for Change
NL	Newfoundland and Labrador
OSH	occupational safety and health
OTM	On the Move Partnership
RTW	return-to-work
SAWP	Seasonal Agricultural Worker Program

TFW	temporary foreign worker
TFWP	Temporary Foreign Worker Program
TSB	Transportation Safety Board of Canada
WCB	workers' compensation board
WSIB	Workplace Safety and Insurance Board

Introduction

Journeys to work, while variable across space and time, are generally becoming more sustained and complex. Intra- and interurban, rural–urban and urban–rural commuting, and interprovincial travel for work are common (Haan, Walsh and Neis 2014). Other kinds of work-related geographical mobility are also widespread, including mobility *as* work, as in the transportation and some other sectors; mobility *within* work, as in multisite work situations in home care, construction, and cleaning; and international labour mobility into Canada and other countries. In this book, we use the concept of employment-related geographical mobility (ERGM) to capture these diverse patterns of mobility. As defined by Roseman, Barber, and Neis (2011, 121–56),

Employment-related geographical mobility ranges across a spectrum from relative immobility (work at home); through extended, daily travel to and from work and within jobs; to regular, more extended absences from home at regional, national, and international scales. This spectrum therefore considers not only transnational mobility to and as part of employment, but also similar movement (and lack thereof) between localities, regions, and

provinces and states, as well as across other subnational borders. We use the adjective “geographical” to distinguish this form of mobility from the alternative meaning of “mobility” in the social sciences, where it is associated with “upward” or “downward” social and economic movement along the kind of scales (such as class and education) that are used by some theorists.

The social, economic, and health implications of ERGM are complex and important. This book is about the effectiveness of Canada’s regulatory systems for the protection of the occupational safety and health (OSH),¹ including access to workers’ compensation, of Canada’s mobile labour force. Canada’s mobile labour force is defined here as those who engage in extended/complex work-related mobility consisting of daily mobility to and from work (more than two hours per day), extended rotational mobility within provinces and territories (intra-jurisdictional) and between provinces and territories (inter-jurisdictional), and international labour mobility, as with international migrant workers (IMWs) who travel to Canada and take up paid work on a temporary basis or until they acquire permanent residency status. Although they are not the primary focus of our discussion, we also consider workers for whom mobility *is* work, as with workers in the transportation sector, as well as those employed in multiple or transient work locations (on a daily/weekly/monthly basis), as with many home care, cleaning, construction, and temp agency work situations. We note that some workers are doubly mobile, as in the case of deadheading airline crews, some Great Lakes seafarers, fish harvesters, and others, such as gig workers in Toronto who take the GO train to work in the downtown and who thus potentially engage in extended mobility to work and mobility as work. Working while mobile, as with work while passengers on planes, trains, buses, and ferries, is touched on here but also not our main focus (see Hughes and Silver 2020).

In each of these situations of complex/extended ERGM, mobility is to varying degrees challenging; its accomplishment requires effort and is essential (in that access to paid work is necessary for most people and failure to get to work or home safely and on time can have major consequences for workers and their families). Complex/extended ERGM often requires the investment of significant temporal, financial, infrastructural,

and social-relational resources at home, on the road, and at work in order to achieve fragile synchronicities (Neis et al. 2018). And to varying degrees and in different ways, it can pose significant hazards to OSH and affect regulatory effectiveness. We define *effectiveness* as the extent to which the objective or purpose pursued by the regulatory framework is fulfilled. Fundamentally and notwithstanding jurisdictional specificities, OSH frameworks seek to protect workers against physical and psychosocial risks. Workers' compensation regimes seek to provide the necessary care to workers who have suffered an occupational injury, from compensating for wage loss to providing support for physical, social, and professional rehabilitation.

A central argument of the book is that (1) a significant segment of the Canadian labour force engages in these diverse types of extended/complex ERGM to, within, and as work and (2) that such mobility is an important but neglected and poorly understood determinant of their OSH, including access to compensation, due in part to mobility-related challenges to regulatory effectiveness.

Why do we need a book on OSH, regulatory effectiveness, and Canada's mobile labour force? Extended/complex ERGM is not new—some workers have engaged in diverse work-related mobilities since long before the start of the industrial era. In recent decades, however, the scale and dynamics of ERGM have changed because of the combined impacts of deregulation, globalization, urbanization, changes in transportation, the expansion of precarious employment, and the expansion of temporary labour migration relative to immigration. Furthermore, some research has shown that many of the changes that are contributing to increased ERGM are also negatively affecting worker safety and health, including through eroding regulatory effectiveness. Examples of the latter include discussions of the “fissured” workplaces associated with extensive subcontracting (Weil 2014) and research on the blurring of employer responsibility for OSH associated with third-party temp agency work contracts (Lippel et al. 2011). Precarious employment has been shown to contribute to higher injury risk through its negative impact on workers' capacity to exercise their rights—including their rights to know about hazards, to participate in health and safety monitoring and prevention, and to refuse dangerous work (Quinlan, Mayhew, and Bohle 2001). It is also

associated more broadly with heightened pressure, disorganization, and risk of regulatory failure (Underhill and Quinlan 2011). Analyses of the global expansion of international migrant work have explored the layers of vulnerability and documented safety and health hazards and regulatory issues contributing to high injury rates and other OSH challenges among these workers (Sargeant and Tucker 2009). A core question here is how and to what extent threats to OSH are linked to work-related mobility.

While important, existing research on the changing world of work and its consequences for OSH has been largely disconnected from the growing body of mobility studies. Mobility studies researchers have demonstrated the pervasiveness of mobility, its complex dynamics, and ways it intersects with family and working lives but have, until recently, paid relatively little attention to work-related mobility and to OSH (see Roseman, Barber, and Neis 2015; Cresswell, Dorow, and Roseman 2016; Dorow, Roseman, and Cresswell 2017). Furthermore, where they exist, studies on mobile workers and OSH have generally focused on a particular type of ERGM (extended daily commuting, fly-in/fly-out [FIFO] work, international agricultural workers). This literature has also tended to focus on particular issues or concerns, such as vulnerability to exploitation among IMWs and to repatriation for injured IMWs; FIFO impacts on work-family conflict; heightened health and safety risks associated with work as mobility, including in trucking, seafaring, and fishing; or the relationship between work scheduling and commute accidents in urban areas.

This book is part of a larger effort to integrate the safety and health literatures on the changing world of work with insights from mobility research to help address this knowledge gap. The book draws on theoretical and research insights from a major, multidisciplinary program of research on ERGM in the Canadian context called the On the Move Partnership (OTM; On the Move Partnership, n.d.). OTM was a ten-year program of research that supported policy, field, and statistical research on diverse forms of extended/complex ERGM across multiple sectors in seven Canadian provinces and in urban and rural contexts between 2012 and 2022. When OTM was originally conceived, researchers, community leaders, and policymakers had limited knowledge of the distribution, scale, and rhythms of diverse types of extended/complex mobility, their relevance

for regulatory effectiveness, and the associated impacts on workers, families, and communities. Within Canada, there was awareness of surging temporary international and internal labour mobility, but little was known about related labour markets and ERGM influences on households and communities, including in labour-exporting regions. In labour-importing regions, such as the Alberta oil sands, community leaders argued that census-based government funding allocations did not compensate for costs of servicing large “shadow” (mostly undocumented) populations of migrant workers in communities and local work camps. Industry organizations in growing sectors associated with hypermobility (construction and transportation) wanted to know more about the relationship between ERGM and the recruitment and retention of workers (male and female) and about the health and safety implications of, for example, extended rotations for FIFO and drive-in/drive-out (DIDO) workers. Although average daily commute times were increasing in urban areas in Canada, data assumed commutes were to fixed places of work, neglecting the expansion of precarious employment and associated employment in transient (temp agency) and sometimes multiple workplaces (as with home care and cleaning work). Human resources scholarship and policies on work-family conflict largely ignored ways extended/complex ERGM could accentuate work disruptions in family lives and ways conflicts between family, mobility, and work demands might affect OSH (Hughes and Silver 2020). OTM, with its multidisciplinary, multisector spectrum approach to ERGM, sought to address these knowledge gaps, identify related gaps in policy and practice, and explore ways to address them.

The book updates and further develops work done by the late Katherine Lippel, lead author of the book, as part of OTM and other major programs of research, including Lippel’s Policy and Practice and Return-to-Work After a Work Injury partnership at the University of Ottawa. It builds on and updates findings presented in a special issue of *New Solutions* coedited by authors Lippel and Neis (2019). That special issue introduces the broader concept of the mobile labour force and explores key challenges for effective implementation of protections in Canada (regulatory effectiveness) related to the application of health and safety legislation, workers’ compensation provisions, and employment standards across diverse groups and ERGM situations.

As with OTM, this book focuses primarily on the situation in Canada. Canada's geography as a large country, based historically on settler colonialism and extensive reliance on resource extraction, with widely dispersed small settlements and a few large cities and with a growing reliance on temporary international labour migrants, is associated with a broad spectrum of ERGM, including short- and long-distance mobility within and into Canada. As explored by OTM researchers, we argue a key reason for the relative invisibility of mobility as an occupational health determinant can be found in the legacy within Canada (and many countries) of OSH regulations based on assumptions tied to standard employment relationships that, as is now well known, only ever fit well with a segment of the Canadian labour force and whose dominance has eroded significantly in recent years. Standard employment relationships are normally defined as employment relationships in which an employee, bound to a single employer, provides services on a full-time basis and for an indefinite period of time in a single physical location (Vosko 2006). ERGM challenges effective implementation of OSH regulatory frameworks in part because it blurs the very meaning of what work is. Linked to this is the distinction between work time and travel time that permeates Canada's OSH, compensation, and employment standards regulatory frameworks (Gesualdi-Fecteau, Nakache, and Matte Guilmain 2019), which are based on the assumptions that where workers live and their commute to work are the product of individual choice and thus responsibility, whereas their experiences at work are mediated by employer dominance to varying degrees. As such, it is assumed that only the latter should be subject to employment-related regulation, while the former should be regulated through other means such as transportation safety, private insurance, and law enforcement rather than employers, inspectors, and OSH bodies.

During our OTM research, we realized early on that the fact that in Canada, OSH and workers' compensation are largely provincial responsibilities with some limited federal jurisdiction had implications for regulatory effectiveness, particularly among interjurisdictionally mobile workers. Similarly, IMWs are entering Canada for work, largely based on rules associated with diverse federal immigration programs, while OSH is largely a provincial responsibility. For this reason and others, the effective

protection of the OSH of these workers is particularly challenging and thus a focus of parts of our discussion, particularly in chapter 5.

Within Canada, rather than examining law and policy in all Canadian jurisdictions, we will focus on the strengths and weaknesses of OSH and workers' compensation legislation primarily in four Canadian jurisdictions—Alberta, Newfoundland and Labrador, Ontario, and Québec—as applied to the mobile workforce. We include some discussion of potential challenges to workers engaged in ERGM who contract occupational illnesses in the wake of work-related exposures and illustrate that with a focused discussion of the COVID-19 pandemic and the mobile labour force in chapter 6.

As we shall see from the analysis that follows, mobility in many cases, although in some ways not for international labour migrants, contributes to the invisibility of workers engaged in ERGM, and from an employer perspective, increased invisibility may perhaps suggest a reduction in accountability. Certainly, we have seen that ERGM work arrangements, as with many categories of precarious employment, transfer to the workers a variety of risks historically borne by employers (Lippel, Johnstone, and Baril-Gingras 2017).

The book is laid out in the following way. Chapter 1 opens with a statistical portrait of Canada's mobile labour force. That profile updates a 2016 version contained in the introduction to the *New Solutions* special issue, where Neis and Lippel (2019) conclude the mobile labour force comprised 16 percent of the overall labour force at the time. We update that profile in chapter 1. Discussion of the statistical profile signals both the size and complexity of Canada's mobile labour force and the very real challenges created by existing statistical sources for capturing and monitoring extended/complex ERGM in Canada. Section 2 of chapter 1 synthesizes findings from disparate bodies of OSH-relevant research on the hazards and injury risks associated with diverse types of mobility, concluding that work-related mobility in its different forms is an important determinant of OSH that deserves more attention. The chapter concludes by introducing the conceptual framework that informs our larger analysis. The framework outlines multiple determinants of regulatory effectiveness related to OSH and workers' compensation for the mobile labour force. These determinants include the relative (in)visibility to regulators and others of certain

types of workers, mobility, and work situations; the power dynamics and the degree of autonomy or control exercised by employers/workers over mobility and work; and frequent constraints on workers' voice linked to space, time, precarious employment, precarious migration, and race-, gender-, and class-related determinants. Given the book's focus on regulatory effectiveness in the Canadian context, we have also identified "regulatory gaps, overlap, and confusion" as a key determinant.

Chapter 2 contextualizes our examination of the relationship between OSH, ERGM, and regulatory effectiveness. It provides an overview of the regulatory context for OSH and workers' compensation internationally, nationally, and within four provincial jurisdictions within Canada and touches on its general relevance for the mobile labour force. In their contribution to the *New Solutions* special issue, Lippel and Walters (2019) organize their discussion of hazards and challenges associated with extended/complex ERGM by looking at these in the context of the journey to work; challenges within work, including living at work; and challenges with reconciling work-related mobility with lives at home. We use this framing to present general and sector-specific findings in our discussions of hazards and regulatory effectiveness related to ERGM, OSH, and workers' compensation in chapters 3 to 6.

Chapter 3 links hazards and regulatory challenges associated with ERGM while on the road, while at work, and, where relevant, while living at or near work sites (which we refer to here as living at work). The discussion encompasses the spectrum of mobility from urban/public transit contexts through to working in remote contexts for different types of workers.

Chapter 4 examines issues around access to protections, including workers' compensation, across the spectrum and in diverse situations. Chapter 5 focuses on OSH and access to workers' compensation among IMWs, and chapter 6 discusses the impacts of the COVID-19 pandemic on the mobile labour force. The conclusion is forward looking. It synthesizes key insights, returns to the conceptual framework and discusses the different determinants in relation to the findings, presents some general recommendations for ways to improve the health and safety of the mobile labour force as well as their access to protections and support, and identifies areas for future research.

This book aims not to provide an exhaustive portrait of the legal issues and the nature of legislative protections in the jurisdictions studied but rather to alert those responsible for the OSH of the mobile labour force, including access to compensation, to the strengths and weaknesses of current practices and regulatory approaches. It is our hope that this information can inform the following stakeholders: (1) legal and social science researchers who may wish to contextualize the experiences of the participants in their studies, (2) workplace parties who represent or manage a mobile workforce, and (3) policymakers who may benefit from a clearer understanding of the OSH challenges affecting workers engaged in ERGM. We also hope that policymakers, workplace parties, and other stakeholders can address some of the gaps identified as well as follow examples of best practices from within Canada and beyond.

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1 Canada's Mobile Labour Force

Hazards and Regulatory Effectiveness

This chapter opens with a statistical portrait of Canada's mobile labour force. The next section, "Employment-Related Geographical Mobility, Hazards, and Injury Risk," synthesizes existing research on geographical mobility, hazards, and injury risk. That section starts with the literature on work *as* mobility (as in the transportation and some other sectors), followed by a section on hazards associated with multisite arrangements and one on prolonged mobilities associated with long-distance labour commuting and rotational work. The discussion of hazards associated with international migrant work can be found in chapter 5. The section "Conceptual Framework" introduces the conceptual framework that specifies the determinants of occupational safety and health (OSH) regulatory effectiveness. These determinants inform our examination of case law and threats to OSH and access to compensation in the remainder of the book.

Canada's Mobile Labour Force

Taken together, roughly what share of the Canadian labour force engages in extended/complex employment-related geographical

mobility (ERGM)? Unfortunately, it is difficult to assemble an accurate statistical snapshot of Canada's mobile labour force, and as shown by the effects of fluctuations in Canada's resource economy and of the COVID-19 pandemic, numbers and patterns of mobility vary across time and space. Neis and Lippel (2019) used 2016 census data on the number of workers (and percentage of employed labour force) engaged in long commutes (more than sixty minutes one way), inter-jurisdictional ERGM, and the number of workers employed in the transportation sector. Temporary international migrants enter Canada through the Temporary Foreign Worker Program (TFWP), through the International Mobility Program (IMP), or as international students with study visas who can then work on campus without a work permit or off campus with a work permit. The 2016 estimate thus also included data from Immigration, Refugees and Citizenship Canada (IRCC) on temporary residents with work permits. The result was a rough estimate of Canada's mobile labour force in 2016 as comprising up to 16 percent of Canada's employed labour force, or approximately 2.8 million workers.

Table 1 includes results from the 2016 and the 2021 censuses, as well as more up-to-date figures for IRCC data. It shows an overall decline both in the estimated mobile labour force share to roughly 14 percent of the employed labour force by 2021, attributed almost exclusively to a reduction in the percentage of long commuters (more than sixty minutes one way), and in interjurisdictional commuters. According to Statistics Canada, 13 million Canadians commuted to work in 2021, a 17.8 percent decrease from 2016, and 4.2 million people worked at home (24.3 percent), a more than threefold increase from 7.4 percent in 2016. Among commuters, the rate of decline was particularly high among those using public transit, where numbers declined by half from two million to one million, and among those commuting to work by car, truck, or van, where numbers declined by 13.2 percent. The number of long commuters declined from 1,494,830 in 2016 to 926,120 in 2021, a decline of almost 40 percent. The number of transportation and warehousing workers and interprovincial migrants increased slightly between the two censuses, as did the overall labour force and number employed (Statistics Canada 2022b).

Table 1. Estimated proportion of Canadian employed labour force engaged in extended/complex work-related mobility, 2016 vs. 2021

	2016	2021
Employed labour force	17,230,040 ^a	17,321,700 ^b
Commuting, total	15,878,940 ^c	13,048,510 ^d
Mobile labour force (% of employed labour force)		
Long commutes (> one hour one way)	1,494,830 (8.68%) ^e	926,120 (5.35%) ^d
Interprovincial mobility	157,975 (0.92%) ^e	98,060 (0.57%) ^f
Worked outside Canada	78,815 (0.46%) ⁱ	58,330 (0.34%) ^j
Transportation workers	777,065 (4.51%) ^g	826,435 (4.77%) ^h
Temporary residents with work permits ^{k,l}	366,670 (2.13%)	541,490 (3.13%)
Temporary Foreign Worker Program ^k	78,450	103,175
International Mobility Program ^l	288,220	438,315
Total mobile labour force	2,875,355 (16.69%)	2,450,435 (14.15%)

a. Statistics Canada 2018b.

b. Statistics Canada 2023.

c. Statistics Canada 2017b.

d. Statistics Canada 2022d.

e. Statistics Canada 2017a.

f. Statistics Canada 2018a.

g. Statistics Canada 2022a.

h. Statistics Canada 2022c.

i. Statistics Canada 2017c.

j. Statistics Canada 2022e.

k. IRCC 2017c.

l. IRCC 2017b.

The estimate in table 1 of the numbers of workers and percentage of the employed labour force who were part of the mobile labour force in 2016 and 2021 likely includes some double counting, as interprovincial and transportation workers might also be captured in long commute figures. However, since census-type data assume a unique place of work for each worker who does not select the “no fixed workplace” option, these data do not capture those who might have shorter commutes to their first work site but then have to travel between sites, thus spending more than two hours a day on the road, or other kinds of work mobility associated with working in diverse locations (Shearmur 2021). The proportion of the labour force selecting the “no fixed workplace” option in the census has increased over time. Based on 2016 and 2021 census data, those with no fixed workplace, men, high-income earners, and those in natural resource occupations were more likely to have long car commutes relative to other groups. Many working in trades, transport, and related occupations selected the no fixed workplace option in these censuses (Statistics Canada 2022b).

Census data also underestimate the size of the interprovincial labour force; however, this is also complex, as not all interprovincial employment requires complex/extended mobility. An alternative data source for the interprovincial labour force (more appropriately called interjurisdictional because of the involvement of territories) used by Statistics Canada and others is the Canadian Employer-Employee Dynamics Database (CEEDD). The CEEDD uses tax filer data, and these data are available on an annual basis (rather than once every five years like the census) and encompass activity (based on jurisdiction of employment income) that runs the full year rather than being valid only for the week prior to the census. For these reasons, these data provide more accurate and complete indications of the scale of interjurisdictional employment (IJE; as measured by the proportion of the provincial labour force engaged in IJE, share of earnings, and aggregate IJE earnings), as well as its distribution across province/territory, gender, age, and industry. In their analysis of CEEDD data on IJE for the period 2002 to 2016, Neil and Neis (2020a) found that, overall, IJE was a significant and expanding but also volatile feature of the Canadian labour market, with outgoing workers ranging from 2.4 to 2.9 percent of the labour force in Canada. In 2023, Statistics Canada

provided a brief update on IJE to 2019. It found roughly 440,000 inter-jurisdictional workers representing about 2.6 percent of all employees in Canada in 2019, compared to 330,000 in 2002.

The CEEDD data allow some separation of those engaging in extended/complex ERGM from those interjurisdictional workers engaging in short, cross-border mobility, as in the case of Ottawa-Gatineau workers. As summarized by Neil and Neis (2020a, v),

In 2002, outgoing IJWs from Atlantic Canada were most likely to travel to Ontario but Alberta had become the top destination by 2016. . . . The distribution of IJE varied across time, jurisdiction, industry, gender and age group between 2002 and 2016. IJE for male-dominated construction workers from labour exporting regions was more volatile than that in public administration and education services, health care and social assistance which employ more women, with workers in the latter industry concentrated in jurisdictions like Ontario and Québec. These jurisdictions also have a relatively higher share of IJ mobility to adjacent rather than more distant jurisdictions when compared to Atlantic Canada and the Territories. Overall, the IJE labour force aged over time with the share of IJE among young workers 18–24 declining and that among older workers 55 and over increasing, although the extent of this shift varied across jurisdictions and was highest in Québec.

According to Statistics Canada, British Columbia (BC), Saskatchewan, Manitoba, Québec, and the Atlantic provinces sent out more interjurisdictional workers than they received between 2002 and 2019 (Qiu 2023, 2). Between 2002 and 2019, Newfoundland and Labrador (NL) sent on average 19,000 workers per year to other provinces and received about 6,000 workers (Qiu 2023, 2). In comparison, Alberta received close to 100,000 interjurisdictional workers (Qiu 2023, 3). In the Atlantic provinces, mobile work is a “response to economic depletion” (Donatelli et al. 2017, 612), including deindustrialization, resource depletion and associated plant closures, and consolidation of ownership of land and fisheries quotas and licences. In Alberta, the relatively high wages, longer working

hours, and opportunities for overtime helped attract labour migrants from other jurisdictions.

Better and more up-to-date data on temporary international migrants in the Canadian labour force were available at the time of writing than had been available in 2016. According to Chartrand and Vosko (2021), in 2018 there were 84,230 temporary work permit holders under the TFWP, a reduction from 118,446 in 2013, with these workers increasingly concentrated in agricultural work and the Seasonal Agricultural Worker Program (SAWP) and in caregiving work, along with some other sectors requiring Labour Market Impact Assessments (LMIA). While numbers under the TFWP declined during this period, numbers under the IMP increased during the same period from 193,378 in 2013 to 254,520 in 2018. These programs include IMP categories governed by international agreements, such as the North American Free Trade Agreement, International Experience Canada, spousal permits, postgraduate employment, intracompany transfers, and other “Canadian Interests” (Chartrand and Vosko 2021, 101).

Numbers recruited through the TFWP increased again following federal government policy changes in April 2022, expanding categories of occupations eligible for permits and the percentage of plant labour force shares open to temporary foreign workers (TFWs) and expanding the period of time covered by LMIA. The number of permits expanded to 142,000 in the first eight months of 2023, an increase of 45 percent from the same period in 2022 (Yalnizyan 2023). Both workers recruited through the TFWP, including the former Live-In Caregiver Program, and those coming in through some of the IMPs were the focus of On the Move Partnership (OTM) research (see, e.g., Cedillo, Lippel, and Nakache 2019; Coderre and Nakache 2021; Hill et al. 2019; Foster 2021; Foster and Barnettson 2017; Gesualdi-Fecteau et al. 2017; Gravel et al. 2014, 2017; Hanley et al. 2014; Nakache 2018; Perry 2018, 2019; Smith 2021).

Other than those engaged in postgraduate employment, international students on study permits were not included in the Chartrand and Vosko data because they don’t need a work permit to work on campus. International students were, until recently, an increasingly important segment of Canada’s mobile labour force, particularly in communities with postsecondary institutions, and were the focus of OTM research

by Shiva Nourpanah (2021, 2019b). According to Statistics Canada, the share of international students in Canada with paid employment income increased from “0.1% in 2000 to 1.4% in 2018, corresponding to a 10-fold increase from 21,800 to 277,400” (Crossman et al. 2022, 3). The increase in labour market participation among college students during this period was particularly large, changing from 7 percent in 2000 to 57 percent in 2018. International students’ paid employment is concentrated in a relatively small number of sectors and is particularly high in accommodation and food services, where they accounted for 4.6 percent of workers and 2.5 percent of employment earnings (Crossman et al. 2022). After declining during the pandemic, international students’ access to study permits rapidly expanded, as did their and their family members’ access to work permits. The ceiling of twenty on the number of hours they could work each week while studying was temporarily removed in 2022 (Smith 2022).

The statistical profile of Canada’s mobile labour force presented above is a forceful reminder of the pervasiveness of not only extended/complex ERGM in Canada but also its sectoral and regional distribution and volatility over time. Challenges with constructing the profile are a reminder of some of the reasons why this mobility and its consequences for workers, employers, and families are difficult to monitor in the Canadian context. The next section uses a review of relevant literature to explore the OSH hazards and risks associated with mobility as work, within work (as in multisite employment), and to work in the form of daily commutes and prolonged mobility across jurisdictions. Literature review findings highlight the multiple hazards and high level of risk associated with much employment-related geographical mobility and provide a rationale and foundation for our focus on mobility-related challenges with OSH regulatory effectiveness and access to compensation in the remainder of the book.

Employment-Related Geographical Mobility, Hazards, and Injury Risk

Extended/complex ERGM is associated with a broad range of physical, chemical, biological, ergonomic, and psychosocial hazards. Physical hazards include the risk of injury and death because of accidents;

chemical hazards can include exposures to diesel and other fumes; and biological hazards include potential exposures to infectious diseases such as COVID-19 and to moulds and disruptions to circadian rhythms linked to long-distance travel. Exposures to prolonged sitting, vehicle vibration, and other hazards associated with musculoskeletal injury can be associated with ERGM, as well as risk of hearing loss, work-related stress, fatigue, and sociocultural isolation. This section provides a synthesis of some of the existing research on these hazards and injury risk, starting with mobility as work in diverse segments of the ground, air, and marine transportation sectors and extending through multisite, daily, and prolonged rotational mobilities.

Mobility as Work

It is well documented that mobility as work in ground transportation is associated with multiple hazards and high rates of injuries and fatalities relative to other types of work (Christie and Ward 2019; see also Boufous and Williamson 2009).¹

Working in moving vehicles obviously involves hazards relating to road traffic (Bidasca and Townsend 2014) but also raises ergonomic issues and issues related to motor vehicle safety. Providing a complete overview of OSH hazards to those working in vehicles goes beyond the scope of this book, but an important body of literature does exist on various industries involving workers who use or travel within vehicles as part of their work.

Injury and fatality rates (related in part to traffic crashes) are very high in trucking (discussed later) and taxi driving. Ride-hail driving in the gig economy (including among those with multiple jobs) appears to be particularly risky, as is gig economy courier work (Lefcoe, Connelly, and Gellatly 2023; see also Bartel et al. 2019; Christie and Ward 2019; Salmon et al. 2023). While less at risk of collisions with other vessels, fishing and seafaring are also high-risk sectors (Walters and Bailey 2013; Roberts 2010; Driscoll et al. 1994). The relationship between risk and mobility in these sectors is mediated by momentum, vibration, technology design and maintenance, remoteness, locational and sometimes jurisdictional transience, and exposure to fluid working conditions linked to payment systems (as with piece work in the gig economy) and

other social-organizational factors. Environmental conditions and reliance on public infrastructures—such as roads, harbours/wharves, and waterways—and on weather forecasting also play a role.

Specific industries, like long-haul trucking, have been studied from an OSH perspective (see, e.g., Bigelow et al. 2014; Crizzle et al. 2017), and those studies have identified time pressures, long hours, and work-family interference to be hazards associated with that work. Other studies have identified whole body vibration, musculoskeletal disorders, fatigue and sleep disorders, falls, and obesity as adverse health consequences of long-haul driving (McDonough et al. 2014; NASEM 2012; see also Sieber et al. 2014). Mayhew and Quinlan highlight the high rates of documented injuries and fatalities in the sector across countries and some of the ways workers' compensation claims data, coupled with limited research, understate the health effects of trucking:

In Australia, the European Union and North America road transport accounts for the largest number of work-related fatal injuries and multiple fatality incidents (most occur on highways) of any industry and large truck-involved crashes are also costly. . . . In terms of fatality incidence the occupation of truck driver ranks between the fourth and eighth most dangerous. . . . A similar ranking applies to non-fatal injuries and occupational diseases although workers' compensation claim records (and other data sources like accident reporting) understate injuries because self-employed drivers lack coverage and there are disincentives (time, cost, fear of losing work) for firms and employee drivers to report minor incidents/injuries. . . . Injury and fatality statistics also fail to take account of more insidious and under-researched health effects, including the impact of long hours and job pressures on work/non-work balance, work-related stress, and occupational violence/road rage, or indications of premature death and above-average suicide rates amongst drivers. (2006, 216; see also Crizzle et al. 2017) [Original references omitted.]

A recent Canadian study focused on fatigue for long-haul truck drivers and, more specifically, on the location and patterns of fatigue-related

crashes, noting that additional truck stops and rest areas are needed in Saskatchewan to ensure that these drivers have more opportunities to rest in order to reduce fatigue and the risk of fatigue-related crashes (Crizzle, Toxopeus, and Malkin 2020). In Australia, despite evidence of the hazardous conditions in which both self-employed and employee truck drivers were engaged, the government abolished the tribunal that had jurisdiction to hear disputes, and a recent report on the current working conditions of truckers in that country provides a bleak portrait of working conditions and adverse health outcomes, with little space for workers to give voice to their concerns in order to protect their own health (Macquarie University 2017; see also Patty 2017).

Within trucking and other transportation sectors, divisions of labour coupled with issues of race, gender, and citizenship mediate exposures and outcomes. The women in a trucking association in the United States reported that only 11 percent of women truckers would recommend their industry, company, or field to others, while 75 percent of men would agree to make a recommendation. Safety was the primary issue, and “women cited the lack of separate bathrooms and showers, cleanliness, laundry facilities and shower and bathroom stalls with locks as reasons why truck stops were undesirable and sometimes unsafe locations for women” (American Society of Safety Engineers 2018, 22). The same article noted that women represent only 7 percent of the trucking workforce in the US (American Society of Safety Engineers 2018). Hanson (2014; 2020) found that women are more likely to be found in short-haul than long-haul trucking in Prince Edward Island and thus confront somewhat different hazards.

In her in-depth study of trucking in BC, McLean (2017) documented the dynamics and some of the impacts of sexism and racism for women and primarily Southeast Asians in the sector. She also documented tensions between regulatory constraints on driving, including their impact on income, and organizational pressures to exceed these constraints. An important finding from this research was insights into psychological injuries among BC truckers associated with coping with both the incidents they were directly involved with and their interventions as voluntary first responders at crashes they encountered on the road. She showed how responding to incidents is a common and largely unacknowledged expectation the truckers have of themselves, which is also often shared by

professional first responders, and how such interventions could result in post-traumatic stress disorders (McLean 2017).

Bus drivers are also confronted by hazardous conditions. Workers in this profession have started to speak up about the safety of their working conditions, notably in light of recent busing catastrophes such as the Humboldt Broncos collision that left sixteen dead and led to criminal charges against the truck driver whose vehicle collided with the bus. The driver and the owner of the truck were charged with dangerous driving under the Criminal Code and for failing to maintain logs for driving hours of service under the federal Motor Vehicle Transport Act, among other charges (Giles 2018). Bus drivers from Québec reacted to the accident by revisiting the hazards of their trade in an interview with a journalist in which they questioned whether they could continue as professional drivers of groups of youths, such as those in hockey teams, given the conditions they face: bad weather, long hours (sixteen hours from the beginning of the drive on a given day, maximum thirteen hours driving), variable hours, and limited power to refuse requests of the hockey trainers who treat the drivers like “robots” (Teisceira-Lessard 2018).

Bus drivers in many Canadian cities are also moving targets when it comes to incidents of workplace violence, to the point where the Canadian Criminal Code was recently amended to add to the sentences of those found guilty of assaulting bus drivers (Mallen 2015).² Other behaviours of passengers may also lead to injury. For example, a Québec bus driver received compensation for laryngitis attributed to exposure to cigarette and marijuana smoke, to which he was exposed despite rules banning smoking in buses.³ Ambulance drivers and others who spend a long time in vehicles in the course of their employment can develop health problems attributable to their work. For example, an ambulance technician who travelled for eight hours, both as a driver and as a passenger, developed phlebitis as a result of the prolonged sitting position required, which was unusually long because of bad weather. The Commission des lésions professionnelles accepted the claim as an accident arising out of employment, with the bad weather contributing to the demonstration of unusual working conditions.⁴

Hazards and risks in ride-share work, such as taxi driving, and among digital platform ride-share drivers, such as those working for Uber and

Lyft, are understudied. Existing research has identified multiple hazards, including violence, crash risk, weight gain, muscle pain, fatigue, and stress. Digital platform ride-share workers appear to be at particularly high risk because of the precarity of their employment, the limited control over incomes, and the effects of monitoring and surveillance (Bartel et al. 2019; Lefcoe, Connelly, and Gellatly 2023; Mao et al. 2021).

A recent Québec study examined jobs requiring the use of bicycles. These jobs go beyond couriership of packages and parcels and have become more diverse over the years, including, in particular, the delivery of meals and other services, such as moving services. The authors point out that little is known about the risks these cyclists incur, that biking accidents are not a rare occurrence, and that a majority of their sample is composed of self-employed workers, with a majority of delivery drivers (59 percent) and couriers (56.5 percent) having no form of accident insurance (Lachapelle, Laberge, and Cloutier 2020). Their respondents note that the majority of accidents are caused by road conditions, the behaviour and interaction with other users of the road (including “dooring” by vehicle owners but also the risky behaviour of pedestrians and cyclists), and their own inattention (Lachapelle, Laberge, and Cloutier 2020, 41). They highlight the realities of this type of job, including

the strong preponderance of commission-based wages, problems with worker legality, and the lack of insurance coverage for work that is generally done year-round and often constitutes the main source of income. While companies offering *gig economy* shifts justify their activities by suggesting that these paid activities can be good sources of extra money, the picture presented here is one of difficult and even questionable working conditions. Especially since few of the workers actually use it as a source of extra income. It is often their main or only source of income; however, it is important to distinguish between *gig economy* activities, especially food delivery, and other types of activities, sometimes carried out in more traditional structures, start-ups or social economy enterprises. (Lachapelle, Laberge, and Cloutier 2020, 57 [our translation]; for Ontario, see Bartel et al. 2019)

Those who engage in mobility as work, such as ride-share and courier workers, truckers, and others, can also experience hazards related to sanitation (accessing washrooms and showers), food, and accommodations (as indicated by the presence of “cab-living” among long-haul truckers), what we call here the hazards related to “living at work” (Gregson 2017; see also McLean 2017). These kinds of threats to their well-being became more severe and visible during the COVID-19 pandemic (see chapter 6).

An important source of vulnerability for courier workers is their lack of unionization and related constraints on these workers’ voice. It is worth mentioning that couriers and drivers working for Foodora in Toronto and Mississauga, Ontario, were granted the right to unionize. The Ontario Labour Relations Board concluded not that they were self-employed but that they were, in fact, dependent contractors.⁵ After this decision, invoking a highly saturated market, Foodora left Canada and decided not to conduct business there anymore. The union representing the workers filed an unfair labour practice claim, and the case was settled out of court (Canadian Press 2020).

Airline personnel, seafarers, and fishermen also engage in mobility as work. OSH is understudied in these occupations, but research indicates they are associated with multiple hazards and often high risk. In the case of aviation, for instance, McNeely et al.’s (2014; see also McNeely et al. 2018) cross-sectional study of the self-reported health of US flight attendants notes that there are not many studies on hazard exposure and the health of flight attendants. Their study identifies health problems that are more prevalent among flight attendants than in the general population, including chronic bronchitis, cardiac disease, fatigue and sleep disorders, depression, and reproductive cancers. Sexual harassment is also said to be pervasive in the airline industry, according to an article relating to a class action brought by flight attendants working for WestJet (Seucharan 2018). Similar allegations have been made regarding sexual harassment of flight attendants working for Air Canada (Harris 2018; for the European Commission’s guidelines on radiation protection for aircrew, see Fernandez, n.d.). In the case of pilots, René David-Cooper’s (2019, 119) 2016 Canadian study on regulation governing flying hours draws the portrait of pilots who are exposed to “grueling work schedules.” David-Cooper reports that since the 1990s, the Transportation Safety Board of Canada

(TSB) “has cited pilot fatigue as a causal factor in 34 separate aviation occurrences” (121).

Maritime work, including seafaring, fishing, aquaculture, and long-shore work, is associated with varying requirements for mobility to and as work and with relatively high accident rates (Neis et al. 2025). Seafaring, despite the well-known problems of the underreporting of injuries (and even fatalities), remains one of the most hazardous occupations according to official statistics and specific studies (Walters and Bailey 2013; Nielsen and Roberts 1999; Roberts and Marlow 2005; Hansen, Nielsen, and Frydenberg 2002). In the British merchant fleet, for example, the relative risk of mortality caused by accidents at work has been reported to be 26.2 times greater than for all workers in the UK (Roberts 2002), while in the Danish merchant fleet, the fatal accident rate was 11 times higher than for shore-based industries (Hansen 1996). Moreover, the hazards of work at sea are not only those associated with sinking ships or major accidents to individuals engaged in obviously dangerous activities. While these are serious enough, the poor health and safety outcomes of work at sea pose significant risks of ill health from everyday exposures to chemical and physical hazards. As is also the case on land, little is known about the full extent of work-related ill health resulting from these exposures, but what is known suggests a similar degree of comparatively poor outcomes. Ergonomic and psychosocial hazards are also prevalent, including the risk of exposure to violence at sea. Mental health problems and high rates of suicide in seafarers have been reported, although it appears that the situation has improved in recent years, at least prior to the pandemic. The pandemic’s serious effects on seafarers’ OSH are discussed elsewhere (see chapter 6; Mellbye and Carter 2017). Those working on the sea are disconnected from land-based infrastructures and assistance, which means that seafarers, like truckers, may need to act as firefighters and first responders in the case of serious incidents potentially threatening their mental health.

Shan and Lippel (2019, 375) discuss the different challenges that seafarers on the St. Lawrence Seaway and the Great Lakes face being mobile while working (constraints on their ability to leave the work site, extreme weather conditions, and living and working on a moving platform) but also in order to get to the work site when they commute between home and the ship (see “Hazards”), a question far less explored. In their research,

the authors show that fatigue is a particular challenge for these workers, both because of the long working hours and long rotations and because workers often travel long distances to meet up with their ship, hours that are not considered in the determination of shift length and maximum working hours. As David-Cooper (2018) found in his study of pilots, the issue of fatigue is particularly important for workers with less seniority, such as relief seafarers (those who are taking short-term contracts to cover holidays of permanent employees), who are more likely to accept several rotations in a row in order to increase their seniority as quickly as possible (Shan 2018; Shan and Lippel 2019).

Seafarers also face particular challenges when sleeping on ships. Shan and Lippel (2019, 376) point out that the ship operator controls work schedules, work hours, food choices, and accommodations on board a ship: As a result, “while working, the safety, health, and well-being of all aspects of seafarers are largely subject to the management practices as well as the hierarchical control on board.” Seafarers have intensive shifts, resulting in often reduced and broken rest hours (Shan 2020a, 198). Fatigue is, therefore, an important but understudied OSH risk: “Lack of, or poor-quality sleep, long working hours, excessive workloads, as well as noise, vibration, and motion on board may all contribute to fatigue among seafarers. Increasing numbers of seafarers report that the motion of ships leads to lack of sleep on board” (Shan and Lippel 2019, 376; see also Sampson et al. 2017). In Arctic environments, sleep might also be disrupted by the noise caused by ice-breaking operations (Shan 2020a, 197, citing Sillitoe et al. 2010).

Within Canada and globally, fish harvesting is also one of the most dangerous occupations (McGuinness et al. 2013; CDC 2010). Pettursdottir, Hannibalsson, and Turner (2001) assessed occupational fatality rates for developed and developing nations in the 1980s and 1990s (see also FAO, n.d.). They found that fishermen are much more likely to be killed on the job than land-based workers.

Compared to countries like Norway, Canada has very weak statistical information on injuries and fatalities associated with fish harvesting, including information necessary to compare across fisheries and fishing activities and with other sectors and countries. A *Globe and Mail* investigation that sought to calculate traumatic injury fatality rates by occupation

in Canada—an exercise abandoned by Statistics Canada in 1996—found the rate in fishing was the highest: The top three of six occupational rates were for people who fished, and the rate was 77/100,000 for deckhands versus 5.4 for police officers between 2011 and 2015 based on the Association of Workers' Compensation Boards of Canada (AWCBC) data. This investigation also showed that this was underestimated by comparing the twenty-seven recorded deaths in AWCBC data to fifty-two fatalities in TSB reports for the same period (Grant 2017). Marine commercial fishing has been on the TSB Watchlist since 2010; key issues for the TSB include vessel modifications that impact stability, lack of or failure to use lifesaving equipment (for example, personal flotation devices), unsafe work practices, and inadequate regulatory oversight (Smith 2018).

The Canadian fish harvesting sector is diverse in terms of vessel size, design and construction, species-targeted and related fishing gear, seasons, ownership structures, work organization, hours of work, and working/living conditions. ERGM and related hazards vary across fisheries and sectors. Day trips are common in coastal fisheries such as lobster and inshore cod and halibut fisheries. Multiday trips are common in other fisheries, including those for pelagic fish (capelin, herring), snow crab, shrimp, and turbot. Work rotations on board large, offshore factory freezer trawlers of up to one month or longer are common; trips can start and end with fairly long commutes by truck (small scale) or taxi and plane (offshore and interjurisdictionally mobile harvesters) from departure and landing ports to and from home residences. Fishing wharves in NL have been shown to be associated with multiple hazards and incidents (Jackson et al. 2013). In addition to a high risk of fatality from falls overboard and vessel capsizing and foundering, noise exposures are a significant but understudied hazard in Canadian commercial fisheries, including in the small-scale sector (Burella, Moro, and Colbourne 2019). Marine weather is a widely acknowledged but poorly understood hazard associated with commercial fishing (Rezaee, Pelot, and Ghasemi 2016; Rezaee, Pelot, and Finnis 2016). Weather can also affect safety during travel on land or by vessel or plane between home and ports of departure and arrival, but this has not been studied.

Hazards Associated with Multisite Work Arrangements

Truckers and other ground transportation workers are not the only workers at risk of injury from collisions and other traffic-related injuries. Workers in other sectors also often drive between sites as part of their work and may be at higher risk than professional drivers. For instance, in the US between 2003 and 2009, the work-related motor vehicle fatality rate for oil and gas extraction workers was 8.5 times that for all private sector workers. Those from small establishments and employed by well-servicing companies were at highest risk, and 51.1 percent of the crashes involved pickup trucks. Risk factors in this sector include driving between well sites, travel on rural roads, low levels of safety belt use, and “long and irregular hours of work that contribute to driver fatigue” (Retzer, Hill, and Pratt 2013, 168).

Some types of workers are called upon to visit multiple clients in their homes on a given shift. These include home care workers⁶ and ambulatory health care professionals.⁷ Research has highlighted the hazards associated with working remotely and often alone in diverse and changing client homes. Fitzpatrick and Neis (2015), for example, reported on the situation of unionized home care workers in NL. They and some other researchers point out specific OSH challenges, such as the isolation, hazards associated with poor maintenance of premises including icy walkways, musculoskeletal disorders associated with lifting clients in the absence of adequate equipment, exposure to violence (and it’s underreporting, since violence may be more tolerated by these workers when the clients have dementia, for example), and exposure to communicable diseases (49). Similar findings regarding OSH challenges for home care workers were found in the province of Québec (Hamel-Roy 2019; Boivin 2014). Hamel-Roy (2019) reported a lack of access to adequate lifting and transfer equipment, disposable gloves, and adequate cleaning equipment but also situations of violence and psychological and sexual harassment. Visiting new homes and clients, as with visiting different ports in seafaring, visiting different airports or loading sites, changing vessels or vehicles, and doing cleaning work in multiple buildings, can raise OSH challenges similar to those experienced by new workers: Every work site is a new workplace with potentially unknown hazards.⁸ These hazards

and challenges are not, however, limited to the work sites. As in other sectors, there are also hazards associated with travelling to and between work sites, often in their own vehicle. The Nova Scotia team of researchers with OTM explored the mobility experiences and related issues, including for their mental health, of mobile health care workers from the perspective of workers and managers. Issues include dealing with hazardous weather, pressure to choose between not getting paid and going to work in dangerous conditions, and not being adequately compensated for maintenance of their vehicle (Jackson et al. 2020; Jackson, Price, et al. 2019; Leiter et al. 2018; Price et al. 2019). NL home care workers talked about travelling with clients as part of their work and about risks related to car crashes, public transit, and slipping and falling on public sidewalks. Fitzpatrick and Neis (2015, 55) noted that interviewed home care workers “reported feeling drowsy driving home after the last shift of the day and drank coffee to stay alert. NL roads and highways can be treacherous during the winter months, and some homecare workers reported feeling uneasy driving in snowy weather.” Limited control over their work/travel schedules is another source of stress (56).

Daily Commute Hazards

Daily commutes entail travelling from home to work and vice versa. In Canada, commute hazards and injuries are generally not treated as work related, contributing to a lack of studies exploring potential links between work- and commute-related hazards and risk. Thus, the clearest indication of daily commute risk relative to other work-related activities comes from European research from countries such as France, Finland, and Spain where, in contrast to Canada, the US, and many other countries, “employees injured in commuting accidents (going to and from work) and those occurring during the course of work are indemnified as for other occupational injuries” (Charbotel, Martin, and Chiron 2010, 604).

While findings are mixed, existing studies have generally linked longer daily commutes to reduced well-being. This research is reviewed in a recent European study that outlines ways the relationship between commuting and well-being is complex and mediated by multiple factors. The study presents findings from a large-scale, multicountry study of the

relationship between weekly commute hours and subjective and objective well-being. It found a relatively small but significant relationship between weekly commute hours and lower well-being across these countries (Zijlstra and Verhetsel 2021; see also Chatterjee et al. 2020; Clark et al. 2020).

Daily commutes to work can be associated with a higher risk of injury than non-work-related travel as well as with injuries that happen at work. Using police reports where these distinguish between work- and non-work-related road accidents, Charbotel, Martin, and Chiron's (2010) study of road accidents in France distinguished between work-related accidents while at work and during the commute and non-work-related accidents. For two periods between 1997 and 2006, they found 10 percent of road accidents occurred while at work versus 18 percent during the commute. In research on commuting accidents among Spanish professional drivers, Llamazares et al. (2021) note that while workplace casualties are declining, work-related commuting accidents seem to be expanding. Their analysis of commuting accidents among professional drivers in Spain found differences between commuting accidents and those occurring overall, including on-duty accidents, with those with less than ten years of tenure experiencing more commuting accidents. They also found gender differences in commuting accident severity. The hourly pattern of crash clusters led them to hypothesize that work-related fatigue, shift work, and time pressure common in the professional driver sector have spillover effects into commuting, with large numbers of accidents on the way to work suggesting insufficient recovery time between shifts (Llamazares et al. 2021).

Higher accident rates on the way to work found in a study of German chemical industry workers may also reflect the impact of pressure to get to work on time and light- and weather-related impacts on driving conditions in the morning (Zepf et al. 2010; for steps employers can take to reduce commuting risk and costs, see Salminen 2012). Whereas some research has found commute accident rates to be higher among women than men (see, e.g., Salminen 2000), this study did not find a gender difference. Mode of commute and accident rates do seem to vary by age and sector.

For daily commuters, travel via public transport has much lower fatality rates per passenger mile than travelling via motorcycle, bicycle, car, or truck (Savage 2013; Truong and Currie 2019). Despite the relative safety

of public transport, there are also hazards that can vary across populations and transport modes. As noted by Tilahun et al. (2016), for example, public transport users must deal with connectivity between transit stops and with hazards related to trip origin and termination points, such as access to sidewalks, risks to pedestrians from vehicular traffic, and street-level crime issues. Exposures to infectious diseases such as COVID-19 are also a greater concern on public transit than in private vehicles (see chapter 6). Other hazards associated with public transport use include the risk of harassment, violence, and sexual assault en route and at transit stops (studied mainly in countries of the Global South) and while on public transport, with overcrowding facilitating sexual touching and empty bus stops increasing the risk of rape (Chowdhury 2023).

Poorer and racialized women are particularly likely to use public transportation and to experience long commutes; women, transgender, and gender nonconforming public transit users are particularly at risk of harassment and violence (McLafferty and Preston 2023; Premji 2018; Lubitow, Abelson, and Carpenter 2020; Graglia 2016). These groups are also at risk of “transport poverty,” which is the compounded lack of ability to travel to important destinations and activities: “Transport poverty occurs when transport disadvantage (not having access to a car, poor public transit options, etc.) compounds with other forms of potential social disadvantage (unemployment or low income, disability or poor health, etc.) . . . and, in the worst cases, can result in the perpetuation of social exclusion” (Farber and Allen 2019, 3) [original references omitted]. Farber and Allen (2019) examined inequalities in transit access to employment for eight Canadian metropolitan regions and found that, despite changes, several households still face transport poverty. Although results are mixed, some previous research in this field has found that people with lower incomes in central city areas tend to have longer commute times than others, linked to higher dependence on public transport with slower travel speeds (Cui 2020).

Temp agency immigrant and, particularly, undocumented workers who commute via agency-provided transportation to work for transient and sometimes unnamed employers in unknown locations experience multiple layers of vulnerability (Sargeant and Tucker 2009). Access to such transport may give these workers access to employment otherwise

inaccessible to them but comes with the risk of travelling in overcrowded vehicles lacking sufficient or working seat belts and being driven by inexperienced or untrained drivers, including other workers who may be suffering from fatigue. Working for an unknown employer in an unknown location with limited options for return transportation can also interfere with workers' ability to exercise their rights, including to health and safety, and means they can end up stranded at the workplace if they object or are subject to harassment and other threats (Hanley et al. 2018). Daily and less frequent transportation to and within work is a documented health and safety hazard for agricultural TFWs and immigrant farm workers in Canada (see, e.g., Preibisch and Otero 2014).

Work scheduling (which can include long working hours, shift work, limited breaks, and quick returns [i.e., reduced periods between the end of one shift and the start of the next] generally associated with rotating shifts) can contribute to the risk of injury at work as well as while commuting. In a Canadian study, Wong, McLeod, and Demers (2011) found that while the rate of work injury in Canada declined between 1996 and 2006, it did not decline for night shift workers. Impacts varied by gender, with an elevated odds ratio for women and men that was higher for night shifts and for women working rotating shifts. They also note that shift work is associated with other health risks.

Fatigue is a key factor linking shift work and injury risk not only at work but also during the commute (Robb et al. 2008). A North Carolina study examining driver risk factors for sleep- and non-sleep-related crashes found drivers in sleep-related crashes were more likely to be working two or more jobs, working a night shift or other work schedule (rotating shifts or working long hours for extended periods of time), or working more than sixty hours a week. According to the study, "Compared to drivers in non-sleep-related crashes, they had been driving for longer times, been awake more hours, slept fewer hours the night before, and were more likely to have used soporific medications" (Stutts et al. 2003, 321).

Much of the existing research on work scheduling, fatigue, and risk of injury that encompasses commuting has been done in the health care sector—particularly among hospital workers. For instance, Dorrian et al. (2008) studied sleep and errors among a small group of Australian hospital nurses at work and on the commute. The main predictor of extreme

drowsiness during the commute was struggling to stay awake, followed by exhaustion and consecutive shifts (Dorrian et al. 2008). Findings from a 2023 scoping review of the relationship between shift work organization and nurse injuries that examined thirty-four articles from fourteen countries suggested both “a strong association between long work hours and overtime and an increased risk for needlestick and sharps injuries, drowsy driving and motor vehicle crashes, and other work-related accidents” (Imes et al. 2023, 1). Rotating shifts increase the risk for the former and other work-related accidents, while night and rotating shifts increase drowsy driving and motor vehicle crash risk (Imes et al. 2023).

In a recent Finnish study, Ropponen et al. (2022) compared shifts among Finnish physicians during the week of an accident (including commute accidents) and the week prior to the accidents. They found that increased shift intensity (number of consecutive working days and number of on-call shifts) increased occupational injury likelihood but unfortunately did not compare accidents at work and commute accidents. Vedaa et al. (2019) examined the association between night work and quick returns (fewer than eleven hours between shifts and generally associated with rotating shifts) and work-related accidents among Norwegian nurses, including during the commute. They found that night shifts were positively associated with work-related accidents and dozing off while driving to or from work, and quick returns were associated with increased risk of causing harm to themselves, patients/others, and harm to equipment.⁹

Time pressure at work may also contribute to injury risk while commuting. In their study of time pressure at work, cognitive failure, and commuting near-accidents, Elfering, Grebner, and de Tribolet-Hardy (2013) found a positive relationship between time pressure at work and commuting near-accidents in a study among eighty-three employees who commuted to work in vehicles. They assume the effect of time pressure at work on commuting near-accidents is mediated by ways time pressure at work can reduce attention to safety priorities and the risk of cognitive failure both at work and on the commute. They suggest that increased time control at work will reduce commute accident risk by, for example, allowing workers to determine the time of their commute.

Work scheduling also has the potential to contribute to hazard exposures and related injury risk among workers taking public transit, particularly in interaction with precarious employment, gender, race, and other factors. These intersections are well illustrated by findings from Premji's (2017) research on mobility and health among precariously employed recent immigrants in Toronto. For these workers, shift work scheduled to start and end outside of peak hours—along with poor public transit service to areas where they could afford to live, employment precarity, and gender—contributed to heightened risk of violence, high transportation costs, childcare issues, and high stress. Although more research is needed, challenges are potentially particularly great for those working in areas like retail and food service, with often short or split shifts dictated by algorithms designed to match schedules to workload (Thornburn 2018; Neis et al. 2018).

Prolonged Mobilities

Long-distance commuting and rotational work are common in the resource extraction sectors like mining, oil and gas, and fishing and seafaring, as well as in major industrial construction initiatives related to these and other sectors like hydro dam, pipeline, and road construction. These operations often take place in rural and remote areas, requiring workers to engage in extended and often complex daily commutes for several days, followed by some time off (Barber 2018). In many cases, workers engage in less frequent commutes, sometimes involving multiple modes of transportation such as driving to a meeting point or airport, flying to the relevant work region, or being driven or bused from the airport or meeting point to the work site (Gesualdi-Fecteau, Nakache, and Matte Guilmain 2019). Such mobility schemes entail prolonged absences, as workers do not return home after their shift. In this case, work scheduling tends to be based on roster systems involving one to several weeks on, followed by time off in nearby communities, home communities, or elsewhere. Rosters give employers access to larger, more dispersed labour forces and can facilitate the operation of long shifts and 24-7 schedules, but they can also encourage workers to live greater distances from work sites than would normally be feasible. Subsidized transportation

can also encourage living at a distance, as with living-out allowances in some labour contracts—although some also use the allowance to rent housing close to the site or purchase and locate an RV or trailer nearby (Di Milia and Bowden 2007; Barber 2018)—and supported air travel in others. While at work, rotational workers are housed on work platforms offshore or in work camps or hotels/motels in nearby communities at onshore work sites.

There is an expanding body of research, much of it from Australia, with some from the UK (offshore oil), Canada, Russia, and some from the US, on the relationship between long-distance commuting, rotational work, and risks to physical and psychological health in the resource and construction sectors. A recently published systematic review of publications on the health and well-being of rotation workers in resource extraction and construction found that studies suggested a lower prevalence of psychological distress among offshore oil and gas workers than among onshore rotational workers across sectors, while both onshore and offshore workers had poorer sleep and more fatigue during on-shift days versus off-shift days. Although workers generally perceived their health status as good, job demands perceived as high were associated with mental distress, exhaustion, sleep problems, and perceived poor health status (Asare, Kwasnicka, et al. 2021).

In Canada, in a study of mobile workers in northern Alberta's oil sands industry, Dorow et al. (2021, 72) asked the workers how they got "from their front door to the work camp." Their participants "described everything from hopping in their truck and going door-to-door, to complex routes involving driving, flying, shuttling, and taking a cab." The workers' relationship to travel shows the strain it can produce:

About one-third of respondents characterized travelling back and forth as somewhat/very difficult. . . . Twice that proportion (70%) indicated experiencing *stress* from travel, but with only 17% rating this as intense. Participants referred to the stress of unpredictable travel conditions (cost, weather), long and tiring journeys, and sometimes, compressed transition time. . . . Some of the more seasoned FIFO travelers downgraded the stress, citing that they were

“used to it” and went on autopilot when traveling. (Dorow et al. 2021, 70) [Original references omitted.]

These authors also distinguish between the workers who fly and those who don't. Those who were flying reported being healthier and more satisfied: “Whether people fly or not makes a difference in how they rate their health, stress, and wellbeing, with people who fly being healthier and more satisfied—but . . . flying is also a proxy for other facets of fly-in fly-out and drive-in drive-out work” (72). Those who drove back home mentioned long commutes (four to seven hours each way) in order to see their family for just one day. The authors indicate Alberta-based workers were often driving back and forth during a window of just two to three days (80). In another Canadian study on fly-in/fly-out (FIFO) workers, Ryser, Markey, and Halseth (2016) report that some workers who fly from other provinces to Mackenzie, BC, may not have a direct flight to their work site and are dependent on flight scheduling. These workers can spend as much time in airports as they would have spent driving if they could have taken their car to the work site. For those who can drive, they reported financial impacts and concerns about the distance and the long hours they had to drive in order to make the commute (Ryser, Markey, and Halseth 2016).

A study on the unintended impacts of work scheduling changes and the shift to a contractor system at an Australian mine found these changes led to the creation of a drive-in/drive-out (DIDO) workforce, with some driving very long distances to work with early morning departures and departing for home shortly after night shift at the end of fairly lengthy rosters. These driving patterns were associated with higher levels of self-reported sleepiness and with falling asleep while driving, with rates higher after night shift on the return home (Di Milia and Bowden 2007). In a study of sleep behaviours, sleep disorder risk, and quantified alertness risk associated with roster design in a remote Australian mine, shift work was found to be a significant factor leading to sleep loss and reduced alertness, exacerbated by a high prevalence of sleep disorders (Maisey et al. 2022). Workers started their rotation with very long start days from wake time through travel to the end of their first shift and thus reduced alertness that continued to decline over their consecutive shifts. Fly-out days

for their return home after seven days of night shift were also very long, with workers commuting home from the airport during a period of low alertness, putting those driving home at high accident risk. Research on health and safety in remote northern Canadian mines flagged a range of health and safety issues, including fatigue related to long shifts at work, rotating day/night shifts, increased fly-in/fly-out (FIFO) work, high employee turnover, difficulty accessing skilled employees, extreme weather, limitations on training, and mine inspection and regulatory gaps related to the particular challenges of these mines (Halabi and Kumral 2022).

Male-dominated workplaces with a culture of risk-taking supported by employers appear to contribute to the risk of injury within resource extraction FIFO and DIDO industries. A study of seat belt use among oil workers in northern Alberta based on focus groups found workers believed risk-taking was “an essential characteristic of who they are and where they work” (Rothe 2008, 226). Participants indicated that employers demand consecutive hours of work and offer incentives for working overtime and that risk-taking is also part of driving. They considered their most dangerous risk to entail driving after working twelve-hour shifts for fourteen consecutive days—a concern supported by data indicating over 50 percent of the fatalities in compensation data for oil workers in Canada were the result of motor vehicle crashes. The study found situational rather than routine seat belt use was part of the same culture and contributed to the risk (Rothe 2008). Evidence was found of a “risk-accommodating environment” among small- and medium-sized pipeline companies based on a series of related Canadian studies that reviewed company accident investigation and remediation programs and linked company reticence to finding and fixing errors to a macroculture of worker blame, compliance versus remediation, and production over safety. Pipeline workers are highly mobile both to and within work (Stackhouse and Stewart 2017).

A particular risk and source of stress for these and other long-distance mobile workers is to be left stranded far away from home, as when some workers were initially stranded when the subcontractor, their employer, went bankrupt in northern Alberta.¹⁰ Stranding also poses a risk to the health and well-being of seafarers who have been stranded, as was

the case for Turkish crew members of the *Phoenix Sun*, who suffered multiple hardships when their ship was condemned while in Québec and the owner ceased to provide revenue to the workers hired to make it seaworthy again.¹¹ Similar situations have occurred in NL (Bailey 2014; *CBC News* 2014) and Nova Scotia (Canadian Press 2000; *CBC News* 2013b).¹² A trucker from Québec was stranded in the US because the truck he was driving was confiscated and his licence suspended by US authorities after an incident on his journey. His oversized load, provided by the employer who had prescribed the specific route to be taken and who had chosen the escort truck driven by a contractor hired to precede him throughout the journey, was in fact too large for a narrow part of the road and became stuck. Despite his employer's objections, he successfully sued his employer for damages, including costs of defending himself from charges in the US, the fine he had to pay, and lost salary and expenses incurred while stranded in the US for five working days.¹³

Even in the absence of stranding, long-distance mobility can be psychologically challenging. There is a growing body of research focusing on the psychological effects of FIFO/DIDO that links work, living at work, travel, and home life factors. Dorow et al. (2021) studied the mental health of FIFO workers in the Alberta oil sands. They found that living in a camp is stressful, with 77 percent reporting some (46 percent) or a lot (31 percent) of stress stemming from living in a camp. According to their research,

Wellbeing in camp is most affected by isolation, a feeling of “entrapment” (58% disagreed that they are free to do what they want in camp, and 39% had never left camp while on rotation), poor morale (52% disagreed that morale in camp is good), limited or unhealthy food options, and difficulty maintaining healthy eating, exercise, and sleep habits. Half of the participants reported difficulty falling asleep (57%) and never or only occasionally waking up feeling rested in camp (49%); this is compared to 29% and 11%, respectively, when at home. (5)

Parkes, Fruhen, and Parker (2023) sought to resolve contradictory research findings on the relationship between rosters and psychological distress. They did this by developing a characterization of FIFO work

schedules as objective stressors and testing a series of hypotheses using findings from a large survey of FIFO workers from the mining, oil and gas, and construction sectors in Australia. Findings generally supported their hypotheses, showing higher rates of distress among these FIFO workers than the Australian average as well as a positive relationship between demanding roster (higher ratios of time at work relative to off time) and shift characteristics (rotating day/night shifts) and psychological distress. They found that this relationship was mediated by subjective perceptions of roster satisfaction, lifestyle adaptation, and parental status.

Most existing research on FIFO/DIDO and other types of mobile work and health and safety doesn't distinguish carefully between the diverse health and safety experiences and outcomes for those employed across different sectors by large, core enterprises and by contractors; in different types of jobs; or between the experiences of men, women, and racialized and TFWs. Some recent research is addressing some of these gaps. Dorow, Hilario, and O'Leary (2023, 1), for example, use their mixed methods study of stress among the large population of oil sands contract trades workers in Alberta to explore "the gendered practices, policies, and discourses that shape and differentiate how stressors are produced, experienced, and interconnected as workers move across worksite, camp, and home" in this male-dominated and boom-and-bust industry, what they call the FIFO-DIDO system. These many thousands of workers commute from within Alberta and from across Canada. They note that most studies of job stress focus on working conditions, leaving aside the inseparable connections between working conditions and im/mobilities across sites and scales. They also note that gender tends to be undertheorized in the FIFO mental health literature, most of which pays little attention to women's experiences and those of the gender diverse. As such, Dorow, Hilario, and O'Leary argue for greater engagement with insights from critical gender mobility studies, which "are concerned with the context-specific social production and governing of unequal experiences, patterns, and intersections of mobility and immobility," and they explore how temporal rhythms of different "constellations of mobility and immobility" are "shaped by the gendered identities, opportunities and inequalities within specific contexts" (2–3).

Those surveyed in the Dorow, Hilario, and O'Leary (2023) study indicated significant health challenges, including high mental health

and daily stress levels that got worse over their daily work schedule and rotations, as well as other challenges. These challenges were linked to a prolonged period of downturn in the industry and the precarities of contract work, as well as to a macho, masculinist work culture linked to gendered harassment. Experiences of challenges were gendered and, for some, mediated by racism. These authors identified stressors related to life in the camps highlighted in other research, often comparing the camp to a prison, and found an association between social isolation stress and compressed rotations, having a young family and working long shutdown projects. They note that “the culture of male dominance and sexual harassment extends *across* work and camp, exacerbating experiences of stress,” and back into home lives, with gender dimensions to these transitions as well (5). Dorow, Hilario, and O’Leary (2023) use their findings and those from other studies to propose a FIFO/DIDO stress-web conceptual model. The model seeks to capture how workplaces, camp, travel, and home have their own stressors but also how stressors interact with each other and with the wider features of the resource industry including its boom-and-bust character and contracting hierarchy, “*articulating and compounding* as workers move across the web” (7). The study also has findings on worker perceptions of employers’ investment in mental health and on access to, and willingness to access, health care while on rotation and at home. It includes insights and recommendations for changes that could help address mental health challenges and needs of these workers, including how the realities of FIFO/DIDO “demand an expanded notion of ‘the workplace’ in human resource policies, employment law, and occupational health and safety [OHS]” (8), something feminist political economy has long supported.

In 2023, Fruhen, Gilbert, and Parker published a systematic review of research on the implications of FIFO/DIDO work for mental health. They note that within types of work/business-related travel, FIFO work can be considered extreme in terms of distance covered, commuting modality, and commute duration. It also involves the need to be located away from home for relatively extensive periods of time, requiring FIFO workers to “live two lives” with limited opportunity to extract themselves from work contexts in part because they often live in employer-controlled housing (Fruhen, Gilbert, and Parker 2023, 181). Because of these characteristics,

they argue, research on FIFO can be useful in developing insights into the health and other effects of work-related travel and for theory development given the neglect of work-related mobility in many theories about how work affects workers, including work-family conflict theories (see Hughes and Silver 2020), job demands and resources theory, and the conservation of resources theory that includes attention to the importance of recovery and detachment from work as a means to manage stressors. Their systematic review found mainly negative mental health implications for FIFO. They propose an integrative model identifying the key features of FIFO work likely to impact mental health, including “the blending of personal life and work while workers are on site, and the simultaneous fracturing of work and home life” (190).

Fruhen, Gilbert, and Parker (2023, 182) describe the “segmentation and integration,” which happens at the daily, microlevel, and note that the nature and extent of these are associated with worker discretion. In contrast, fracturing and blending are more profound in that they can last for weeks and are dictated by employer arrangements, leaving FIFO workers with limited discretion around their extent. Furthermore, “FIFO work arrangements prescribe physical blending and fracturing alongside psychological blending and fracturing” in the context of work design that “requires workers to integrate and bridge paradoxical extremes” and to manage while transitioning psychologically from one extreme situation to another (190–91). They draw on Dorow and Jean’s (2022) research on camp life that uses the concept of liminality to examine the blending of work and personal life and its impacts, extending attention to the lack of autonomy in the work site as a threat to mental health in the camps where workers can lack choice around food, accommodation (including shared accommodation), schedules, and activities. They also highlight ways the lack of autonomy and social isolation on site and in the camps associated with FIFO can contribute to the blending of life and work and can affect the potential for recovery and detachment from work and the risk of bullying. They argue that while the fracturing of work and home life can help workers switch off from work, on balance, it is more likely to be detrimental, affecting the potential for work-family conflict. The “spatial fracturing” of the commute is associated with long distances, and the “temporal fracturing” of roster types (i.e., those with

long periods away relative to time home) might be greatest in the absence of employer flexibility, the ability to take time off or ask for different rosters, and where workers have limited ability to connect with home while away. Related mental health impacts would include psychological challenges around transitioning between work and home, loneliness, and work-family conflict. Fruhen, Gilbert, and Parker (2023) note challenges are likely to be particularly significant where workers and their families are locked into FIFO due, for example, to debt and with limited opportunities for alternative work. From a regulatory perspective, challenges are also likely to be particularly significant when FIFO/DIDO involves both distance and crossing jurisdictional boundaries.

The overview of some of the existing research on hazards associated with extended/complex ERGM and health and safety in this section supports the conclusion that mobility is a determinant of health, including occupational health, that is often neglected in existing OSH research. It highlights the relatively high risk associated with such mobility across the spectrum from mobility as work through multisite work, to daily commutes, to prolonged mobility and rotational work. Findings also highlight evidence of injury risk during commutes and some of the ways that work scheduling and organization can interact with mobility to influence risk and vulnerabilities across differently mobile workers as mediated by gender, family status, and other factors. Finally, the overview also points to some research syntheses and studies that theorize variable relationships between mobility, risk, and particular kinds of hazards across groups and mobility regimes while considering the wider industry and regulatory context. Key limitations in this literature include its attention to a relatively narrow range of specific groups, sectors, and types of mobility and work situations. Much existing research still tends to treat work-related mobility as essentially getting from A to B without attending to issues of complexity and control related to ERGM or to the intersections between work, mobility, and life at home.

The neglect of mobility as a determinant of occupational health is encouraged by its invisibility in much of the existing data on employment and on work-related injuries and illnesses. While the literature shows how work organization and scheduling can influence risk at work and after work while commuting, there is little exploration of how challenges

in negotiating complex mobilities and life conditions might influence risk at work. Overall, more attention could be paid to the consequences of intersections between work, ERGM, and home and to ways ERGM intersects with other factors to mediate regulatory effectiveness and injury prevention and compensation across diverse groups and situations.

Informed by insights from the conceptual framework on determinants of regulatory effectiveness within the mobile labour force outlined in the next section, the remainder of this book focuses mainly on policy issues related to extended/complex ERGM and health and safety. It explores the layers of vulnerability associated with the diverse work-related mobilities of differently situated groups of workers with a particular focus on understanding the determinants of regulatory effectiveness in the Canadian context. Our focus here has been on OSH hazards experienced by internally mobile workers within Canada and elsewhere. The particular hazards and multiple layers of vulnerability experienced by international migrant workers (IMWs) are discussed in chapter 5.

Conceptual Framework

Overall, Canada's mobile labour force encompasses rural and urban workers employed in multiple sectors who engage in diverse and often multimodal mobility or serial mobility across jobs and regions to, as well as within and sometimes as, their work. Within the mobile labour force, the distribution of workers across sectors, genders, ethnicity, and immigration status varies across space and time (Nourpanah 2019a), as do workers' mobility dynamics, conditions, and resources. Participants range from gold watch business travellers in standard employment relationships with mobility largely organized and paid for by employers (not the focus of this book); to skilled workers who might navigate across multiple mobility arrangements, from individual through private, commercial travel; to the precariously employed for whom the costs and challenges of mobility are more likely to fall largely on individual workers and their families. Different again are the situations of IMWs whose OSH experiences and options are mediated by citizenship status, sometimes language, and immigration-related constraints.

Mode, distance, time, and the frequency of mobility vary, with potential consequences for OSH. While distances may be shorter for the urban

precariously employed or for intraprovincially as opposed to interprovincially mobile workers, their commutes are much more frequent, and their mobility can be particularly onerous in terms of associated annual time and cost investments relative to the employment opportunities, benefits, income, and opportunities for advancement they provide (Premji 2017). These workers would not, however, generally face the kinds of challenges that come from living at work that confront long-distance rotational workers, IMWs, and the long-distance truckers who sleep in their trucks and seafarers and some fishermen who live on board ships. Among the latter, there are people who come from all over Canada and potentially from outside of Canada to go to a remote workplace, like a mine in northern Ontario, BC, Labrador, or the Arctic or travel long distances while working. Others come from one community, perhaps an outpost in rural NL, to work in the same workplace; still others come from the same workplace, like an engineering firm, but live for varying periods in different places and work all over the world.

Internal Canadian “migrants” don’t necessarily have an employer when they travel to another province for work, a reality that determines specific challenges, obligations, and solutions. International migrant workers are often not able to travel to Canada without having an employer in place and are then often tied to that employer while in the country. Those who have short-term commutes to get to and from work or who travel between clients during the course of the day may not face work-family challenges attributable to their mobility analogous to those faced by interprovincial rotational migrant workers and international labour migrants, but they may face different challenges like long, combined travel and working day combinations broken by split shifts and frequent changes in work site location, design, and relationships (Fitzpatrick and Neis 2015). The related OSH hazards and policy challenges represented by these and many other situations are very different, and these are only some of the many possible situations relevant to understanding OSH and ERGM.

The full spectrum of mobility thus includes a broad range of factual situations, each of which poses somewhat distinct challenges for regulatory effectiveness as this applies to injury prevention, compensation, and return-to-work programs—our focus in the remainder of this book. Lippel and Walters (2019) developed a conceptual framework to support

their analysis of the hazards and regulatory challenges associated with diverse forms of ERGM as experienced by differently situated segments of the mobile labour force. This framework informs our analysis. They began by identifying hazards and challenges associated with getting to work, working, living at work, and living at home. They and others then devised a framework (see figure 1) that sought to capture the determinants of regulatory effectiveness related to injury prevention, compensation, and return-to-work (Lippel and Walters 2019; Neis and Lippel 2019). As adapted for this book, this framework understands the regulatory challenges associated with ERGM as distinct depending on specific characteristics, including issues with regulatory gaps, overlap, and confusion; the time, space, and mobility rhythms examined; the precarity of migration and employment; the visibility of mobile workers including to regulators; the degree of autonomy and control over mobility, work, and family situations; access to unionization and collective agreements; and other determinants such as gender, race, class, and citizenship.

Experiences of mobility and work are multifaceted in relation to time (including regulatory distinctions between work time and travel time), space, and rhythms (Gesualdi-Fecteau, Nakache, and Matte Guilmain 2019; Neis et al. 2018). There are situations of long-term, repetitive, local mobility patterns, such as daily commutes to the same, fixed workplace, but longer distances and less frequent mobilities can also take place over many years. For instance, some IMWs have been returning to Canada for prolonged periods. When we consider FIFO/DIDO arrangements, these can involve a relatively stable operational workforce governed by a collective agreement and working year-round, workers engaged on short-term contracts (e.g., in construction), or workers placed by temporary employment agencies or other intermediaries for short-term work in transient locations requiring, as a result, regular changes in mobility patterns and rhythms. The construction industry is a stellar example of how ERGM is a multifaceted phenomenon:

Construction worker mobilities vary with the nature and context of both the job and the site. In the construction phase, resource extraction projects often employ large, diverse, and shifting groups of trades and other workers for periods of weeks, months, and, in

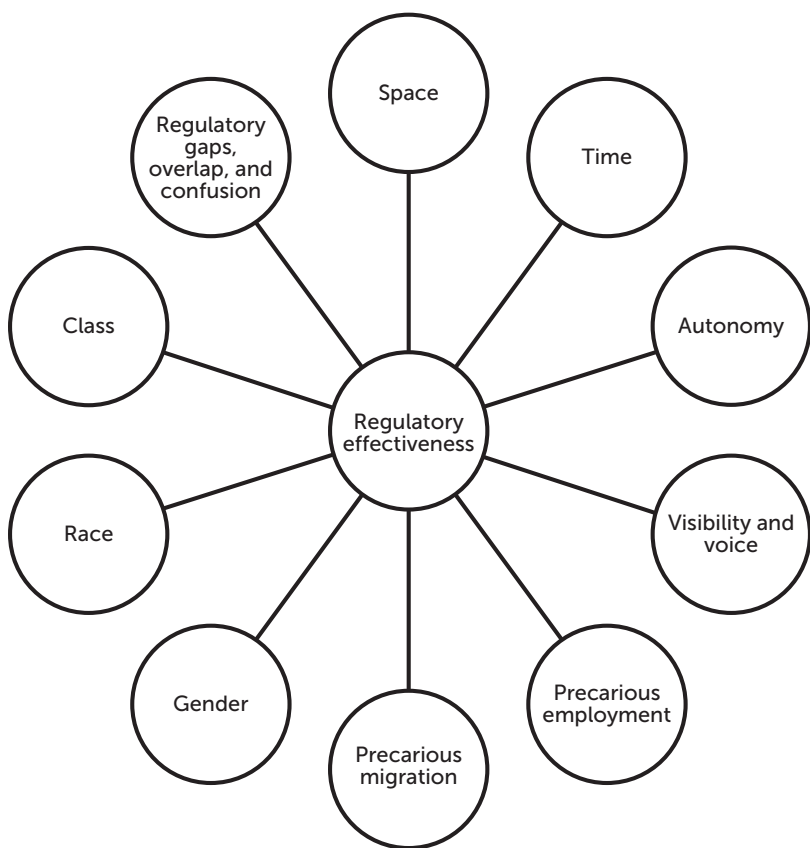


Figure 1. Regulatory effectiveness and its determinants

some cases, several years. In the operations phase, labour forces tend to be smaller and more stable. Depending on the location, some may live in the region and commute daily, while others engage in long-distance mobility (fly-in/fly-out, drive-in/drive-out, and multi-modal transport arrangements) on a rotational basis. (Haan et al. 2020, 290)

Some mobile workers are self-employed while others are employees.

Eligibility of hazards for OSH regulatory intervention and of injuries for compensation can vary within a particular journey, particularly

when the journey entails multiple modes of transportation and transitions between public and private infrastructure (Gesualdi-Fecteau, Nakache, and Matte Guilmain 2019). The issue of whether the different steps in a “commute” are seen to be work related is key to our understanding of the rights and obligations of workers and employers. For those engaged in mobility as work and when, for instance, getting to and from work in a remote region is a work-related activity, a worker can refuse to undertake a commute made perilous because of bad weather, without fear of reprisal, as the right to refuse dangerous work exists in all Canadian OSH legislation (see CUPE 2012). On the other hand, if getting to work is perceived to be a personal activity, the employer can sanction a worker who fails to show up for work. Deeming the commute to be a personal activity would have the effect of providing an incentive to workers to undertake unduly hazardous behaviour to protect their job, their clients (Fitzpatrick and Neis 2015), or their paycheque. The risk would then be their own; if they are injured, the employer would not be subjected to sanction, and no economic incentives would serve as a deterrent to insisting that workers undertake risky travel. If injury occurs, it is the worker who assumes the economic and social consequences of the injury. Similarly, hazards and injuries associated with living at work may or may not be seen as work related.

As noted by Neis and Lippel (2019, 305),

Key determinants include the visibility and invisibility of different categories. In Canada, while TFWs are highly visible to the federal immigration regulator, they are less so for the provincial [occupational health and safety and workers’ compensation] authorities who have had, until recently, no mechanism to detect where international migrants were working within the province—a situation that mirrors the reality in many European countries. The invisibility is even more pronounced when we consider internally mobile workers who do not require any form of permit to travel between provinces for work. Nor is there any regulatory attention paid to workers, often highly precarious, who undertake a long daily commute. Also of importance is the issue of cultural isolation as certain types of mobility may impact the social cohesion of workplaces and

surrounding communities, the sense of belonging to the workplace collective, and access to social support from families and others in their neighborhood/community of residence. The isolation of certain categories of mobile workers can serve as an impediment and deterrent to unionization and can create challenges for managing work-related stress, injury, illness, and return to work. These will, in turn, weaken mobile workers' ability to exercise their rights including those related to OHS, accessing compensation, and return to work.

There are huge disparities within the mobile workforce as to power relations and autonomy. Professional hockey players are technically mobile workers, as are many professionals. The impact of mobility will be quite different for those who have greater autonomy and control over their working conditions, related work schedules, and mobility patterns, as compared to those who have little say on when and where they must work, little economic support for travel, and little control over when and how the mobility and job must be accomplished. Yet even so-called gold-collar mobile workers have health effects related to ERGM, including both physical and mental health problems that are more prevalent in those who travel for business fourteen or more nights a month—12 percent of employees in a US study (Rundle 2018). There are also sectoral differences of importance: Challenges and solutions specific to OSH protection of seafarers or truckers will be very different from those relevant to tree planters and IMWs working in agriculture or home care. Also, injury risk, outcomes, and access to protections vary within sectors when comparing those employed by large firms with permanent employment and protections and those employed by subcontractors—for example, industry- and self-employed long- and short-haul truckers, including new immigrants and IMWs. Gendered divisions of labour within and across sectors and gendered relationships between home, work, and mobility responsibilities and options can all influence risk and access to protections and compensation.

The parameters of the specific situations of diverse groups have particularly important implications in the policy context, given the potential for “layers of vulnerability” as defined by Sargeant and Tucker (2009).

The different, overlapping layers of vulnerability associated with source contexts (where workers come from), their mobility options, and where they end up all mediate exposure to OSH hazards on the one hand and affect the ability to mobilize regulatory protections on the other. Undocumented IMWs are among the most vulnerable, followed by many IMW visa holders who, in turn, are more vulnerable than internal (within Canada) labour migrants and local workforces with regard to many issues relevant to OSH, a phenomenon that has been broadly documented internationally.¹⁴ Specificities of the conditions of work in relation to migration status in turn are known to affect the abilities of workers to mobilize regulatory protections, even when those protections exist (Gesualdi-Fecteau 2015). Overarching considerations include sensitivity to gender, language skills, socioeconomic status, disability, ethnicity, and racialization.

Considerations of gender are relevant in the context of OSH for many reasons. Illustrations not specific to the mobile workforce include issues related to morphologies of men and women: Women are not small men, and designing prevention strategies must take gender into consideration to be effective (Messing and Stellman 2006). Issues more specific to ERGM and gender include differential exposures and vulnerabilities of women to violence and sexual harassment when working in vulnerable situations (Robillard et al. 2018),¹⁵ in remote workplaces, or during commutes and challenges for work-family balance that exist for both men and women but within different parameters (Lefrançois, Saint-Charles, and Messing 2017).

As we explain later, IMWs often live in cultural isolation in relation to the broader community—isolation that is exacerbated if they do not speak the predominant language of that community, be it English or French, and the workplace where they are employed. Cultural isolation must also be considered—for example, for a Québécois working in the Alberta oil sands or a Métis or Indigenous person working in a mine. Aside from the challenges with language, to some extent, the same is true of other Canadian mobile workers who are isolated from their communities and local culture. Cultural isolation is itself differentially relevant within the spectrum of the mobile workforce and a consequence of mobility. While these types of issues are the underpinnings of sociological analysis, they must also be considered in the context of policy analysis. Language

proficiency, for example, is a key factor in the ability of workers to understand the hazards to which they are exposed or their rights and obligations under OSH legislation.¹⁶ It is also essential in communicating with health care providers (Preibisch and Otero 2014; Hanley et al. 2014), and while the analysis of health effects of mobility itself is beyond the scope of this book, there are now many studies examining the health of IMWs in Canada (Salami, Meherali, and Salami 2016). Cultural perceptions of risk may differ based on familiarity with dangerous working conditions in other countries, as can the cultural norms regarding contestation of working conditions (Rathod 2010, 285–88). Disparities in morphologies specific to ethnic origins will affect the appropriateness of individual protective devices, and failure to consider this in recruitment of IMWs, for instance, can reduce the effectiveness of these devices (Hsiao, Long, and Snyder 2002). Disparities in rules governing the various IMW programs operating in Canada also lead to disparate abilities to voice health and safety concerns (Cedillo, Lippel, and Nakache 2019). We discuss these issues and others related to IMWs in chapter 5.

A final point: While the diverse groups and situations experienced by the mobile labour force are often treated in research as separate and distinct, research suggests that they need to be understood as interconnected elements in larger corporate and state mobility regimes (Kesselring 2014; Cresswell, Dorow, and Roseman 2016). Such regimes are perhaps most visible in contexts like Alberta's oil sands operations in the Wood Buffalo region around Fort McMurray, where international migrants work in camps, hotels, and restaurants; drive taxis; and are employed as live-in caregivers, with all of them doing work that supports better-paid daily commuters, as well as intrajurisdictional and interjurisdictional rotational workers living on site. Corporate development and manipulation of these regimes is illustrated by explorations of the complex, private FIFO and DIDO infrastructures and practices created by oil sands companies coupled with expanded reliance on existing community airport and highway infrastructures during periods of high oil prices and industry expansion as well as by the decommissioning of infrastructure and changed practices and opportunities during periods of downturn resulting in reduced long-distance labour commuters, longer rotations, and the

externalization of mobility costs and management onto workers and their families (Beaton 2022; Ferguson 2011; Dorow and Mandizadza 2018).

The existence and dynamics of larger state-corporate mobility regimes are also evidenced by the expansion of IMW programs relative to permanent immigration options in Canada over the past two decades and manipulation and contestation around programs premised on providing just-in-time, vulnerable labour for diverse “temporary needs” that are often durable and long standing (explored in chapter 5), as well as by the implementation and manipulation of internal and international mobility constraints as a key element of infection controls with exceptions for so-called essential workers during the COVID-19 pandemic (see chapter 6).

Conclusion

We opened this chapter by defining and providing a statistical portrait of Canada’s mobile labour force across the spectrum from those engaged in extended daily commutes through to international labour migrants into Canada. The portrait shows both the scale and the complexity of extended/complex mobility as, to, and within work in Canada. It provides some insights into its regional and sectoral distribution and points to areas of expansion and volatility linked to wider macroeconomic factors and to the pandemic. It also shows how challenging it can be to capture this labour force and how little these demographic data can tell us about their actual patterns of ERGM. The chapter then reviews some of the existing research on ERGM, hazards, and risk across the spectrum from mobility as work through multisite mobility, daily commuting, and prolonged commuting. We will deal with hazards and risks associated with international migrant work in chapter 5.

The literature review shows how hazards are significant and diverse and can be mediated by a range of factors, including mode, distance, and timing of mobility; work organization and scheduling; and such determinants as gender, race, and precarious employment. Noting that the relationship between ERGM, OSH, and access to compensation is mediated by a range of factors, we conclude by introducing a conceptual framework capturing key determinants of regulatory effectiveness. These determinants inform our exploration of regulatory frameworks, insights from case law, and

threats to OSH and access to compensation across the mobile labour force in the remainder of the book. We return to them in a focused synthesis in the conclusion, “Moving Forward.” Chapter 2 further sets the stage for this exploration by providing a brief overview of the complex and multilayered regulatory framework that guides OSH and workers’ compensation in Canada, focusing on laws, conventions, and regulations most relevant to the mobile labour force.

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2 OSH and Workers' Compensation Regulatory Overview

The International and Canadian Contexts

This chapter provides an overview of the regulatory framework for occupational safety and health (OSH) and workers' compensation in Canada. It sets the context for the remainder of the book by discussing the international conventions, national jurisdiction, and provincial laws and policies that guide regulation. Given the complexity and dynamism of OSH and workers' compensation law in Canada's federal context, we limit our provincial/territorial level discussion and our examination of related case law to four provinces. These are also provinces that were a key area of focus for On the Move Partnership (OTM) researchers and for the authors in other projects. This regulatory review was done in 2023 and does not reflect changes that may have occurred since then.

We begin with an overview of the international OSH framework, including exploring international labour law, how it addresses OSH and mobility, and its impact on the law in Canada (see "The International Framework for OSH"). In the "Canadian OSH and Compensation Regulatory Frameworks" section, we shift our focus to the Canadian regulatory context for prevention and compensation of work injuries and illnesses, elucidating the guiding principles behind these schemes. We present key features of both the prevention and the compensation schemes in the

five jurisdictions under study and highlight the limitations of these regulatory frameworks when it comes to mobile workers. The third section, “Legislative Challenges for Mobile Workers,” explores, in broad terms and with a focus on challenges for regulatory effectiveness, the scope of these regulatory frameworks. This section discusses the specific features and exclusions of the frameworks to indicate how workers will navigate the challenges they might face. It draws attention to the territorial limitations of OSH legislation, which does not have extraterritorial application, and to how this impacts workers who move across jurisdictions. We present the regulatory framework for the compensation of workplace injuries and occupational illnesses specific to each jurisdiction and discuss how mobility might interfere with injured and ill mobile workers’ access to workers’ compensation.

The International Framework for OSH

Regulatory provisions developed separately in different countries over many years during and following industrialization, but they have numerous features in common internationally. This is partly a result of the influence of transnational standards on OSH.

Workers’ entitlement to safe and healthy conditions at work is provided for internationally in article 23 of the Universal Declaration of Human Rights, which states that everyone has a right to just and favourable conditions of work.¹ This is reaffirmed by article 7 of the International Covenant on Economic, Social and Cultural Rights, which recognizes the right of everyone to just and favourable conditions of work, ensuring in particular “safe and healthy working conditions.”²

The standard-setting role of the International Labour Organization (ILO) is also fundamental. The ILO is the only tripartite United Nations agency and brings together governments, employers, and workers’ representatives of 187 member states to set labour standards, develop policies, and devise programs promoting decent work. The ILO has developed the Global Database on Occupational Health and Safety Legislation, which provides an overview of OSH legislation in a broad range of countries (ILO, n.d.-b).³

The first ILO Constitution, which formed part 13 of the Treaty of Peace of Versailles (1923),⁴ stated that a maximum working day and week was

“urgently required.”⁵ This fundamental OSH issue was on the agenda of the very first General Conference of the ILO, in 1919, when the member countries adopted a convention limiting the hours of work in industrial undertakings to eight in the day and forty-eight in the week.⁶ Other OSH issues subsequently and periodically became key issues in ILO legislative activity.⁷

In June 2022, the General Conference of the ILO decided to amend the ILO Declaration on Fundamental Principles and Rights at Work to include the right of everyone to just and favourable conditions of work, ensuring, in particular, “safe and healthy working conditions” (ILO, n.d.-c). The fundamental right to health and safety at work now bears the same status as the abolition of child labour, the elimination of forced labour, the elimination of employment discrimination, the freedom of association, and the right to collective bargaining.

Conventions 155 and 187 are now included in a list of ten fundamental instruments. Convention 155 states that “the aim” of the national policy shall be to prevent accidents and injury to health by minimizing, so far as is reasonably practicable, the causes of hazards inherent in the working environment.⁸ Convention 187 requires members to promote continuous improvement of OSH to prevent occupational injuries, diseases, and deaths by the development, in consultation with the most representative organizations of employers and workers, of a national policy, a national system, and a national program.⁹ The convention calls for the establishment of a national preventive safety and health culture “where the principle of prevention is accorded the highest priority.”¹⁰

Both of these conventions provide a framework that promotes the “complementary roles of governments, employers and workers in improving safety and health at work,” emphasizing the necessity of the participation of employers and workers “through express provisions on consultation and cooperation in decision-making and implementation processes” (ILO 2023, 5).

All member states of the ILO must comply with the ILO’s framework on OSH by virtue of their membership in the ILO. All ILO member states, regardless of their ratification status of fundamental conventions, are subject to a monitoring procedure aimed at assessing the conformity of their national legislation and practices with the content of these instruments.

Various ILO conventions address OSH with provisions that could have specific applications to Canada's mobile labour force.¹¹ For example, the Protocol of 2002 to the Occupational Safety and Health Convention addresses the importance of maintaining records and reporting systems, including for commuting accidents.¹² The latter is of importance for the tracking of work-related exposures and injuries incurred by mobile workers, since, as we will see, some might be invisible to regulators because of their mobility. In 2019, the International Labour Conference adopted Convention 190, the Violence and Harassment Convention. It aims at protecting workers and other persons in the world of work, whether public or private or in the formal or informal economy, from violence and harassment occurring in the course of, linked with, or arising out of work, including when commuting to and from work.¹³

There are also conventions addressing specific categories of workers, such as migrant workers, seafarers, miners, agricultural workers, fishermen, and domestic workers, that can involve some types of work-related mobility.¹⁴

Canada has ratified only a few of these international conventions, including the Promotional Framework for Occupational Safety and Health Convention (which provides that nations should have a general regulatory framework for OSH), the Maritime Labour Convention; the Protection Against Accidents (Dockers), the Labour Inspection Convention (ratified in 2019 by Canada), and the Violence and Harassment Convention (ratified in January 2023; ESDC 2023c). Canada has not ratified the Occupational Safety and Health Convention, which now has a fundamental status. As noted by Lippel and Walters (2019, 320), with the exception of the Maritime Labour Convention, "international law has had very little direct influence on the Canadian legal frameworks governing OHS and WC that apply to the mobile workforce." This is in part explained by the fact that Canada is a dualist system and requires that international law be transposed in domestic law. Moreover, in Canada, the procedure for implementing international treaties or conventions is complicated by the distribution of legislative powers between the federal and provincial levels within the federation. Canada generally awaits unanimous agreement from the provinces before ratifying an international treaty.¹⁵

Canadian OSH and Compensation Regulatory Frameworks

We will now shift our focus to the architecture of the regulatory framework in Canada pertaining to OSH and workers' compensation. Canada is a federation, and the Constitution Act of 1867 divides legislative powers between the Parliament of Canada and the provincial legislatures. Despite its vast scope, legislative jurisdiction over labour is not specifically listed in the Constitution Act. It has been ruled that the power to enact labour legislation stems primarily from the provinces' exclusive jurisdiction over property and civil rights provided in section 92(13) of the Constitution Act. However, the federal Parliament has the authority to regulate sectors under its jurisdiction. As a result, numerous federal labour laws have been enacted and enforced. Federal labour legislation applies to businesses and employers that are under federal jurisdiction (interprovincial transport, banks, telecom, etc.¹⁶).

In Canada, workers' OSH and compensation entitlements are supported in national legislation through a set of provisions. Roughly summarized, OSH legislation aims to protect workers' health, safety, and welfare by imposing requirements on certain classes of duty holders (usually employers) to ensure that the work under their control does not harm the workers employed to undertake it. As for workers' compensation, the different bodies of legislation provide for compensation and rehabilitation when a worker suffers from an occupational injury.

The Prevention of Occupational Injuries and Illnesses

At both international and national levels, the recent history of these regulatory developments in OSH demonstrates, according to Lippel and Walters (2019), a growing focus on process-based regulatory standards over more traditional prescriptive standards:

Thus, general requirements on duty holders to manage the risks to which workers (and sometimes others) may be exposed have increasingly come to provide over-arching and constitutive regulatory principles that require general duties from employers and others having control over work to evaluate and take the necessary

steps to manage occupational risks to workers to acceptable levels. In theory these broad and constitutive principles should allow greater scope for addressing what is widely recognised as a rapidly changing structure and organisation of work and provide adequate protection of the safety and health of a diversified range of work situations. (321)

Relatedly, this type of framework should be sufficiently flexible to be responsive to challenges associated with employment-related mobility. In this review, we explore, in general terms, the extent to which this is the case in Canada.

Regulatory frameworks promoting OSH in Canada and many other jurisdictions generally rely on a three-pronged strategy in relation to workers' rights. Workers have the right to information, including training, on the hazards in their workplaces and the tools and equipment for prevention; the right to participate in the identification and elimination of these hazards; and the right to refuse dangerous work.

In the case of federally regulated workplaces, the Canada Labour Code governs the prevention of occupational injuries and illnesses for federally regulated work: "The purpose of this Part [of the code] is to prevent accidents, occurrences of harassment and violence and physical or psychological injuries and illnesses arising out of, linked with or occurring in the course of employment to which this Part applies."¹⁷ The Canada Labour Code applies to only approximately 7 percent of the Canadian labour force (ESDC 2022), but the legislation encompasses a variety of sectors involving extended/complex employment-related geographical mobility (ERGM), particularly in relation to transportation (for more on the legislative framework that applies to maritime workers in Canada, see Shan and Lippel 2019).

As the power to enact labour legislation generally stems from the province, each province and territory has its own OSH framework. Given the large number of provincial and territorial jurisdictions in Canada, we will focus on five jurisdictions: the federal legislation, Québec, Ontario, Alberta, and Newfoundland and Labrador (NL). In each of these jurisdictions (see table 2),¹⁸ the regulation's general objective is to prevent work-related injuries and illnesses and to provide for mechanisms for

the participation of workers, their associations, and their employers in the elimination of dangers to health and safety. These regulatory frameworks include provisions regarding the obligations for employers, employees, and sometimes other parties within the employment relationship.¹⁹ They all institute the right for workers to refuse dangerous work under certain conditions. At the federal level, the right to refuse work is different for employees on ships and aircraft.²⁰

Table 2. Key legislation

Jurisdiction	Prevention of work-related injuries and illnesses	Compensation for work-related injuries and illnesses
Alberta	Occupational Health and Safety Act, SA 2020, c O-2.2	Workers' Compensation Act, RSA 2000, c W-15
NL	Occupational Health and Safety Act, RSNL 1990, c O-3	Workplace Health, Safety and Compensation Act, 2022, SNL 2022, c W-11.1, 2022
Ontario	Occupational Health and Safety Act, RSO 1990, c O.1	Workplace Safety and Insurance Act, 1997, SO 1997, c 16, Sch A
Québec	Act Respecting Occupational Health and Safety, CQLR c S-2.1	Act Respecting Industrial Accidents and Occupational Diseases, CQLR c A-3.001
Federal	Canada Labour Code, RSC 1985, c L-2	For specific situations, see the following: Government Employees Compensation Act, RSC 1985, c G-5 Merchant Seamen Compensation Act, RSC 1985, c M-6

In Canada, the prevention of occupational injuries and illnesses is based on the “internal responsibility system,” which assumes that workers and employers share the responsibility to prevent injuries and illnesses (Foster and Barnetson 2016, 24). Different mechanisms exist in order to implement this obligation, such as joint health and safety committees and health and safety representatives. The requirements for such committees and for the presence of safety representatives may vary from one jurisdiction to the next, often varying according to the size of the organization

(26). Foster and Barnetson (2016, 29) highlight the criticism of the internal responsibility system, including relating to its effectiveness: “The state has attempted to mediate the conflicting demands of workers (who want safety) and employers (who want flexibility to organize work in maximally profitable way). The result is a system that somewhat reduces, but does not eliminate, workplace injuries.” They add that it’s a system that tends to work for a more standard form of employment (stable, full-time job in a large organization), whereas workers in less traditional settings do not benefit as much from the internal responsibility system.

In addition to the internal responsibility system model, governments have established inspectorate systems, where inspectors conduct “work-site inspections in order to identify health and safety violations and ensure their remediation” (Foster and Barnetson 2016, 26). In fact, in every jurisdiction, the authority responsible for OSH²¹ will designate an “officer,”²² an “inspector,”²³ or a “Head of Compliance and Enforcement,”²⁴ who all have investigative powers. There are generally two main types of workplace visits conducted by the inspectorate: proactive and reactive. Proactive visits are typically unannounced and aim to increase awareness of OSH regulations, check compliance, and promote the collaboration of the workplace parties. Reactive visits occur in response to a fatality, a critical injury, a work refusal, or a complaint or when a health and safety event happens in the workplace. These visits typically happen when an employer files a report following an injury, in regard to its obligations. When officers or inspectors arrive at a workplace, they can write an order to ensure compliance, issue stop-work orders, and issue stop-use orders when they consider there is a danger to the health or safety of workers.²⁵ At the federal level, it is specifically provided that in the event of a death that “results from a motor vehicle accident on a public road, as part of the investigation the Head shall obtain a copy of any police report as soon as possible after the accident.”²⁶ However, research has highlighted major shortcomings in the implementation of the inspectorate roles, including the lack of resources and the priority accorded to more “so-called traditionally dangerous workplaces,” leaving other workplaces uninspected despite the importance of certain risks (Foster and Barnetson 2016, 232).

In all jurisdictions, the regulatory frameworks provide the possibility to impose fines and other sanctions when violations of standards are identified. The sanctions vary significantly from one jurisdiction to another, as in some cases, courts have the authority to impose imprisonment (with the exception of Québec). Fines can vary widely, with some jurisdictions allowing for substantial penalties, reaching up to \$1 million in specific cases, while others have considerably lower fines.

The Compensation of Work Injuries and Illnesses in Canada

Workers' compensation is one of the oldest social protection programs in Canada, dating back to the early twentieth century (for a broad overview of these systems and their challenges, see Foster and Barnetson 2016; Ison 1996). It is exclusively governed by provincial legislation, which applies to federally regulated enterprises, including interjurisdictional trucking, the airline industry, and shipping (Lippel and Walters 2019).²⁷ Rights to workers' compensation of employees of the federal government are also governed by provincial legislation, Parliament having delegated by reference the determination of coverage for government employees.²⁸ Specific legislation governs compensation of seafarers who, if ineligible to claim under provincial or territorial legislation, may turn to the Merchant Seamen's Compensation Act.²⁹

The workers' compensation regimes across Canada work on a no-fault basis, meaning that how the injury occurred—whether it was the worker's or the employer's fault—is not relevant. Prior to the implementation of this regime, workers had to sue their employer, thus proving their fault, which often proved impossible or extremely costly: “In exchange for immediate, predictable, and stable compensation, injured workers gave up their right to sue their employer for workplace injury. This exchange is often called the historic compromise” (Foster and Barnetson 2016, 35).

Even though these regimes are based on the same basic principles, not all of them provide the same level of protection and coverage. For example, in 2021, the coverage of the workforce in Alberta (81.76 percent) and Ontario (75.89 percent) was significantly less than in Québec (92.90 percent) or NL (97.40 percent; see AWCBC, n.d.; most recent data doesn't include Ontario and NL). This means that all workers are not

equally protected from one province to the next. For mobile workers, this holds significant importance, as they might be unaware of potential changes in their coverage when they move between jurisdictions (AWCBC 2024).

All Canadian compensation regimes guarantee the right to compensation for eligible workers injured out of and/or³⁰ in the course of employment. Foster and Barnetson (2016) outline the general principles for the requirement of work relatedness:

Injuries arise out of employment when they are caused by the nature, conditions, or obligations of employment. That is to say, injuries arise from employment when they are caused by an employment hazard. Injuries that happen at times and places consistent with the obligations and expectations of employment occur in the course of employment. This can include injuries that occur outside of normal hours of work or off the employer's premises (e.g., running an errand for your employer on your drive home) so long as there is some relationship between employment expectations and the time and place of the injury. (36)

Deciding whether injuries or disease “arise out of employment” and thus compensation eligibility is usually straightforward for acute injuries that happen in a fixed workplace but becomes more complex when dealing with injuries that occur while mobile to, within, or between workplaces, and while living at work. It is also more challenging to establish the relationship between chronic injuries and occupational diseases and work; these challenges can be exacerbated by ERGM. These issues are the focus of future chapters.

Each province and territory has a workers' compensation board (WCB) that assesses the eligibility of a claim made by a worker. In doing so, the WCB will assess the merits of a claim based on the balance of probabilities, asking if it is more likely than not that the injury arises out of the employment. It is a burden of proof that is much lower than in criminal matters, where the reasonable doubt is the standard. In many jurisdictions, there are also presumptions, which means that if, for example, a worker does a preidentified type of work or meets certain criteria and suffers from

a preidentified illness, that illness will be presumed to have arisen in the course of employment, unless proven otherwise.³¹

Once the WCB finds that the injury is compensable, the worker will be eligible to receive wage-loss, medical, and vocational rehabilitation benefits. If the claim is made by the family of a deceased worker, their dependents are eligible to receive fatality benefits, including funeral costs and wage-loss benefits (Foster and Barnettson 2016, 37). Because they are no-fault, these regimes curtail workers' rights to sue under tort law, so even negligent employers or those responsible for sexual harassment are protected from civil liability if the injury incurred is potentially covered under the provincial workers' compensation legislation, whether or not the worker or the worker's estate has actually filed for workers' compensation.³² It is often assumed that employers would prefer injuries and illnesses not be compensable because of potential consequences for compensation premiums and other compensation-related obligations, but in some cases, as within the mobile labour force, employers might prefer injuries to be deemed compensable to avoid the risk of being sued. Furthermore, there are numerous specificities with regard to scope, coverage, benefit levels, and adjudication that differ from one province to another. Obligations are also different, as, for example, in Québec, the worker is the one who must declare the injury or illness to the WCB, whereas in Ontario, the employer is required to report an injury to the WCB.³³

Eligible workers in all Canadian jurisdictions have the right to appeal WCB decisions—a right that is particularly important in the case of situations where claims are denied and work relatedness can be ambiguous. One key regulatory difference between the province of Québec and the provinces of Alberta, NL, and Ontario is that the policies adopted by the WCB (see table 3) are binding for the appeals tribunals in the latter three provinces but not in Québec. In Alberta, the Appeals Commission is the appeal body³⁴ and is “bound by the board of directors’ policy relating to the matter under appeal.”³⁵ In NL, the Workers’ Compensation Independent Review Board is the appeals tribunal. Its commissioners are also bound by the policies of WorkplaceNL.³⁶ In Ontario, the Workplace Safety and Insurance Appeals Tribunal is the appeal body responsible for hearing the appeals of the Workplace Safety and Insurance Board (WSIB): “If there is an applicable Board policy with respect to the subject-matter of an appeal, the

Appeals Tribunal shall apply it when making its decision.”³⁷ In Québec, the appeals tribunal is the Administrative Labour Tribunal, and several laws, including the Act Respecting Industrial Accidents and Occupational Diseases (AIAOD), fall under its jurisdiction. However, the Administrative Labour Tribunal’s jurisdiction is *de novo*, which means it is bound not by any internal policies adopted by the Commission des normes, de l’équité, de la santé et de la sécurité du travail (CNESST) but only by the laws and regulations. For the sake of clarity, for all provinces, we have identified these appeals commissions or tribunals as “appeals tribunals.”

Table 3. Workers’ compensation boards and appeals tribunals or commissions

Province	Compensation board	Appeals tribunal/commission
Alberta	Workers’ Compensation Board—Alberta	Appeals Commission for Alberta Workers’ Compensation
NL	WorkplaceNL	Workers’ Compensation Independent Review Board ^a
Ontario	Workplace Safety Insurance Board	Ontario Workplace Safety and Insurance Appeals Tribunal
Québec	Commission des normes, de l’équité, de la santé et de la sécurité du travail ^b	Administrative Labour Tribunal ^c

a. Effective September 1, 2023, the name of the Workplace Health, Safety and Compensation Review Division was replaced.

b. Prior to January 1, 2016, the compensation board in Québec was the Commission de la santé et de la sécurité du travail (CSST). In 2016, three boards with work-related missions were merged together to form the CNESST: An Act to group the Commission de l’équité salariale, the Commission des normes du travail, and the Commission de la santé et de la sécurité du travail and to establish the Administrative Labour Tribunal, SQ 2015, c 15.

c. In Québec, the appeals tribunal of the CSST decisions was the Commission d’appel des lésions professionnelles (CALP) until 1998, when it was replaced by the Commission des lésions professionnelles (CLP). In 2016, two labour tribunals were merged to form the Administrative Labour Tribunal (TAT), Act to Establish the Administrative Labour Tribunal, CQLR c T-15.1.

It is important to note that compensation boards rely exclusively on funding from employers’ premiums. While specificities vary across jurisdictions, the fundamental principle governing this mechanism is called

experience rating. The idea is simple: Lower rates of occupational injuries will reduce the premiums paid. There is thus supposed to be a financial incentive for employers to prevent such injuries. However, researchers have documented undesirable effects of this mechanism, in particular a greater propensity to appeal workers' claims and rushing workers back to work without making any health and safety improvements, which can also have the effect of lowering premiums (MacEachen et al. 2012; Tompa, Trevithick, and McLeod 2007; Charbonneau and Hébert 2020). The potential effect of experience rating on encouraging injury prevention in the context of different forms of mobile work needs to be investigated, as potential issues with visibility and jurisdictional differences could encourage claim suppression and other practices to avoid paying higher premiums.

In the next section, we will start to explore more closely how mobility—within, across, and outside jurisdictions—may impact the effectiveness of the provisions that are supposed to protect workers and compensate them for work-related injuries and occupational diseases.

Legislative Challenges for Mobile Workers

As previously mentioned, workers have the right to information, including training on the hazards in their workplaces and the tools and equipment for prevention; the right to participate in the identification and elimination of these hazards; and the right to refuse dangerous work. Complying with each of these pillars of OSH law can be challenging in the context of ERGM. Returning to the conceptual framework in figure 1 (chapter 1), where we identify space, for example, as a determinant of regulatory effectiveness, mobile workers are often widely dispersed from each other and from managers across transient work locations where hazards (i.e., weather, traffic, work environments, and equipment maintenance) are variable and dynamic. This can affect their capacity to recognize, to participate in, and to refuse dangerous work. Jurisdictional specificities (our focus here) need to be considered when reflecting on OSH protections and the mobile workforce, since workers may travel for work between provinces or across countries, live in one province and work in another, and travel while working. When ERGM requires crossing jurisdictional

boundaries as with international migrant workers (IMWs), interjurisdictional workers, and some transportation workers, differences in regulatory regimes can add to space-related challenges to basic OSH rights. The same observations can be made about the workers' compensation regimes. As noted previously, who and what types of injuries/illnesses will be covered, the proportion of earned income provided in compensation claims, and return-to-work processes and requirements can vary between provinces. This variability can contribute to reduced claim rates, to delays in claiming and decisions, and to delayed return to work for mobile workers.

For these reasons, it is important to understand the different schemes, with their specific features and exclusions, as mobile workers may have to navigate between them. This is the focus of the remainder of the chapter.

Mobile Workers and the OSH Regulatory Framework

First, since in each case, provincial and territorial OSH legislation does not have extraterritorial application, its territorial scope can limit the effectiveness of OSH protections for internationally and interjurisdictionally mobile workers. For Canadian workers who are internationally mobile, their recourse might be limited. Canadian workers working in other countries may face specific hazards that arise from the specificities of the political or geographical context of the country where they work, but they may not be adequately protected since they cannot refuse a deployment in a war zone or obtain support from inspectors without fearing reprisals. To illustrate, in Québec, a 1987 decision³⁸ found that a worker who refused to undertake a trip overseas—exercising the right to refuse dangerous work provided for in the OSH legislation—did not have regulatory protection for his refusal (Lecavalier and De Aguilar 2015),³⁹ a situation revealing a clear gap in current regulatory protections.

This is also an issue for interjurisdictional workers within Canada. As Lippel and Walters (2019, 326) note, “The regulator’s jurisdiction stops at the border of their province, so this limitation applies when hazardous conditions arise in another Canadian province not just in another country.”

In Québec, the appeals tribunal declined jurisdiction for the claim of a worker resident from Québec, hired by a Québec employer to work on a twelve-day contract in Ontario. Once in Ontario, the employer advised the worker that he had to buy protective gear. The worker refused, saying that under the Act Respecting Occupational Health and Safety (AOHS), the Québec legislation, it was the employer's duty to provide such gear. The employer fired the worker. The worker filed a claim saying that he was penalized for exercising a right under the AOHS. The appeals tribunal declined jurisdiction, stating that the "AOHS does not apply in Ontario; had the facts occurred in Québec, the worker's complaint could have been upheld but, given the circumstances of this case, it must be dismissed."⁴⁰ However, in Ontario, a worker hired by an Ontario company to work temporarily in BC complained to his supervisor about his health and safety concerns regarding conditions of work on a BC work site. He was asked to return to Ontario, where he was fired two weeks later. He filed a complaint in Ontario alleging he was fired because of the health and safety issues he had raised. His employer, unsuccessfully,⁴¹ pleaded that the Ontario Labour Relations Board had no jurisdiction on the complaint, ostensibly because Ontario health and safety legislation did not apply to conditions in BC. Because the employment relationship was rooted in Ontario and the Occupational Health and Safety Act (OHSA) governed the worker's obligation to express his health and safety concerns, the Ontario Labour Relations Board found it had jurisdiction over the complaint of the worker. These two cases illustrate the complexity and jurisdictional challenges that can arise when workers try to mobilize the legislation to enforce their rights to a safe work environment.

A second potential issue with regulatory effectiveness around prevention of injuries is related to federal/provincial jurisdictional overlap. This can lead to uncertainty and confusion, especially in scenarios like reporting accidents or responding to them, as well as when workers need to refuse dangerous tasks. This is perhaps particularly obvious at the interface between OSH regulators and those called upon to regulate transportation as public regulators, many of whom are within the federal jurisdiction. For example, air travel, rail travel, seafaring, and interjurisdictional trucking all fall within the scope of federal jurisdiction, although local rail travel and fisheries within provincial waters would fall under provincial jurisdiction.

This has implications for injury prevention and accident investigation in these sectors, as transportation is often federally regulated, but health and safety are provincial/territorial responsibilities and can thus lead to uncertainty about who should investigate and the law that applies. For Desai Shan (2022a, 2), fishing health and safety governance is a “wicked problem,” partly because of jurisdictional issues. Shan presents a telling example of how a seemingly straightforward situation becomes significantly more complex to navigate, owing to the coexistence of different regulators:

Noise exposure and hearing loss are identified as an occupational hazard for fishing workers in Atlantic Canada. If noise exposure is recognized as an occupational health issue, provincial OSH authorities should take measures to eliminate and control noise on board fishing vessels. However, noise sources can be related to fishing vessel design and construction, which falls under federal jurisdiction. (2022a, 7)

Thirdly, jurisdictional confusion around injury prevention and investigation may also arise from the division of responsibilities between different actors or agencies *within* a province. For example, if a traffic accident occurs in Ontario involving the death of IMWs transported between the farm and the housing provided, if it may be work related, WSIB investigators would examine the circumstances of the accident for the purpose of determining contraventions under the Ontario OHSA and compensability, as would the Ontario police, who would be called upon to apply a variety of provisions in the Highway Traffic Act and the Criminal Code applicable to motor vehicle accidents (e.g., criminal negligence, dangerous driving, and impaired driving).⁴² In contrast, if an accident occurs while a worker is returning to their residence during the usual extended commute between work and home, it is unlikely that the WCB would investigate the circumstances of the accident, as it would not be considered to be work related (see chapter 4). Lippel and Walters (2019, 327), in their research, report that “the delimitations are unclear, and [they] were told that multiple inspectorates, including police forces, often attend the scene of an accident and do multiple factual analyses to

determine which regulation/regulator has jurisdiction over the incident.” Such intrajurisdictional ambiguity and potential confusion have reduced the quality of the oversight, thus contributing to unsafe working conditions for both IMWs and workers who work with them.

A final issue stems from the nature of some of the work that is performed by mobile workers. ERGM does not necessarily imply that the worker is spatially separate from the employer. For example, once they’ve arrived at the workplace, IMWs may well be under the direct supervision of their employers during all work activities, in their accommodations, and, in some cases, when travelling for supplies or medical care. However, other mobile workers—including those who travel for work (e.g., truckers); those who work in multiple, transient workplaces (e.g., tree planters and home care workers); and those driving or being flown in and out of remote communities—are often at some distance from their supervisors or employers. In those cases, understanding the effectiveness of OSH legislation must be informed by an understanding of employer oversight and communication and by the monitoring of site safety by managers and employers. These mobile workers are required to get to, travel within, and leave work, sometimes with little information or control over hazards, including the state and means of transportation that are being provided. The employer may also turn a blind eye to these conditions or may not be in a geographic location that permits adequate supervision. This further shows the limits of the provisions supposed to safeguard workers when mobility comes into play and will be discussed in more depth in chapter 3, where we explore the peculiar hazards that mobile workers face and assess whether the legislation in place can effectively protect mobile workers from these hazards.

These examples highlight the complex nature of the challenges that may arise and underscore the limitations of laws intended to safeguard mobile workers. Additionally, mobility can create confusion because of the interjurisdictional and intrajurisdictional complexities it involves.

The Territorial Scope of Compensation Schemes

As previously mentioned, as with OSH, each province and territory has a regulatory framework for the compensation of workplace injuries or

illnesses. Each act and set of regulations has different dispositions about who is a worker and an employer covered under the act and hence is eligible for workers' compensation. In this section, we will see how mobility may muddy the waters when workers need compensation.

It must first be noted that specific rules apply to employees of the federal government. The right to compensation of employees of the federal government or of a Crown corporation such as Canada Post or Air Canada is governed by specific legislation that provides for compensation according to the rules of the province in which the employee is usually employed.⁴³ For workers who work within Canada, each province's WCB is thus called upon to adjudicate claims from these federal workers according to local provincial legislation, interpreted in light of the specificities identified in the Government Employees Compensation Act (GECA). If the federal employee is usually employed outside of Canada, section 6 of the GECA provides that it is the Ontario legislation that applies to a claim for an injury occurring or a disease contracted outside of Canada.⁴⁴

When ERGM involves mobility across provincial or national boundaries, before a claim is accepted, there is a determination as to which WCB should provide coverage to the worker. In some cases, the compensation board will accept claims for all accidents occurring within the province or territory; however, each jurisdiction has specific rules and policies governing the territorial scope of its legislation, as can be seen in the appendix. In this context, as illustrated by the case law, there is a possibility that workers may be deemed ineligible for compensation in multiple jurisdictions—a risk exacerbated by variations in compensation policy across provinces. Of the four provinces examined, Alberta and Ontario appear to be most likely to compensate for any accident that happens in their jurisdiction or outside of it, irrespective of the location of the employer and domicile of the workers, but even here there are exceptions. It is worth mentioning that if a worker is denied compensation, they may be entitled to sue in a civil case, following the principles of civil liability or tort law, in which case they would need to demonstrate fault (not a requirement for compensation), damages, and the causal link.

In Québec, the legislation covers work accidents occurring in Québec that involve a worker working for an employer with an establishment in Québec.⁴⁵ However, if the worker's employer does not have an establishment in Québec, an accident that occurs in Québec and affects a worker residing in Québec will not be covered under the AIAOD. There are several cases where the tribunal has been called upon to interpret the meaning of "establishment."⁴⁶ Thus, an Ontario-based employer who bid on contracts on Québec soil was found to have an establishment in Québec because the private residence of the president of the company (rented, not owned by him), situated in Québec, included a garage in which construction equipment was stored, and thus the compensation claim, for the injury incurred in Québec by the Québec resident, was found to be compensable.⁴⁷ In a case where a Québec-domiciled construction worker only worked in Québec for a construction company based in Ontario, the Ontario WCB denied coverage, given that links to Ontario were insufficient; the worker did not challenge this decision; and the Québec WCB⁴⁸ accepted the claim. However, the employer then contested the decision relating to its status as a Québec employer, specifically for the purpose of determining whether or not it was obliged to pay premiums. The final decision regarding the obligation of the employer to pay premiums concluded that it had no establishment in Québec, and the Commission de la santé et de la sécurité du travail (CSST) then suspended the worker's benefits because the employer was found to not have an establishment in Québec. The appeals tribunal⁴⁹ reinstated the worker's benefits on a procedural question, but this case raises a serious issue. Essentially, while in theory, this worker who had an accident that was compensable, by its nature, in both provinces could have lacked coverage in both provinces because the employer had no establishment in Québec and the worker and work accident had insufficient ties to Ontario.⁵⁰ This litigation provides a glimpse into the mechanisms by which it is conceivable that mobile workers in Canada injured at work can fall through the cracks created by interjurisdictional conflict.

If a worker domiciled in Québec and employed by a Québec-based employer has an accident outside of Québec, the Québec legislation will also apply, as it will if the worker who is no longer domiciled in

Québec is injured within five years of leaving Québec while working for a Québec-based employer.⁵¹ If the worker cannot prove the identity of their employer, as happened in a case where a middleman recruited truckers for an unnamed company, the worker will not have coverage if he is injured outside the province.⁵² This case illustrates the vulnerability of workers in the informal workforce, who are highly precarious as well as being, in this case, mobile workers. When recruiting agencies are involved, the debate as to the “real” employer may also arise, and if the “real” employer does not have an establishment in Québec, the Québec-domiciled worker who is injured working outside of Québec will not have coverage under the Québec legislation.⁵³

If the worker who is not domiciled in Québec is injured in Québec while working for an employer with an establishment in Québec, section 7 of AIAOD provides coverage; however, if the worker who is not domiciled in Québec is injured outside of Québec while working for a Québec-based employer, they will not have coverage,⁵⁴ regardless of whether their salary has been included in the calculation of premiums paid to the Québec WCB by the employer.⁵⁵ Not surprisingly, the issue of domicile has given rise to several disputes. For example, artists and dancers working for Québec-based dance troupes have filed for compensation when injury occurs while the dance company is on tour and have been found to be domiciled in Québec. The tribunal does not require proof of landed immigrant status if the evidence shows that the worker’s principal address is in Québec.⁵⁶

This situation is quite different from that applicable to accidents occurring in Alberta. Pursuant to the Alberta Workers’ Compensation Board’s (WCB-Alberta) *Policies and Information Manual* (2023a), workers injured while working in Alberta would have coverage if the accident occurred in Alberta, regardless of their domicile, if the employer has, or should have, an account with the WCB-Alberta.⁵⁷ The definition of *employer* in the Alberta Workers’ Compensation Act (WCA) has no requirement with regard to having an establishment in Alberta, referring only to an “individual, firm, association, body or corporation that has, or is deemed by the Board or the Act to have, one or more workers in the individual’s or its service.”⁵⁸ Pursuant to section 14, the only exception can

be found in the Workers' Compensation Regulation,⁵⁹ which provides for industries designated as being exempt from the WCA.

The Alberta WCA also allows for coverage for accidents occurring outside of Alberta if the worker is a resident of Alberta or if they have their "usual place of employment in Alberta and the work out of Alberta is a continuation of the employment by the same employer . . . and the nature of the employment is such that, in the normal course of the employment, the work or service the worker performs is required to be performed both in and out of Alberta," and if the employment outside of Alberta has lasted for fewer than twelve months.⁶⁰ These provisions provide for relatively large coverage for out-of-province Alberta workers and nonresidents who usually work in Alberta (WCB-Alberta 2024).

In Ontario, the law provides for different situations. When an Ontario worker is injured while being employed outside of Ontario, they will be covered by the act if the worker resides and is usually employed in Ontario, if the employer's place of business is in Ontario, and if the employment has lasted fewer than six months, unless the board decides otherwise.⁶¹ If the worker is not an Ontario resident but is usually employed in Ontario, they will be eligible if the employer's business is in Ontario and if the worker was out of Ontario for some temporary, work-related purpose. However, if an Ontario worker is travelling for work and the employer is paying premiums to the jurisdiction they are travelling in, it is that jurisdiction that will cover the worker. The nonresident Ontario worker will also be covered even if their employer's business is not in Ontario if the worker is employed in Ontario but was out of the province "only for some casual or incidental work-related purpose, i.e., a salesman picking up his pay cheque" (WSIB Ontario 2008, para. 11).

The Ontario WSIB policy on "Non-Resident Workers" provides that "a non-resident worker or non-resident employer must have a substantial connection with Ontario in order to come within the scope of the Act [WSIA]. . . . A non-resident worker who works in Ontario normally has a substantial connection with Ontario unless the worker's Ontario employment is so minimal that it is merely incidental to the worker's employment in another jurisdiction" (WSIB Ontario 2007, paras. 1–3).

The notion of "substantial connection" is subject to interpretation, and the WSIB policy states that each case must be decided on its own

facts. However, the policy specifies that a worker who works in Ontario for more than eleven days in the course of a year usually has a substantial connection with Ontario. These nonresident workers need not necessarily be injured in Ontario. For example, a worker domiciled in Nova Scotia, who was hired to work in Albania and was employed by an Ontario-based employer, was considered eligible for compensation under Ontario law. The panel found the worker had sufficient connection requirements for entitlement to compensation as a nonresident of Ontario under the provisions of section 19(1) of the WSIA.⁶²

In NL, a new law came into force in September 2023.⁶³ NL legislation specifies in which situations a worker working outside the province of NL will be eligible for compensation in case of a work injury. The employer must carry “on a business in the province that has a substantial connection with the province,” and the injury has to occur “out of the province to a worker who is employed by that employer.”⁶⁴ The worker or dependents are entitled to compensation as if the injury had occurred in the province, with the exception being situations where the worker or dependents are entitled to compensation under the law of the place where the injury occurred.⁶⁵ For NL workers injured outside of the province, it then seems that they may need to look at the law where the injury occurred before turning to WorkplaceNL. Also, WorkplaceNL (2023a) documentation mentions that the fact that an employer is located in the province of NL does not constitute by itself a substantial connection. As for nonresidents, section 57 of the Workplace Health, Safety and Compensation Act provides that “the commission may order that payments of compensation under this Act be made to persons living in another province, country or jurisdiction in respect of a worker killed or injured in this province.”⁶⁶

It is also possible that a worker could have the right to compensation for an accident under several different regimes. In the four regimes examined here, an election disposition exists according to which workers must elect the province where they decide to claim benefits following a work injury within particular, interjurisdictionally variable time frames (see table 4). Here, as in other situations outlined earlier, workers need to be aware of their rights in order to preserve them.

Table 4. Time frames for electing jurisdiction

Jurisdiction	Time frame for electing claim jurisdiction
Alberta	Thirty days after the occurrence of the accident ^a
NL	Within three (3) months of the injury or death ^b
Ontario	Within three (3) months after the accident date or date of death ^c
Québec	Within six (6) months of the industrial accident or when it is brought to the attention of the worker that they have contracted an occupational disease ^d

a. WCA, s 28.

b. WHSCA, s 54.

c. WSIA, s 20.

d. AIAOD, s 452.

French-speaking workers injured outside of Québec can encounter difficulties in relation to this requirement.⁶⁷ In Ontario, for example, the employer can file a claim on behalf of a worker without necessarily informing the worker of their right to opt for compensation under the Québec compensation scheme. Benefits are different in each province, as is the role of the doctor in charge of the patient (Hudon, Lippel, and MacEachen 2019). Sometimes a worker only becomes aware of the obligation to choose between several applicable regimes when benefits run out and they seek counsel. The Québec Court of Appeal⁶⁸ confirmed that a worker had not validly elected to be covered by the Ontario regime in a case in which the employer managed the claim in Ontario, and the worker received benefits without having formally opted for that regime. His claim for benefits in Québec was found to be validly submitted, although it is also clear that workers cannot keep benefits received for the same injury from two different compensation boards.⁶⁹

The Ontario Superior Court of Justice concluded in 2020 that when a worker elects a jurisdiction for compensation, they cannot bring a legal action, such as a civil suit, against the same employer in another jurisdiction. The court invoked the “historic trade-off” and what it entails:

The workers’ compensation scheme established a “historic trade-off” by which workers lost their cause of action against their

employers but gained compensation that depended neither on the fault of the employer nor ability to pay. The provision of workers' compensation insurance was country-wide and each plan incorporated a provision reflecting the historical trade-off. There was no good reason to establish a tort haven amongst provinces that would encourage the circumventing of provincial workers' compensation legislation by simply moving to a different province. The plaintiff's tort action represented an attempt at relitigation of a matter covered by insurance to which the defendant had contributed, a circumvention of the historic trade-off, and an opportunity for double recovery and as such was an abuse of process.⁷⁰

Thus, when an injury or fatality occurs, mobile workers or their dependents may need to quickly assess what to do. They may need to elect a jurisdiction, and the period allowed for election varies significantly from one jurisdiction to the next. Coverage and benefits also differ between provinces, sometimes quite substantially, and advantages of claiming under one regime versus another may be different for employers and workers. So in those cases where the worker may elect to be covered under one of two regimes, it is wise for the claimant to seek information before choosing a province—and the corresponding legislation governing the claim—and they need to do so in a timely manner. Given that employers are often more knowledgeable about workers' compensation than workers themselves, this and the other complexities outlined earlier could potentially contribute to failed claims, lower benefits than they might have been formally eligible for, or even a reluctance to claim on the part of workers.

The Interjurisdictional Agreement

The Interjurisdictional Agreement on Workers' Compensation (IJA) also has to be considered (AWCBC 2017). The IJA binds the provincial and territorial WCBs that have committed to its provisions. Its intent is to avoid duplicate payment of employer premiums on workers' earnings, to assist workers or dependents when more than one jurisdiction may be involved in a claim, to create a system to permit any board to provide services to another board's claimant, and to provide a system for dispute resolution

between boards (AWCBC 2017). There is also a dispute mechanism that provides for arbitration between two boards in the event that there is disagreement as to which board should assume the costs of benefits in a given case.

All provinces are part of the IJA, but Québec withdrew from section 7 concerning occupational diseases,⁷¹ which provides for the procedure when a worker has partial exposure within the jurisdiction of a particular board and discusses how the different boards will share costs associated with that claim. If a board receives a claim for an occupational disease, it will have to adjudicate the claim if 30 percent of the “total contributing exposure occurred in the jurisdiction of that Board” (AWCBC 2017, s 7.4[a]). Then the costs will be shared by the contributing boards (see s 7.7). In Québec, the board will only rely on what is provided by the AIAOD about the territorial scope and won’t apply section 7 of the IJA,⁷² meaning that if the Québec WCB or the appeals tribunal concludes that it doesn’t have to adjudicate a claim because only a small percentage of the exposure that caused the occupational disease took place in Québec, it should then transfer the worker’s file to the competent board to deal with the claim.⁷³

The IJA also includes the Alternative Assessment Procedure. This policy applies to employers in different sectors such as interjurisdictional trucking, courier, and bus industries. Employers may elect to participate in the optional Alternative Assessment Procedure. Under the Procedure, these employers report earnings and pay premiums—for example, to Ontario for their Ontario resident workers who travel through other Canadian provinces and territories (WSIB Ontario 2018).

International Agreements on Social Security

Of relevance for IMWs, there are international agreements designed to ensure workers from outside Canada maintain their right to benefits once they return home, and these issues are also governed by specific contractual provisions policed by consulates in some cases. In Québec, the WCB participates in fifteen international social security agreements. These agreements include provisions relating to work-related accidents and diseases. They also promote cooperation between the different

boards or organizations and provide, among other things, for specific rules in relation to occupational diseases and allocation of the costs of a claim (CNESST 2024). These agreements mainly concern countries of Europe: Germany, France, Norway, Sweden, Belgium, Greece, Poland, Denmark, Italy, Portugal, Finland, Luxembourg, Romania, Serbia, and Austria.

The WSIB of Ontario has entered into reciprocal agreements with Italy, Greece, and Portugal. These agreements apply to Ontario residents who move out of the country or when a person from another jurisdiction comes to Ontario. They provide a way for the WSIB to “review a worker’s degree of permanent impairment/disability, pay for necessary health care at the worker’s place of residence, and register a worker’s claim for exposure that may have resulted in an occupational disease” (WSIB Ontario 2004d). The WSIB also has a special policy that applies to workers participating in the Commonwealth Caribbean/Mexican Seasonal Agricultural Workers Program, which provides that “coverage begins as soon as workers reach the agreed-upon point of departure in their homeland, and remains in place until they return to their country” (WSIB Ontario 2009).

No similar agreements seem to be in force in Alberta or NL. The situation of a worker who wishes to leave the jurisdiction once their claim is recognized will be further discussed in chapter 4.

As we will see in subsequent chapters, even when IMWs have accepted claims and coverage in the province or territory in which they are injured, they may face challenges once they are required to or wish to return to their home country (Sikka, Lippel, and Hanley 2011), an issue that can also arise when a worker living in a province outside of where the claim is managed has returned home. Mobility can pose challenges in determining workers’ obligations to assume light work and in determining suitable employment for the worker whose injuries prevent them from returning to preinjury employment. Finally, in some cases, the calculation of benefits may be problematic, particularly for IMWs. These issues will be discussed in chapter 4. These are not legal obstacles to compensation, but the compensation process, which is already complex for many workers, becomes even more difficult to negotiate when the worker is no longer in the province where the claim has been filed.

Conclusion

After reviewing the laws, policies, and relevant case law in the four provinces under examination, it is clear that Canada's OSH regulatory framework has limitations in its application to mobile workers and is often restricted by territorial boundaries. The presence of multiple regulators with jurisdiction over territories or specific matters further complicates the regulatory landscape. As for workers' compensation, it is evident that interjurisdictionally mobile workers who cross provincial/territorial/national boundaries for work may encounter additional complexities. In certain cases, they may even find themselves without recourse within the workers' compensation regulatory framework. It is worth noting that while a worker may be covered under the workers' compensation scheme in one province, the legislation in OSH matters will not necessarily apply if the worker works between provinces or territories. This highlights some potential shortfalls in regulatory effectiveness when applied to mobile workers.

In chapter 3, we will turn to a discussion of the hazards related to ERGM to, within, and as work that may confront the mobile workforce across the spectrum from daily commuting through to extended mobility within and between jurisdictions encompassing diverse types of transportation and mobility arrangements. We will also explore key regulatory challenges associated with ensuring their protection. Ways in which mobility will impact their health and safety needs and ways of addressing these needs will differ substantially depending on the specific situations in which they find themselves while engaging in ERGM—at work, while living at work, and at home.

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3

Regulatory Challenges for Hazard Navigation

This chapter links hazards associated with employment-related geographical mobility (ERGM) with regulatory challenges across the spectrum and in diverse contexts. These hazards are linked to the diverse mobilities associated with ERGM but also to the types of work and work arrangements engaged in by the mobile labour force. Thus, among mobile workers, hazard exposures are potentially exacerbated by socio-organizational and other factors that constrain regulatory effectiveness, including ambiguities around whether hazards are work related and by a health and safety system premised to some degree on dealing with fixed, unified workplaces and standard employer-employee relations. Furthermore, when examining regulatory challenges associated with ERGM, it is useful to remember that some mobile workers leave their homes to travel to a remote workplace, and once they have arrived at work, they work together in the same place, often on a remote site. Other mobile workers, like truckers or home care workers, may be affiliated with a fixed workplace but are dispatched to work alone, separate from management and often colleagues. The different forms of mobility may then intersect and create new challenges.

It is safe to say that many accidents involving workers travelling to and from work are compensable under certain circumstances. Issues relating

to the effectiveness of the occupational safety and health (OSH) regulatory framework and access to the workers' compensation regime include ambiguities about whether or when injuries or illnesses associated with mobility to work are work related as well as the determination of which regulations apply and which regulators should be involved in investigating these injuries and illnesses.

The chapter outlines key health and safety hazards directly associated with the work arrangements that ERGM entails and other sources of vulnerability that can enhance the risks that mobile workers face. We will discuss diverse issues such as road conditions, the states of the vehicle, long hours and fatigue, remoteness and living at the workplace, and how OSH interacts with these iterations of mobility to impact regulatory effectiveness. We will also go beyond the risks within the OSH framework to discuss the different socio-occupational challenges that stem from the intersection of mobility with the social factors associated with the occupation of mobile workers. Overall, this chapter shows how even when mobility is unambiguously part of work, there are issues with regulatory effectiveness that may increase or change as we deal with different segments of the mobility spectrum. The challenges that the mobile workforce can confront when accessing the workers' compensation regime will be dealt with in chapter 4. The hazards and issues confronting international migrant workers (IMWs) and COVID-19's effects on the mobile labour force will be dealt with in chapters 5 and 6, respectively.

Hazards

Extended/complex ERGM is associated with a broad range of physical, chemical, biological, ergonomic, and psychosocial hazards. Nevertheless, we believe that mobile workers are likely to face specific hazards that need to be fleshed out. While mobility by air, water, and road is associated with diverse hazards, in this section, we will focus on road conditions, the state of the vehicles mobile workers are likely to borrow, and the long hours and fatigue mobile workers are likely to face.

Road Conditions

Road conditions are a challenge in most parts of Canada, particularly when the weather is bad but also when roads are poorly maintained. Because of the size of the country, the harsh winters, the long periods of darkness during the winter, and the possibilities of encountering wildlife, there are undoubtedly situations in which one would be ill advised to take to the road (see, e.g., Jackson, Price, et al. 2019; Jackson et al. 2020).¹ Yet it appears unlikely that, in the absence of specific provisions in a contract or collective agreement, workers have legal or contractual protections if they cannot make it to work because of the conditions of the commute. The same may be true about the trip home for fly-in/fly-out (FIFO) or drive-in/drive-out (DIDO) workers. These conditions may raise both health and safety issues and pay issues. If no provisions specify worker protection related to pay and expenses in the event of bad weather, for example, this situation may incite the worker to take to the road even when conditions would dictate that the roads should be avoided.

Even when poor weather is not contributing to the deterioration of driving conditions, the roads themselves can be intrinsically hazardous. Highway 63 connecting Fort McMurray to southern Alberta has attained notoriety, labelled as Suicide 63 and Highway of Death (Bascaramurty 2016). Factors identified include wide loads with insufficient passing lanes, long drives in remote areas with few rest stops, inadequate highway design for the quantity of traffic, and travel undertaken by DIDO workers at shift rotation following many consecutive long working days. In her article, Bascaramurty (2016) describes how first responders who used to volunteer no longer wish to do so because of the frequency and seriousness of the accidents on this highway that require their attention.

There have been a number of serious accidents involving transport of international migrant and other farm workers to and from farms in recent years.² In some of these cases, driver fatigue was a factor that contributed to the accident, as was the state of the vehicle or the fact that workers were not wearing seat belts or were required to ride in the back of a pickup truck. Lack of driver training was also a contributing factor.³ In June 2023, a bus carrying thirty people, mostly Ethiopian and Somali women who were employed as housekeepers in a remote camp, rolled over, and more

than eighteen workers were injured (Trumpener 2023). According to the union, the housekeepers were removed from the work camp in order to prioritize the stay at the camp of other workers; the women were moved to another location two hours away from the site, forcing them to commute several hours a day on what was known, and had been denounced, as precarious roads (UNITE HERE Local 40 2023).

Fitzpatrick and Neis (2015, 55) report on the reality of home care workers in Newfoundland and Labrador (NL) and emphasize that these workers may feel obligated to drive in severe weather in order to care for clients, “especially when the homecare agency used ‘emotional blackmail’ to make them feel guilty or instructed the worker to contact the client with the news that she would not be caring for the client today due to severe weather.”

A study of ERGM among health care workers in Nova Scotia reported on findings from a survey on experiences of risk and road safety. Even though over half of their respondents were confident in their ability to address the hazards of bad-weather driving, most of them described limited organizational support in terms of training and equipment. One of the researchers’ recommendations was that policies, regulations, and/or employment contracts “could include an allowance for mobility-related safety features (e.g., snow tires, roadside assistance services)” (Jackson, Bourgeault, et al. 2019, 2). Nourpanah et al. (2018, 19), also studying health care workers in Nova Scotia, reported how “mobile employees carry disproportionate responsibility for occupational safety when driving or at remote settings. Inconsistencies across employers and across jurisdictions serve to aggravate that imbalance by introducing greater uncertainty for employees.” Hence authors hypothesize that more comprehensive and consistent policies would help relieve the burden put on the shoulders of mobile workers to care for their own health and safety.

Canada’s unique geography has allowed for the development of an extensive network of ice roads throughout northern Canada, and many of these “winter roads” provide access to supplies from the south for many First Nations and other northern communities. Some serve mining sites that require heavy equipment that cannot be transported by air (Prowse et al. 2011). Climate change has affected the duration of the season during which these roads can be used, as well as the extent of the roadways

(Kuryk 2003) and the quality of the roads, an often forgotten challenge with which truckers and other mobile workers are grappling. For example, in Manitoba, where a 2,200-kilometre winter road network linked remote communities to the south, mild weather in March 2010 led to the closure of the network, requiring emergency evacuations of freight haulers and local drivers (Prowse et al. 2011). Transportation authorities in the relevant provinces and territories manage the risks of these winter roads, a responsibility that is not without its challenges, particularly in light of increasing traffic on these roads and increased climatic uncertainties. One study described an incident that could have led to serious consequences for the driver:

It was fortunate for the driver that the density of diesel fuel provided sufficient buoyancy for the trailers to remain afloat, thus the tractor stayed on the ice. . . . The probability of a fatality following a breakthrough of this type is assumed to be in the order of 1 in 10, similar to that of a rock striking a vehicle and causing a fatal accident [comparing conditions to rockfalls on certain highways in British Columbia]. (Hayley and Proskin, sec. 5)

It might well be that, in some circumstances, workplace parties will agree implicitly that a transport worker is justified in refusing to take to the road in bad conditions. For example, in Québec, despite the bad weather, the school board failed to close the schools. A school bus driver refused to jeopardize the safety of the children and her own safety, although nothing suggests she filed a formal refusal signalled to the Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST), nor, seemingly, was she the object of sanctions by her employer, despite having made the headlines for her refusal (Gendron 2018).⁴

As we will see, regulatory requirements affecting employer obligations will vary depending on whether or not the road is private (logging roads, for example) or public and whether or not the vehicle is considered a workplace.⁵

State of the Vehicle

Situations in which the employer provides the vehicle or where the employer has arranged transportation are more likely to fall within current OSH legal frameworks than those where the vehicle is owned by the workers and they arrange their own travel. However, there are many situations, most notably in those involving self-employed mobile workers, where the maintenance of the vehicle is the responsibility of the owner of the vehicle, often the worker. In Alberta,⁶ if a worker uses a personal vehicle for work purposes, the employer must only ensure that the worker has the appropriate licensed driver requirements. The worker, however, “must ensure that the vehicle is maintained in sound mechanical condition.” Cost pressures borne by workers can contribute to insufficient maintenance of vehicles and increase the chances of injury sustained to and from work.

The laws in the provinces examined for this book unevenly set standards on general issues about the use of motor vehicles, like the presence of seat belts and the overcrowding of a vehicle. In Alberta,

if a worker is dispatched by their employer, Alberta OSH considers that driving to be driving for work. A vehicle used for work purposes while away from the work site (such as when being driven to deliver a parcel or being driven to another office) is itself considered a work site. For this reason, the hazard assessment requirements apply to such vehicles, whether they are personal or work vehicles. (OHS Contact Centre 2022b, paras. 2–3)

Hence the employer must assess the work site and identify existing and potential hazards.⁷

Furthermore, the Alberta Occupational Health and Safety Code (OHSC) includes various sections on “powered mobile equipment” and the correlative obligations of operators⁸ and employers.⁹ The employer also has obligations relating to traffic safety. In the forestry industry, they “must ensure that bridges, elevated platforms and other structures used by vehicles transporting workers, logs or other forest products in forestry operations are constructed and maintained to permit safe transit.”¹⁰ Also,

pursuant to section 235 of Alberta's OHSC, an "employer must ensure that a worker who is riding a bicycle or using in-line skates or a similar means of transport wears protective headwear."¹¹

In Ontario, the regulation on Passenger Transportation Vehicles¹² provides for general provisions about passenger transportation. As for OSH regulations specifically, the Mines and Mining Plants¹³ regulation regulates the transportation of workers in this specific sector. Section 10 provides that "vehicles being used for transporting workers shall, (a) be provided with suitable seats or other facilities; (b) be limited to a maximum number of passengers, which number shall be posted in or on the vehicle; and (c) when enclosed, be equipped with an emergency exit."¹⁴ The Industrial Establishments¹⁵ regulation concerns the logging industry and regulates the haul road (defined as "a road, other than a highway as defined in the *Highway Traffic Act*, on which vehicles used to haul logs are operated"). These haul roads shall, according to section 117, be adequate to provide for the safe operation of vehicles. As for the vehicles that transport loggers, workers "who engage in logging" (including the employer and any person under the control of the employer) have to respect some quality and safety norms, such as having an adequate number of seats securely attached to the vehicle so that all loggers being transported may be seated and illuminated by an electrical lighting system.¹⁶

In NL's OSH regulation,¹⁷ part 13 applies to "all persons, including the operator, engaged in transporting a worker by a vehicle operated on behalf of the employer except for the transportation of a worker by (a) a public transportation system including a taxi, bus line, chartered air service or airline; or (b) personal transport of the worker on public roads before or following a work shift."¹⁸ The regulation provides that, "where reasonably practicable, a vehicle used to transport workers shall have seats with full seat backs."¹⁹ The worker has to wear a seat belt while being transported in a vehicle equipped with seat belts. The number of workers being transported shall not exceed the number of seat belts available in the vehicle, and the seats must achieve a certain degree of safety.²⁰ There are also provisions on ventilation, lighting, effective means of communication, and the need for more than one means of egress.²¹ It is worth noting that an exception to the no-fault regime exists in NL, since according to sections 52, 53, and 54 of the Workplace Health, Safety and Compensation

Act (WHSCA), workers injured as a result of a motor vehicle accident may choose between receiving compensation under the WHSCA or filing civil claims. Few decisions from NL have addressed the issue of determining what is the “use” of a motor vehicle in order to conclude if the worker can file a civil claim or if their recourse is limited to workers’ compensation.²²

In Québec, the Regulation Respecting Occupational Health and Safety²³ provides firstly that when workers perform work in remote areas, camp and eating facilities shall be provided, except when the work is carried out over short periods. Section 158 provides that where a camp is not provided, the employer shall provide workers with transportation facilities in accordance with division 31. That division does not apply to automobiles used in general as common carriers.²⁴ Section 359 then provides that any “automobile used for transporting workers shall be arranged and used in compliance with the *Highway Safety Code* (chapter C-24.2) and its regulations.” The transport of workers in trailers and semi-trailers is prohibited.²⁵ The vehicle must also meet a certain standard: be driven by a person who has an appropriate licence issued and be examined and maintained so as to protect the health and ensure the safety and physical well-being of workers.²⁶ Any vehicle used primarily or regularly for transporting workers shall be equipped with a first aid kit in compliance with the First-Aid Minimum Standards Regulation.²⁷

In British Columbia, WorkSafeBC goes further to regulate the transportation of workers,²⁸ providing for requirements additional to those stipulated in the highway code. Thus the employer has to ensure that reasonable measures are taken to evaluate road, weather, and traffic conditions to ensure the safe transit of the workers, and the transportation vehicle must be inspected by a qualified person before the first use on a work shift. WorkSafeBC’s investigation of a fatal accident involving a temporary agency labour supplier delivering seventeen workers to a work site in a van designed for a maximum of fifteen passengers—that, therefore, lacked seat belts for all passengers—found that the vehicle used did not comply with the regulation and that the workers had had no health and safety training, not even training as to the obligation to buckle their seat belts, were they to have been available (WorkSafeBC 2007). This regulation seems particularly appropriate in Canada considering the particularities of the weather in the country.

Travel by road is not the only means of transportation to work. Helicopter maintenance was identified as a key issue after seventeen workers lost their lives in a helicopter accident in NL (*CBC News* 2011).²⁹ Workers may also travel by snowmobile, as with wildlife enforcement officers who can be sent off to investigate in remote locations (Annable, Marcoux, and Kubinec 2017).

Long Hours and Fatigue

The mobile workforce is often confronted with long hours and fatigue, which are considered to be important hazards. It is important to understand the organizational factors that impose long hours on workers and cause fatigue, which are inherent to the reality of mobile work.

Taxi drivers (Burgel, Gillen, and Castle White 2012), short-haul (Williamson et al. 2009) and long-haul (Bigelow et al. 2014) truckers, ambulance drivers,³⁰ workers who drive or ride delivery vehicles (e.g., bicycle messengers), public transport drivers and emergency service workers, wildlife officers, pilots, some heavy equipment operators, skidders in forestry, some salespeople, and tour guides are among many whose job requires long hours in moving vehicles as an intrinsic part of the job. Pressures to work long hours and the risk of fatigue are exacerbated by piece-work payments and lack of regulation in some sectors, such as delivery work and taxi driving.

Long hours for truckers are particularly problematic,³¹ and legislative requirements are complex, coming from both provincial and federal jurisdictions depending on the size and weight of the truck and on whether the employer is interjurisdictional or intrajurisdictional in its practices.³² On the Move's labour standards report shows that trucking is among the professions that have longer work weeks before overtime is required to be paid by the employer (Gesualdi-Fecteau and Nakache 2017). For example, in PEI, trucking is exempted from the standard work week of forty-eight hours (after which overtime is received). For the trucking industry, overtime starts at fifty-five hours a week (Department of Workforce, Advanced Learning and Population 2024). Federal regulation, applicable to interjurisdictional trucking, provides more explicit constraints on working time.³³ In 2019, Transport Canada published modifications to the

Commercial Vehicle Drivers Hours of Service Regulations³⁴ in order to make mandatory an electronic logging device (ELD) for federally regulated commercial drivers. ELD is a device that automatically records a driver's driving time. One of the stated aims of this new measure is to help reduce the number of fatigue-related accidents (Transport Canada 2020a). Several provinces have followed in Transport Canada's footsteps. Since April 30, 2023, all heavy vehicles on the road in Québec, whether they move inside or outside the province, must be equipped with an ELD. As reported, with the ELD on board, if a driver exceeds the limit, they will receive an alert message (Radio-Canada 2023c).³⁵ Canadian truck drivers who travel to the US were already required to comply with American standards that include electronic monitoring of their logs.

Electronic monitoring is not without problems. It has been reported that some employers are concerned about the behaviour of their clients, who make truckers wait for longer than necessary, thereby reducing their total permitted driving time. In some cases, loading takes so long that the drivers have no more available driving time, yet the clients object to the drivers staying on their premises. In one example, a client actually called the police to have the driver removed, which the police refused to do, given that the driver would have violated the law were he to have driven off the premises (Codère 2018; Crizzle, Toxopeus, and Malkin 2020).

Researchers in the US and Australia have identified pay schemes and economic pressures leading to long hours as important contributors to truck crashes, and they recommend safe rates programs to ensure that economic pressures do not lead to unsafe practices (Belzer 2018), a recommendation acknowledged to be of interest to the Tripartite Sectoral Meeting on Safety and Health in the Road Transport Sector of the International Labour Organization (ILO 2016).

Continuous mobility itself creates particular problems because of the blurred boundaries between work and nonwork spheres.³⁶ Occasionally, truckers live in their trucks (Conway 2017; in Europe), sometimes with their families, exposing their families to the same hazards to which they are exposed.³⁷ In Québec, the tribunal considered the rest period required by the long-distance trucking rules to be connected to the performance of the work of transporting goods.³⁸

As noted in chapter 1, a few studies have looked at the relationship between rosters, shift work, and driving risk (Langdon, Biggs, and Rowland 2016; Di Milia and Bowden 2007; Retzer, Hill, and Pratt 2013). These studies have found that with employees who must commute after working extended hours, the likelihood of vehicle accidents is increased, as would be the case for FIFO workers who may end up driving after they work and fly. FIFO workers operate in a peculiar context, since they are expected to work long hours for multiple days. This reality is intrinsically linked to the cost of travel and accommodation, sometimes paid for by employers, and to maximizing what can be earned while away from home for workers. Thus these workers face risks that are not explicitly addressed in the regulations studied here and that can be invisible to regulators and in employers' obligations with regard to fatigue of their employees when they leave the workplace.³⁹ In their work, Langdon, Biggs, and Rowland (2016) encourage future research to address risk assessments and effectiveness of fatigue management in industries that rely on FIFO/DIDO workers to manage the risks associated with extended shifts and long commutes.

Regulators in some Canadian jurisdictions provide particular advisories for workers travelling alone. Some, like in NL, mention that employers should allow sufficient rest time for workers who are travelling on long trips (for NL, Digital Government and Service NL, n.d.; for Alberta, OHS Contact Centre 2022a).

If the employer provides transport, workers' compensation legislation will limit their liability and that of the driver of the vehicle if transport was undertaken during the driver's employment. In the case of extended daily commutes, workers are also adding hours to their workday, and fatigue may well be a significant hazard for them as well. This is also true of extended commutes between provinces, where workers may have long drives to get to remote workplaces after having flown in from another municipality or province.

Seafarers (Shan and Neis 2020) and pilots (David-Cooper 2019), professions where workers are often mobile to and as work, are also at risk because of fatigue at the beginning of a shift, "hitch," rotation, or mission. Shan and Lippel (2019) report on OSH challenges faced by seafarers on the St. Lawrence Seaway and the Great Lakes, including how

they get from their home to the work site. Once again, their commuting encompasses several steps, from driving or taking a cab to airports, flying between home city and port city, and taking another taxi to the port terminal (381). The authors emphasize that many Canadian seafarers were “‘feeling tired after their commute’ as their primary safety concern, in particular those living in Atlantic Provinces, such as Newfoundland and Labrador and Nova Scotia” (382). This issue was not found among their colleagues living in nearby port cities in Québec and Ontario. Those seafarers reported that commuting “would rarely affect their ability to work safely on board” (382).

In their study, Lippel and Walters (2019) were told in many provinces that workers in remote workplaces often began their shifts fatigued because of the commute preceding the beginning of a shift. Yet union representatives they spoke to found this to be a delicate issue because of increasing practices of blaming workers for accidents when they occurred, often blaming them for being overtired or inattentive. Similar findings were reported by Ryser, Halseth, and Markey (2020). In their research, they identified the transition to night shifts as problematic because it required workers to begin their rotation a few hours after arriving at the work site, resulting in fatigue at the end of the first night shift. In order to address these concerns, some of their interviewees were provided “with the flexibility to start their first night shift later to reduce fatigue” (332). However, the authors reported that some of their interviewees felt that “cumulative fatigue from both commuting and long shift rotations was prompting incidents towards the end of the rotation” (332). They note the scarcity of site safety protocols and commuting safety protocols (333), even though fatigue related to long hours and shift rotations was in fact identified as a workplace hazard in those workplaces and managers could allow workers to leave the site if they felt the need to do so. That said, it appears some workers may fear job loss if they request a leave, limiting the effectiveness of such measures. Moreover, fewer than 20 percent of their interviewees had received fatigue management training (333), suggesting that these risks may not be given sufficient consideration.

Fatigue has also been identified as an OSH issue for ERGM workers in home care (Fitzpatrick and Neis 2015, 55) and among seafarers. Desai Shan (2020a, 198) reported similar findings in her study of Canadian seafarers,

stating that “fatigue risk arising from long commutes also creates challenges for safety management on board the vessel.” In their scoping review, Hagan-Haynes et al. (2022) reported that many oil and gas extraction workers in the US work remotely, requiring workers to drive long distances before, during, and after shifts on rural roads that often lack safety features. These long commutes “further extend work days” (841).

Foster and Barnetson (2016, 125) rightly point out that most cases of fatigue are resolved through adequate sleep, along with other workplace adjustments:

While an employer cannot control how well a worker sleeps, they can adjust the workplace to mitigate fatigue. Shift scheduling is one of the most important administrative controls of fatigue: employers can ensure shifts are not too long or too close together as well as avoiding dramatic shift rotations. . . . Employers can also ensure that workplace temperatures are not too high, work is interesting and engaging without being too strenuous, and adequate opportunities for resting, eating, and sleeping (if necessary) are provided.

Hence the risk of fatigue at the beginning of the shift, increasing the likelihood of workplace injuries, must be considered (Nielsen, Dyreborg, et al. 2019) in OSH management as well as fatigue attributable to long and irregular work shifts, which increases the likelihood of injuries during the commute back home. Ryser, Markey, and Halseth (2016, 604) propose, in order to manage fatigue, that commuting times should be incorporated into the OSH protocols of the workplace. Australia has also focused on the challenge raised by fatigue associated with DIDO work after twelve-hour shifts, and findings have led to a call for employer responsibilities to bus workers in and out of remote sites (see HRSCRA 2013, 56–58). In another report, researchers in Australia also recommend that legislators implement shift structures that optimize mental health and well-being (Parker et al. 2018).

There appears to be very little literature specifically oriented to issues of ERGM and long shifts in the Canadian context, although a few studies have looked at OSH effects of working time arrangements for offshore workers in the North Sea (Mikkelsen, Ringstad, and Steineke 2004; see

also Hagan-Haynes et al. 2022; Parkes 2010). In one such study, the authors concluded that both the quantitative data and the perceptions of the respondents interviewed indicated that the risk of accident was no greater after a negotiated modification of working time allowed for increased time at home and more symmetrical rotations. In that study, workers had been working twelve-hour shifts for two weeks, followed by three weeks at home and four weeks at home; the newly negotiated shifts involved twelve-hour shifts for two weeks followed by four weeks at home (Mikkelsen, Ringstad, and Steineke 2004). Respondents did not believe longer time at home increased their risk when returning to work. In addition, symmetrical rotation of shifts was associated with increased stability of work teams. Findings from one study suggested that longer tours offshore (three weeks duration as compared to two weeks duration) may increase the severity of injuries incurred during the third week (Parkes 2010, 24).

An Australian study has examined the impact of extended shift rosters on construction workers' health and safety. From the outset, author John Martin (2020, 384) emphasized that sleep deprivation and fatigue are key problems associated with working a FIFO roster, especially when combined with long shifts such as twelve-hour shifts. Martin emphasized that roster shifts create risks to workers' health and safety, ranging from fatigue to mental health effects, adding that "these risks could be reasonably managed by a roster that is shorter in terms of weeks away and closer to even time" (395). Another Australian study also showed how shift work in remote mining operations is a "significant factor that leads to sleep loss and reduced alertness, which is exacerbated by the high prevalence of risk for sleep disorder" (Maisey et al. 2022). In their systematic review, Asare, Kwasnicka, et al. (2021) found that studies on rotation work in isolated areas suggested higher prevalence of psychological distress and more sleep problems. According to Wagstaff and Sigstad Lie (2011), shift work and long working hours appear to have a clear detrimental effect on safety at work.

A UK study of offshore drilling crews found that higher levels of stress and fatigue are linked to lower levels of "work situation awareness," an essential element for safe work in safety-sensitive jobs. They included recommendations to employers in this sector to review their working patterns, including the organization of shifts and the conditions for sleep

on the offshore rigs, in order to reduce fatigue (Sneddon, Mearns, and Flin 2013).

FIFO (HRSCRA 2013, 54–56) and DIDO workers or others who work in remote locations that require they live in work camps want to work as much as they can while they are away from home and family. They thus seek to work long shifts (Di Milia and Bowden 2007).⁴⁰ However, long shifts can have health consequences, both because of the associated fatigue, which increases the risk of accidents,⁴¹ and because of intensified exposures to toxic substances and ergonomic and biological hazards, to say nothing of psychosocial hazards, associated with generalized fatigue in a workforce.

Some Canadian provinces regulate work time of workers in remote areas to exclude the application of the standard forty-hour work week, after which overtime must be paid. For instance, in Québec, the standard work week for an employee working in a remote area is fifty-five hours.⁴² Others have special rules for industries such as mining or mineral exploration.⁴³ There are also provisions in some provinces requiring minimum hours of time off per week.⁴⁴ BC's labour standards provisions are framed more broadly: "Despite any provision of this Part, an employer must not require or directly or indirectly allow an employee to work excessive hours or hours detrimental to the employee's health or safety."⁴⁵

The federal jurisdiction also allows for longer hours in certain industries such as work involving driving of motor vehicles,⁴⁶ maritime transport,⁴⁷ aviation (David-Cooper 2016), and railways,⁴⁸ and special rules determined by employment standards apply in some sectors, including agriculture and caregiving.⁴⁹ As discussed by Gesualdi-Fecteau and Nakache (2017), beyond formal regulation, there are also provisions in contractual arrangements governing employment of IMWs, sometimes negotiated with the consulates of the providing countries.

Lippel and Walters (2019) point out that in some legal cases, the fact that workers work long shifts will be taken into consideration when analyzing the facts of a precise case. For example, in Québec, a worker doing remote work on long rotations was injured because of the associated intensification of work. The construction worker, who had worked ten hours per day over periods ranging from twenty-five to thirty-three consecutive days and who developed various musculoskeletal problems, including

epicondylitis and carpal tunnel syndrome, while building houses in the far north of Québec, was found to have a compensable injury under the AIAOD.⁵⁰ As for OSH legislation, some jurisdictions have specific threshold limit values relating to exposure to toxic substances during long shifts.⁵¹

Additional Sources of Vulnerability

While the road (as well as sea and air conditions for seafarers, fishermen, and aviation workers) and other travel conditions, the state of the vehicle, and long hours can have direct repercussions on the level of risk that workers face, other factors are also likely to contribute to vulnerability from an OSH perspective.

Remoteness

Remoteness refers to the degree to which a location is physically isolated or distant from major population centres, transportation networks, and infrastructures. It often involves factors such as distance from urban areas, limited access to transportation routes, rugged terrain, and sparse population density.

In case of an emergency, working in a remote workplace can impact life-and-death situations. In all provinces, regulation provides for first aid norms, equipment, and protocols. In Ontario, pursuant to the Industrial Establishments regulation, all employers that have industrial establishments have to provide mandatory first aid equipment, facilities, and trained workers in each workplace where ten or more workers are employed.⁵² In Alberta, different provisions regarding first aid exist in the Occupational Health and Safety Code, and the threshold varies according to the classification of the work done (low, medium, and high hazard work).⁵³ In BC, the employer must provide each workplace with first aid attendance and must ensure that workers can be promptly provided first aid.⁵⁴ In NL, the Occupational Health and Safety First Aid Regulations⁵⁵ apply to all workplaces, notwithstanding risk assessment. Québec's regulation contains similar obligations that vary according to the size of the employer, type of work, and also considers remoteness.⁵⁶ Indeed, employers may have more obligations in regard to health and safety when the workers are more than thirty minutes from a medical service.⁵⁷

Transportation in the case of emergency also has to be considered when looking at remote workplaces. In Alberta and NL, regulations on OSH contain obligations for employers regarding the transportation of injured or ill workers from the work site to the nearest health care facility.⁵⁸ Specific legislation applies to workers on offshore facilities in NL.⁵⁹ In Ontario, specific regulations concern offshore oil and gas work sites, which contain the obligation to have an emergency plan in writing that includes “a suitable and rapid means of obtaining first aid help and transportation from the rig to a hospital for injured workers.”⁶⁰ Québec’s First-Aid Minimum Standards Regulation provides obligations for construction sites in remote locations and under certain conditions including specifically “where at least 25 workers are working simultaneously at any given time and where it is not possible to reach, within 30 minutes by road and under normal conditions, a hospital, a local community service centre, a medical clinic or polyclinic or other emergency medical services, including the health services of an establishment or construction site.”⁶¹ In the Regulation Respecting Health and Safety in Forest Development Work,⁶² section 51.10 provides that where twenty workers work on a work site, an evacuation vehicle must be available on the site. This obligation applies where the work site is situated more than thirty minutes away and at a minimum of thirty-five kilometres from an emergency medical service and is not accessible by ambulance.

When an emergency occurs, the speed with which emergency response services arrive can make the difference between life and death. As the BC Forest Safety Ombudsman (2017, 3) reported, “Nearly three-quarters of all people who die of trauma-related conditions in northern BC do so before they can be brought to hospital. In north-western BC, this percentage is 82% compared with 12% in Metro Vancouver.” The report describes an incident in which an injured forestry worker waited a total of eleven hours before accessing appropriate care; he lost part of his leg, a consequence the report suggests was avoidable, although WorkSafeBC concluded that “nothing went wrong and the appropriate means of transporting the worker were utilized” (3). The report continues by stating that “the Office of the Forest Safety Ombudsman is of the view that the location of an injured forestry worker . . . should not be a determinant of whether or not that worker receives adequate emergency services in

the event of an accident” (3). Acknowledging that emergency services in Washington State and Alaska are more responsive to the needs of their remote populations in times of emergency, the report makes a series of recommendations to improve services, including a recommendation that “BC consider mandating—through legislation or policy—guaranteed timelines for the public to be able to access Trauma 3 level care, similar to other jurisdictions” (11). It goes on to describe a collective approach to addressing the problem, with the Coast Harvesting Advisory Group bringing together representatives of timberland owners, contractors, and labour to create partnerships between service providers and industry to ensure timely provisions of helicopter emergency services. The ombudsman suggests, however, that this model might not work everywhere, “as it requires an adequate level of industrial activity, an available/accessible air transportation infrastructure, and an organization with the ability, responsibility and capacity to take the initiative of developing those partnerships” (6). The model called for would apply to both workers and others living in remote regions.

Working alone is particularly hazardous when workers are working remotely. An oil worker in Saskatchewan barely survived an accident that exposed him to hydrogen sulphide, some of which he swallowed when his face was sprayed with a mixture of oil, water, and gas in 2014. In 2017, he still had significant health problems that prevented him from returning to work. No investigation followed the near-fatal accident, and the employer did not report the accident to the provincial OSH authorities. That employer stated to a reporter, “I wasn’t aware I had to report it” (the details of this case are described in Cribb [2017]). The worker managed to radio for help before losing consciousness. Cribb (2017, para. 35) notes that “Saskatchewan’s regulations require that when workers are in situations that are ‘immediately dangerous’ to life or health, employers and contractors ‘shall ensure that the worker is provided with and uses an approved atmosphere-supplying respirator’ and that ‘a second worker, suitably equipped and trained, is present and in communication with the worker at all times.’” Yet the worker was working alone at the time of the accident. Regulatory requirements are clearly not enough to prevent potentially fatal accidents if there is no effective enforcement, and

the invisibility of the remote workforce makes it easier to ignore standards and reporting requirements.

In Québec, thirty workers working in a remote region exercised their right to refuse under OSH legislation because of the lack of an emergency plan to evacuate in cases where a worker is injured. The workers' compensation board (WCB) inspector concluded that the danger was not sufficiently imminent to justify the refusal, and the workers were sanctioned as a reprisal for what the employer alleged to be an abusive refusal to work, a sanction that was found to be well founded by the administrative tribunal,⁶³ and a conclusion judged to be reasonable by the Superior Court.⁶⁴ The reasoning of the administrative tribunal was based on the finding that the workers were trying to improve their working conditions (health and safety conditions) by using the right to refuse, an abusive use of the right according to the decision-maker.

Living at Work

As we have seen, ERGM often entails that workers will be away from their homes for some time. Hence the fact that workers are living at work (on site or near site) is a crucial component of some ERGM, and what it entails, from the point of view of OSH, needs to be examined. Dorow and Jean (2022, 685) studied work-life dynamics in the oil sands industry in Alberta and depicted camp life as a “transitional state, usually bounded in space and time, . . . described as a period of ‘in-betweenness’, ambiguity and uncertainty” (referring to Bamber, Allen-Collinson, and McCormack's [2017] concept of “liminality”).

The very issue of whether a worker is obliged to live in work camps or in other types of work sites, such as on vessels, or in other types of premises provided by the employer is in itself of interest from the perspective of worker autonomy. Here we will not focus on this aspect of living at work, but several studies have mentioned that the obligation to live on site, be it in a mining camp (Jones 2014, 92) or as a migrant agricultural worker (Bélanger and Candiz),⁶⁵ is in itself a way of controlling the workers and limiting their freedom of movement⁶⁶ and freedom of choice. A study found that some workers, given the choice, preferred to drive to the remote work site, as this provided them with more control

over their situation and allowed them the option of leaving the work site. Conversely, managers preferred FIFO arrangements so that workers could not leave the site during their leisure time, thus reducing their possibility of consuming alcohol or drugs (Jones 2014).⁶⁷

As we will see, when living conditions are an intrinsic part of working conditions, the frontiers between work-related hazards and hazards that would not be covered under OSH legislation are sometimes blurred. However, the quality of the housing conditions of mobile workers is a determinant of their health, and poor-quality housing may expose them to mould,⁶⁸ vermin, electrical hazards, harassment, and other risks.

In some provinces, regulations govern industrial camps, although sometimes those regulations are enacted under statutes governing the environment, as is the case in Québec,⁶⁹ or public health, as in Alberta and Ontario,⁷⁰ and not statutes addressing OSH considerations (see, for instance, Northern Health 2012). Others may be specific to certain industries such as mining, like in BC⁷¹ or in NL (Occupational Health and Safety Division 2014). A study prepared for the BC Natural Gas Workforce Strategy Committee identified best practices with regard to industry community relationships, planning, and mobile workforces. It noted that “work camp standards have become outdated” in many jurisdictions in Canada, citing, for example, a Nova Scotia requirement that “provision shall be made which will permit the bathing of all employees at least once a week” and fines for noncompliance with regulations that can be as low as “\$20 to \$25 for each offence or \$5 to \$20 each day after notification in which the offence continues” (CDI-UNBC 2015, 17–18). Similar low fines can be found in the province of Québec, where a \$20 fine applies in case of violation of the Regulation Respecting Sanitary Conditions in Industrial or Other Camps.⁷² In the BC report, they show that there are often several regulations that apply (water use, building codes, etc.); however, the inspection and enforcement of the different regulations that apply to work camps have limited effectiveness, since government agencies lack the resources to monitor or inspect camp operations (CDI-UNBC 2015, 18–19).

Apart from the regulatory requirements, there are examples of negotiated conditions governing construction camps. For example, in Alberta, a collective agreement between the Building Trades of Alberta and the

Construction Labour Relations—an Alberta Association, in force between 2010 and 2018, required that accommodation be provided at a sufficient distance from the work site to protect workers from noxious fumes and other contaminants.⁷³ Even though now expired, many collective agreements provide that accommodations must meet the specifications negotiated in the Camp Rules and Regulations of 2010–18 or any successor thereto.⁷⁴

The responsibilities relating to work camps are often divided between multiple agencies or departments. In Ontario, public health authorities are responsible, but seemingly not the Ministry of Labour.⁷⁵ In Québec, the classic OSH actors include both the CNESST and the public health network, so legislation would suggest that the requirements are applied more coherently. However, in sectors like agriculture, for instance, it appears the labour inspectorate does not consider itself to have jurisdiction over living conditions, which would then be governed by public health authorities. During the pandemic, the CNESST (2020b) provided information for employers who had workers living in the accommodation they provided⁷⁶ but somehow could not act if the accommodation was not on the work site (Lavigne 2021).

Lippel and Walters (2019) studied hazards and regulatory challenges related to living at work for those whose work requires overnight or off-shift accommodations away from home. They found unclear and inconsistent requirements regarding the provision of adequate housing for the internationally and internally mobile workers in remote workplaces (328). In the context of health and safety legislation, six hundred construction workers in Québec exercised their right to refuse dangerous work because of exposure to mould in the housing provided to them by the employer. The inspectorate ordered measures to be taken in response to their refusal, and the camp was eventually dismantled before the hearing of an appeal on the extent of the corrections required of the employer and on the substantive issue of the right to refuse. Judging the issue to be moot, given the dismantling of the camp, the tribunal refused to hear the appeal. It must, however, be noted that neither the inspectorate nor the tribunal hesitated in applying the OSH legal framework, and more specifically section 51(5) of the OSHA, part of the general duty clause, to the living conditions of these construction workers working in a remote

location.⁷⁷ That said, if housing is provided in premises that do not belong to the employer, even if it is provided by the employer, it is not considered to fall within the definition of “establishment” in the Québec health and safety legislation, and a complaint by the worker regarding the housing does not provide protection from reprisals if the worker is fired because of the complaint.⁷⁸

Even when the housing belongs to the employer, boundaries of responsibility for the safety of the occupants are fuzzy. As part of their research, Lippel and Sabourin (2020, 120) report on a case they encountered in which the refusal of the employer to secure the house it provided to workers in a remote location prevented the worker, who had suffered from post-traumatic stress disorder as a result of a violent home invasion in her employer-provided housing, from returning to her employment. For years, Québec OSH authorities invoked their lack of jurisdiction on housing conditions, saying that the employer-provided residence was not an “establishment” under section 1 of the Québec AOHS and that for that reason, the OSH authority could not order the employer to place bars on the windows of the house where she had been sequestered by a local resident. Lippel and Sabourin point out that this argument, which they never put in a formal decision that could have been contested, seems strange given that the initial injury occurred in the residence in question and that the Commission de la santé et de la sécurité du travail (CSST) accepted the claim without difficulty. The reasoning proposed suggests that the CSST, as the OSH regulator, feels it does not have the authority to prevent injuries that are clearly compensable under the workers’ compensation legislation applied by the same agency. Lippel and Sabourin report that the case was eventually settled when all parties—the employer, the OSH authority, and the union—contributed to a large lump-sum payment in exchange for the worker’s resignation. In this example, regulatory nebulousness cost the worker the job she loved and cost the other parties over \$100,000 in damages, according to Lippel and Sabourin.

In those workplaces that are subject to prevention programs and health programs under Québec OSH legislation,⁷⁹ these programs also include, in the obligations of the employer, explicit obligations under a variety of related regulations, including the Regulation Respecting Sanitary Conditions in Industrial or Other Camps.⁸⁰ Thus, the OSH mechanisms that

allow for the enforcement of prevention programs also cover conditions in these work camps. It's also worth mentioning that in Québec, the Regulation Respecting Sanitary Conditions in Industrial or Other Camps was adopted in 1981 but only applies to certain industries. In the regulation, an "industrial camp" is defined as "a set of temporary or permanent facilities, together with their appurtenances, organized by an employer for the accommodation of persons employed by the employer in logging, mining, railroad, road, dam and similar operations, sawmills and pulpwood mills, whether in permanent camps, permanent summer camps or temporary camps."⁸¹ Farm and agricultural workers' housing is not explicitly mentioned in the list of "industrial camps," but one could argue that it is one of the "others" mentioned in the title of the law (Gallié and Bourbeau 2014, 22). It is also worth noting that most regulations governing industrial camps in Canada do not require accommodation for families of the workers.⁸²

The specific situation of international migrant agricultural workers, which will be further discussed in chapter 5, has been the subject of extensive research. In the US, there are several studies on the quality of farmworker housing. Pesticides to which these workers are exposed at work have been found to be transferred to their living quarters, a source of concern (in the US; Beti Thompson et al. 2003). In North Carolina, where the quality of migrant farmworker housing is explicitly regulated, researchers found that violations of housing regulations were common, with numbers accommodated "ranging from 4 to 22 per camp" (Arcury et al. 2012, 191). Thus, there could be problems with practices to ensure workers do not wear contaminated clothing when they return to their on-site living quarters, a problem for IMWs in the agricultural sector in particular because of pesticide exposures, but potentially also a problem for other workers living on site.

The obligation to provide adequate on-site laundering facilities does not seem to be part of the legislative framework for camp facilities.⁸³ In Canada, the contract employers sign with the federal government for seasonal agricultural workers from the "Commonwealth Caribbean" requires that employers provide laundry facilities or weekly transportation to a laundromat (ESDC 2024a). Some regions also have precise guidelines; for example, the Niagara Region Public Health has housing guidelines and

inspectories who must verify the conformity of the facility with their guidelines. Conformity with these can, however, be questioned. In 2022, a Jamaican worker was injured when he got hit by a car while travelling with his bike to a laundromat, since his employer didn't provide either a laundry facility or transportation to the laundromat (Rosas 2022).

Living conditions in work camps in Canadian FIFO facilities cover a broad spectrum, from camps that have been said to be luxurious to very rudimentary camps. One participant in a study of workers in Fort McMurray said that living in the work camp was “like living in jail, only you're getting paid” (Angel 2014, 129). The author of that study goes on to suggest that Karasek's model of job strain applies to the living conditions of her participants:

Work camps, as extension of work sites, appeared to be “high demand” and “low control” settings. In this way, . . . we can hypothesize that these work camp spaces have the potential to contribute to negative mental and physical health outcomes for workers. . . . The links between work camp settings and the physical and mental health outcomes for mobile workers in the Alberta and Canadian contexts are less known, and stand as a significant research gap. (Angel 2014, 130)

A final issue is that of psychosocial and physical hazards of ERGM employment in situations where there is no housing provided or available. A study of Newfoundland workers working in PEI noted that they often struggled to find appropriate, sustained, safe, and affordable housing. Some worked side by side with IMWs from Russia and Mexico for whom employers were obligated to arrange housing (Grzetic 2007, 2022). Lack of housing has also been identified as a problem in Alberta and Saskatchewan, where some workers from other provinces have had to resort to sleeping in their cars (articles illustrate this issue in Estevan, Banff, and Fort McMurray: *CBC News* 2012b; Monchuk 2006; *CBC News* 2017). Not only is this hazardous because of the potential for carbon monoxide poisoning or other challenges associated with the elements, but it is also a particular hazard for women workers, who are more likely than men to be targeted as victims of violence (in the US, see Brody 2013).

Socio-Occupational Issues

Socio-occupational issues often highlight the interplay between social structures, economic systems, and individual experiences within the realm of work and employment. Mobile workers are likely to face different socio-occupational challenges that generally stem from the intersection of social factors with the material reality of their occupation and mobility.

The isolation and separation from family and community appear to be associated with elevated stress levels among many mobile workers and also among their families (Temple Newhook et al. 2011; see also Neil and Neis 2020b; Neis, Spinks, and Murray 2022). Access to the outside world, be it to information that could be available on the internet or communication technologies such as cell phones that would allow workers to maintain regular contact with their families without excessive cost, has been identified as a potential strategy to reduce the problems associated with isolation of workers required to live at work for prolonged periods of time. Some workplaces may provide good internet access to supervisors (Kahveci 2007) but not necessarily to all workers, and communication issues with family and home are not addressed in the regulatory frameworks (Lippel and Walters 2019, 329).

Some workers will maintain electronic communication regularly to ensure they are in touch with their families when they are away and remain in touch with their work at the same time—cell phones and email not discriminating between personal and professional communications. Although maintaining contact with families while in remote workplaces was usually seen as desirable, informants in one study on mining in the Yukon told of increased stress associated with regular contact with home, particularly if distance prevented them from acting upon the deterioration of relationships (Jones 2014).⁸⁴

In other settings, access might be restricted to particular categories of workers. On board ships, for example, as a study undertaken by the Seafarers' International Research Centre found, senior officers had far greater access to internet facilities than ratings (nonofficer crew)—even when the ship management policy apparently allowed free access for all (Kahveci 2007). The same is true of telecommunications services on board vessels, with seafarers frequently having to wait until they have shore leave in order

to contact their families via public telephones (Kahveci 2007, 28). In that 2007 study, only 16 percent of seafarers reported that they had access to on-board email facilities. In a recent international study, it was reported that respondent seafarers had no (13.7 percent), limited (51.1 percent), or unlimited (34.9 percent) free internet access on board for personal use (Pauksztat, Grech, and Kitada 2022). In 2022, a new paragraph was added to the Maritime Labour Convention providing that “shipowners should, so far as is reasonably practicable, provide seafarers on board their ships with internet access, with charges, if any, being reasonable in amount.”⁸⁵

Another study suggested that better access to internet communication for seafarers had improved conditions for ratings who were at sea for months at a time, suggesting that previously reported high suicide rates were attributable in part to distance from family and difficulties in maintaining relationships because of poor communication facilities (Mellbye and Carter 2017).

IMWs and other workers who are separated from their families for long periods of time working in Canada also need to have access to communication technologies that allow them to keep abreast of family emergencies and to remain part of the daily lives of their families.

When a worker is seriously injured or killed away from home, the importance of contacting and keeping the worker’s family informed, even if they are overseas, is self-evident, yet there are documented situations in recent years where the worker’s widow was not given adequate information.⁸⁶ With regard to seafarers, it is telling that trade magazines provide advice on what to do in the event of a death at sea. For example, they suggest placing the body in a refrigerator, not a freezer. They also underline the importance of “respect and preservation of the remains, while maintaining traditional customs” (Wright and Holloway 2017, 9). Desai Shan (2017) studied the impact on workers’ families of the deaths at sea of seafarers and the pain associated with the lack of information permitting them to better understand how their loved one died was a key finding of her study.

But communications are not always available or functional. In Omar Mouellam’s (2017) reporting on men in the oil sands of Alberta, he depicts portraits of troubles incurred by these workers, including anxiety related to being away. As one worker he met puts it, “Your entire window to the

outside world is your cell phone and your laptop. If you have problems at home, and you can't get there to deal with them, or contact your wife to sort it out because you're fighting for the signal with everybody else, it makes anxiety infinitely worse" (quoted in Mouellam 2017, para. 23; see also Neis and Neil 2020).

As we saw, when examining hazards at work, communication is key to successful prevention, and communication dynamics are affected both because of the different cultural networks of mobile workers, in some cases, and because opportunities to communicate may be either increased or reduced when the workforce is mobile.

When workers are isolated from their family or community of belonging, studies show the importance of the workplace collective for the mental and physical well-being of workers (Carpentier-Roy and Vézina 2000; David, Cloutier, and Ledoux 2011), and shared understandings of working conditions and hazards are key to successful OSH prevention strategies. Mobility may well act as a mediator in the ability of a workplace to build communities of understanding. Collective understanding of OSH issues may be facilitated by some forms of mobility—for example, when workers fly in to live and work in distant communities where work becomes the focus of their lives for the time they are there—but the opportunity to build collective understandings may be undermined in the case of IMWs parachuted into a workplace where their colleagues do not understand them (Preibisch and Otero 2014).⁸⁷

The nonmobile workers in an organization may well be part of a tight community, allowing for voicing of workers' needs, but the mobile worker may not be welcome in that community or may simply not have the time or opportunity to integrate given the constraints of mobility itself (see Tucker 2017). Opportunities for informal gatherings, relevant to building support networks, will vary between different categories of mobile workers because of the nature of the mobility itself.

Relational schisms within working groups based on permanent vs. temporary status (see, for instance, Seifert and Messing 2004; David, Cloutier, and Ledoux 2011) dovetail with those based on local versus nonlocal workers. In-group/out-group dynamics may apply not only to IMWs, whose social exclusion from the community (see, e.g., Foster and Taylor's study on skilled temporary foreign workers [TFWs], 2013, 178;

Basok 2004) and from colleagues in mixed workplaces has been documented, but also to Canadian workers working in the host workplace⁸⁸ or to groups of racialized mobile workers when the employer manages its mobile workers differently depending on their ethnic origin.⁸⁹

Requirements of mobility in situations where getting to work requires a long daily commute or living in work camps far from home may pose challenges for specific categories of workers because of either pregnancy or temporary disability. Even when a long-distance commute does not present particular hazards for a worker under usual circumstances, when the worker is pregnant or has sustained an occupational injury preventing him or her from doing their usual job, light work may be offered (work the worker can perform despite the injury), but on the condition that they can get to work. Issues arise when the commute is problematic because of the temporary health condition (see, e.g., Kelly, Mosquera Garcia, and Dorow 2022, 102).

In all Canadian jurisdictions, employers have a duty to accommodate workers with disabilities, “to the point of undue hardship” (Foster and Barnettson 2016, 209).⁹⁰ Québec is the only province that has specific regulatory protections for pregnant workers under OSH legislation. Pregnant workers can request a reassignment under the preventive reassignment program if working conditions present a danger to the worker because of the pregnancy or the fetus.⁹¹ Long-distance travel and remote workplaces have both been discussed in tribunal decisions in order to determine whether the commute or the housing in a work camp presents potential hazards for a pregnant worker. In the case of a newly hired worker whose work required her to either commute or live in a remote forestry camp, the appeals tribunal found that she was not entitled to protective reassignment because the hazard associated with driving was not seen as a working condition that was part of the employment relationship, given she was not in a position of subordination during the commute.⁹² However, in a subsequent case involving a travelling saleswoman whose job required she drive over four hundred kilometres a week between clients, the tribunal concluded that prolonged driving was potentially a hazard that warranted reassignment, given the gravity of the consequences to the fetus in the event of an automobile accident.⁹³ The tribunal distinguished this case, where the work entailed driving, from the situation where the worker had

chosen to live at a considerable distance from her employment, suggesting that the tribunal would not consider commuting to and from work in the evaluation of these cases.

In another case, a driving restriction was issued but not complied with. The tribunal concluded that the worker who was pregnant was eligible for the program, since the assignment, which required her to drive for several hours during the day, was not safe for her and her unborn child.⁹⁴ Such restriction was decided following public health recommendations that stated that her employment involved ergonomic risks that involved uncomfortable postures, such as prolonged sitting in the car and getting in and out of it. The court also noted the danger that driving and car accidents represented for the pregnant worker and/or her unborn child.

Finally, gendered aspects and conditions of mobility have been studied by researchers Dorow and Mandizadza (2018). They identified the forms of care that help workers endure camp life and the practices the workers in Alberta camps deploy to manage care back home while away at work. They underline how having a support network back home helps workers deal with the emotional challenges of distance and isolation. This support manifested itself by maintaining virtual contact with home: “Keeping in touch across time and distance is an individual form of caring labor aimed at creating proximity” (1247). The authors also point out that some gender exclusion emanates from the mobility regime:

Women with young children were sometimes structured *out* of mobile reproductive work. One human resources manager told us that she actively discouraged them from taking rotational camp jobs because they were “too distracted” by separation from their children—i.e. too closely tied to family to provide mobile “family” to others. Camp work was thus the province of older women, single people, and men of all ages, many of them racialized immigrants or temporary foreign workers. (1248)

The authors demonstrate how the work, paid and unpaid, of caregivers back home, usually done by women, was a clear way of addressing the absence of mobile oil workers and accommodating their mobility (Dorow and Mandizadza 2018, 1251). Women and men mobile workers also seem

to face different types of challenges when trying to reconcile life at home with the mobility associated with their jobs:

The mobile masculine provider was socially reproduced via the gendered socio-spatial flexibilization of care across camp and home. Martha's material and affective labor as a camp housekeeper, and her reliance on a familial care chain, are part of this regime; but as a single mother working in less skilled paid labor, Martha's choices for providing "proxy" care did not include moving her family to a sun destination. Before taking up mobile work in the oil sands, she had looked into moving her family to another part of Atlantic Canada where there were better job options than in her hometown. However, the cost of childcare and of re-locating made this impracticable. Instead, a parallel mobile "care shift" on the part of her parents allowed Martha to be a long-distance commuter to the oil sands, which in turn allowed her a viable income. The fly-in fly-out regime opened a pathway for her to provide for her family, albeit within a circuit of circumscribed choices. (1252; see also Kelly, Mosquera Garcia, and Dorow 2022)

The authors emphasize how the notion of care back home is intertwined with care in the camp site, and they also show how the challenges of mobility may differ between men and women workers and between oil workers and camp staff, both categories of mobile workers.

As mentioned, regulation in most provinces is completely silent with regard to housing for workers in remote camps who have families with them. Mobile workers are often engaged in work entailing long and variable shifts, and the shift patterns have been studied and found to fail to accommodate domestic and family issues. Authors of one study concluded that more acceptable shift patterns could be introduced to accommodate these needs (Mikkelsen, Ringstad, and Steineke 2004, 177; Wedderburn 1996).

Conclusion

In this chapter, we have outlined some of the specific hazards and other sources of vulnerability associated with extended/complex mobility for work and explored ways these influence the regulatory effectiveness of existing legislative frameworks. With a focus on land-based mobility, we examine how road and vehicle conditions, as well as fatigue, long shifts, and rotations, can encompass significant hazards that are poorly addressed within existing regulatory frameworks. With a focus on regulatory effectiveness, we also show how threats to OSH among the mobile labour force in Canada can be exacerbated by such sources of vulnerability as remoteness and housing options for FIFO/DIDO workers. Issues can arise when housing is provided by the employer, when outside providers are used, and in situations where housing is not provided and mobile workers are expected to find a place to live. Finally, the chapter identifies a number of socio-occupational issues that stem from the intersection of social factors with work and mobility-related realities. These include issues such as access to social support and communication supports to allow workers to stay connected to family and friends and some ways these are mediated by gendered responsibilities and the gendered division of labour. Mobility can also create particular challenges for those who are pregnant or disabled.

The next chapter shifts focus from hazards and occupational injury and disease prevention to compensation for injuries and illness within Canada's internally mobile labour force. Challenges with OSH and workers' compensation regulatory effectiveness for IMWs are examined in chapter 5.

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4 Access to Workers' Compensation Regimes for Mobile Workers

While this book is focused on occupational safety and health (OSH) legislative frameworks, certain issues raised by employment-related geographical mobility (ERGM) in that context are coloured by the interpretations given to workers' compensation legislation. In some provinces, the OSH regulator is the same entity that applies workers' compensation legislation (British Columbia,¹ Prince Edward Island,² and Québec³), while in others, the minister of labour is responsible for implementing OSH (Alberta,⁴ Ontario,⁵ and Nova Scotia⁶). In Newfoundland and Labrador (NL),⁷ two separate organizations are mandated to implement the legislation, but the statute specifies they must cooperate.⁸

This chapter examines Canada's workers' compensation processes for occupational injuries and diseases with a focus on related challenges faced by mobile workers. Using Lippel and Walters's (2019) exploration of the challenges that mobile workers face with regard to workers' compensation, we draw on findings from a review of workers' compensation acts and policies and on case law from compensation appeals tribunals dealing with claims from different types of mobile workers in four Canadian provinces concluded in 2023. We will show how some workers may have difficulty simply accessing compensation for a work injury because of the mobility

their work entails. We will also discuss the question of commuting accidents and how they are received within the regulatory frameworks in the jurisdictions under study. Finally, we will see how, even though they suffer from a compensable injury, mobile workers may face different pitfalls regarding their benefits, receiving adequate care, and returning to work.

We begin by presenting the challenges associated with various stages of the compensation, rehabilitation, and return-to-work (RTW) process linked to interjurisdictional mobility and longer-distance mobility within jurisdictions. We then discuss some of the complexities related to compensation for commuting accidents by presenting the policies and relevant case law in the jurisdictions under study. The last section examines the specific situation of workplace injuries that occur when workers are accommodated far from their homes, as in work camps.

Injured Mobile Worker Challenges for Accessing Compensation, Rehabilitation, and Return-to-Work Benefits

As outlined in chapter 2, workers' compensation in Canada is a no-fault system that falls largely within provincial jurisdiction. Research has shown that the process leading to the recognition and compensation of work-related injuries and occupational illnesses can sometimes be fraught with obstacles. The legal process can become particularly cumbersome, complex, and costly when claims are rejected by the compensation body (Lippel 1999a, 2010, 2012, 2018; Lippel and Sabourin 2020; Lippel and Sikka 2010; Gesualdi-Fecteau and Visotzky-Charlebois 2020, 260; Visotzky-Charlebois 2021b). While claims for some injuries, such as acute physical injuries like cuts, broken limbs, and other forms of physical trauma are generally easily accepted, workers with claims for other types of so-called invisible injuries, such as musculoskeletal and psychological disorders and occupational illnesses, often confront greater difficulty in proving their existence, severity, and connection to work (Lippel 2008, 2020; Lippel and Cox 2012). Mobile workers share with other workers challenges accessing compensation. However, for them, an additional layer of difficulty arises, particularly because of the complexities associated with jurisdictional changes, which can also affect return-to-work (RTW). This section reviews the specific challenges occupationally

injured and ill mobile workers are likely to face as they seek to access workers' compensation benefits. These range from not being eligible for workers' compensation in some jurisdictions, to being eligible but being told they are not, to reporting challenges, to experiencing challenges in the healing process, and to encountering mobility-related complications with the steps that lead to returning to work.

Eligibility for Workers' Compensation and Claiming Challenges

As noted in chapter 2, a key difference between the provincial regulatory frameworks is the percentage of the labour force eligible for workers' compensation and the list of excluded occupations and sectors (see variability in percentage of eligibility and list of exclusions by Canadian jurisdiction in AWCBC [2024]). Given this variability, international migrant workers (IMWs) and interjurisdictional workers may be particularly likely to not know about their eligibility, with higher risk among the precariously employed (see, e.g., MacEachen, Senthana, and Lippel 2021; Lippel, MacEachen, and Senthana 2020) and among home care, fishing, and agricultural workers. For most workers, including particularly IMWs and the precariously employed, the very process of initiating a workers' compensation claim is not without pitfalls (Lippel 2012; Lippel et al. 2005; MacEachen et al. 2010; Visotzky-Charlebois 2021a, 2021b; Premji, Begum, and Medley 2023), and when adding the mobility component, more challenges may arise. If workers are interjurisdictionally mobile, for example, further complexities may also arise when it comes to claiming, since they need to navigate the laws and regulations of different jurisdictions. Access to workers' compensation can be complicated by a failure to meet deadlines for filing claims found in provincial workers' compensation regulations. Delays in identifying the workers' compensation board (WCB) responsible for compensating a particular injury increase the risk that the "correct" jurisdiction will deny the claim because it was filed beyond the time limits provided for in the legislation.⁹

The nature of the injury that occurs may lead to further complexities for mobile workers. Some occupational diseases occur rapidly after exposure, as is the case for dermatitis, for example. Others, such as hand-arm vibration syndrome or noise-induced hearing loss, develop over time,

and some, such as mesothelioma¹⁰ and other occupational cancers, have a long latency period so that exposure may have occurred decades before symptoms occur and could have happened in one or more jurisdictions. The interjurisdictional complexities that exist in injury claims are clearly exacerbated when the claim is for occupational disease. For example, a worker's claim for hand-arm vibration syndrome following exposure to vibrating tools over the course of his career was denied in Québec because only 5 percent of the worker's exposure occurred when he was working for Québec employers. The appeals tribunal referred the case back to the Québec WCB so that it could undertake discussions with its Ontario counterpart regarding the claim.¹¹ If a Québec-domiciled worker was only exposed outside the province, working for an employer who did not have a Québec establishment, he would not be able to claim in Québec.¹² Further complexities may arise for federal workers. As we have seen in chapter 2, federal employees will be covered by provincial regulation, but in some cases, the particular status of federal employees may impede access to compensation. For example, claims may be denied because the worker's disease was contracted in a province other than the province where the worker is now employed.¹³

Workers' compensation legislation in all Canadian jurisdictions covers the initial injury but also allows a worker to claim for recurrences of that injury. For example, if a compensated work injury is stabilized and then, years later, requires surgery, the disability associated with the surgery is deemed to be the consequence of the initial injury and compensable. What happens when the initial injury is compensated in one province and the recurrence manifests when the worker lives in another province? In theory, one would expect that the recurrence would be compensable by the same compensation board that recognized the initial injury;¹⁴ however, this may not always be consistently applied. In Québec, the appeals tribunal rejected the claim of a worker, stating that the worker, whose injury was initially recognized as compensable under Québec law, was no longer residing in Québec nor working for a Québec employer at the time of the recurrence.¹⁵

Every Canadian jurisdiction has legislation or policy providing compensation for work-related mental disorders. However, the scope of coverage varies based on the type of mental disorder, its cause, and the

diagnostic criteria required (Lippel and Sikka 2010).¹⁶ In recent years, several jurisdictions, including Alberta and Ontario, have facilitated access to workers' compensation for first responders who suffer from post-traumatic stress injuries.¹⁷ In Québec, the worker has to demonstrate "having carried on any work involving repeated or extreme exposure to serious injury, sexual violence or threatened death, or to actual death not resulting from natural causes."¹⁸ NL adopted a similar approach in 2018, including a post-traumatic stress disorder presumption for workers exposed to "a traumatic event or events in the course of the worker's employment" and diagnosed by a psychiatrist or registered psychologist.¹⁹ When workers travel between provinces for work, the jurisdiction elected for the compensation of a mental health claim will determine eligibility for benefits, and it is unclear how regulators deal with workers who were exposed to stressors in several provinces, some of which provide coverage and some that don't.

What It Means to Be "in the Course of Employment" for a Mobile Worker

When discussing commuting and transportation to work, the question that arises is whether or not the worker was "in the course of employment" when injured. There appear to be different interpretations of what it means to be in the course of employment, even in the jurisdictions where comprehensive policy about this matter exists.²⁰ In each case, adjudicators will look at the list of potential links between work and the circumstances in which the injury occurred and weigh the evidence to determine if, in balance, the injury occurred in circumstances that were sufficiently linked to work before accepting a workers' compensation claim.

In Québec, the expression "in the course of employment" is not defined by the law, but the jurisprudence has enumerated several criteria to assess this issue—namely, the place of the event, the time of the event, the remuneration of the activity carried out by the worker at the time of the event, the existence and degree of employer authority or subordination to the employer when the event does not occur on the premises or during working hours, and the purpose of the activity carried out at the time of the event, whether it is incidental, ancillary, or optional to the workers'

working conditions and whether the activity is related or relatively useful to the performance of the work.²¹ According to the analysis of Bruno, Martel, and Vallée (2018), there are two jurisprudential streams that speak to what it means to be “in the course of work.” As a result, workers subject to similar availability requirements may not have the occupational nature of their injury recognized in an equivalent manner (277–78).

In Alberta, NL, and Ontario, the WCBs have comprehensive policies related to what it means to be “in the course of employment.” In Alberta, an accident occurs in the course of employment when it happens at a time and place consistent with the obligations and expectations of employment.²² Coverage is not extended for routine commuting, regardless of any remuneration. However, if the worker is required to take a company vehicle to and from the work site for a work-related purpose (e.g., being available for service calls), they will be covered while travelling (WCB-Alberta 2023c, ques. 3–5). A worker would likely be covered when they go directly from their home to an off-site business meeting (WCB-Alberta 2023c).

In NL, the phrase “arising out of and in the course of employment” means the injury is caused by “some hazard which results from the nature, conditions or obligations of the employment and the injury happens at a time and place, and in circumstances consistent with and reasonably essential to the employment” (WorkplaceNL 2001, 1). No single criterion is conclusive, and various indicators are used for guidance, including

whether the injury occurred on the premises of the employer; whether it occurred in the process of doing something for the benefit of the employer; whether it occurred in the course of action in response to instructions from the employer; whether it occurred in the course of using equipment or materials supplied by the employer; whether it occurred in the course of paid employment; whether the risk to which the worker was exposed was the same as the risk to which he/she is exposed in the normal course of production; whether the injury occurred during a time period for which the worker was being paid; and whether the injury was caused by some activity of the employer, a fellow worker, or a third party. (WorkplaceNL 2001, 1–2)

In Ontario, to determine if an injury occurred in the course of employment, the decision-maker will also apply the criteria of place, time, and activity (WSIB Ontario 2004a). It is generally considered that workers are in the course of employment when the conditions of the employment require a worker to drive a vehicle to and from work for the purpose of that employment, with the exception of when a “distinct departure on a personal errand takes place en route.”²³ As in other jurisdictions, a worker is generally not considered to be in the course of the employment when travelling to or from the workplace (WSIB Ontario 2004e). In one case, workers working remotely and living in an employer-paid motel accommodation got in a car accident when they were returning from lunch at the only restaurant available. In that case, the decision-maker considered that the individuals were in the course of their employment “or engaged in an activity reasonably incidental thereto.”²⁴

A Supreme Court of Canada decision previously addressed the issue of the nature of the activities leading to the injury to see if they fell in the professional or personal spheres. The Supreme Court then noted how these activities can be interrupted and then resumed or even succeed each other.²⁵ The interference of the personal sphere is often discussed and not always interpreted evenly between the jurisdictions. Thus, it was found that an Ontario worker who did a slight detour to get something to eat “did not negate the overarching work-related purpose behind his activity at the time of the accident.”²⁶ In Québec, a food inspector was hit by a car while going to retrieve her scarf in the restaurant where she had eaten before going to another establishment for an inspection. Her claim was rejected; the appeals tribunal concluded the injury did not occur “in the course of work” because “not only did it occur on the public highway, but . . . the court found that the purpose of the activity was of great importance, whereas it was purely personal in this case.”²⁷ Other circumstances will rarely, if ever, be considered the basis for a compensable injury by any Canadian WCB, such as an injury occurring while the worker stopped on her way to or from work for personal reasons, perhaps to visit a relative on the way to work.²⁸ Generally, the fact that the employer owns the vehicle is not a relevant factor; the determination will be based on the purpose of the trip and the control or direction the employer exercises.

Healing at Home

What happens if a worker whose family is living in another province or country is injured on the job? Can they return home after the injury and continue to receive benefits? In theory, the answer is yes; many decisions and policies address the situation of workers who return home after their injury, with the approval of the compensation board and without being penalized.²⁹ Nevertheless, doing so can impede full access to benefits.

In Alberta, Ontario, NL, and Québec, all four WCBs have more or less comprehensive policies related to what happens when a worker is injured and wishes to heal at home. The general principle is that a worker who wishes to leave the province after an injury needs to notify the board. Failure to do so may result in the suspension of benefits, and the file could be closed (WSIB Ontario 2021c, 2023; WCB-Alberta 2018d; WorkplaceNL 2021b; CNESST 2023).³⁰ The WCB normally continues compensation following notice of a worker's intention to leave the province, unless it is evident that by leaving the province, the period of disablement may be extended (WCB-Alberta 2018d; WorkplaceNL 2021b; CNESST 2023). The WCB may stop benefits if the worker consciously chooses to delay their rehabilitation program for personal reasons and leaves the province. A worker can usually choose to receive health care in the province where they got injured or in the community where they reside; however, when leaving the province is considered to interfere with the required treatments, the benefits will likely be suspended and lead to further litigation.³¹

In Alberta, the WCB may reimburse reasonable expenses resulting from necessary travel within Alberta when the WCB directs a worker to report in Alberta but will consider that the expenses that result from travelling from the worker's place of residence to the Alberta provincial boundary would be the worker's own responsibility (WCB-Alberta 2018c, ques. 7). In some cases, the appeals tribunal may order the independent medical examination to take place closer to the worker's home if they relocate to another province after the injury.³²

Québec's WCB has some specific guidelines when it comes to border regions, defined as a region of Québec located within a radius of less than eighty kilometres from a point of contact with the province of Ontario, New Brunswick, or NL (CNESST 2023). When a worker suffers

an occupational injury in a border region, Québec's WCB will cover the cost of care and treatment received in a hospital centre, as well as the services of physicians, dentists, optometrists, or pharmacists received outside Québec. In cases where the worker moves to a country with which there is an agreement, the WCB assumes the cost of health professional services, according to terms and conditions set out in the agreement (see chapter 2). If the worker moves to a country with which there is no agreement, the WCB assumes the cost of the services of health professionals according to the rates provided for similar services under the Québec public health insurance plan.

In Québec, the legislation allows the employer to require the worker to undergo an examination by a doctor designated by the employer. In these cases, the employer is responsible for the cost of the examination and any expenses incurred by the employee in attending.³³ The issue of whether the absent worker has reasonable cause not to attend a medical evaluation required by the employer has been raised on some occasions. In one case, an IMW did not attend, as she had been deported from Canada after the expiration of her work permit, and the WCB suspended her benefits. The appeals tribunal refused to revoke payment of her permanent impairment benefits by reason of her absence at the time of the medical appointment.³⁴

Dana Howse et al. (2018) reported on how some workers, including those mobile within provinces, may have to spend time away from home because of the treatment they need to receive, or they may have to travel back and forth (see also Howse and Neis 2026). There is limited research comparing compensation claim rates and outcomes across workers engaged in different types of ERGM. Cherry et al. (2019) used Alberta workers' compensation records to compare claim rates among all workers with accepted injuries that resulted in more than five days of time loss between interjurisdictional migrant workers from NL and those injured workers resident in Alberta. They found a markedly lower injury reporting rate for the former rather than the latter, particularly for injuries resulting in one to thirty days off work.

Survey and interview findings from research done in Fort McMurray, Alberta, summarized in the same publication, indicated underreporting of injuries, with greater underreporting by workers from out of province

or recently arrived. Reasons for underreporting among interprovincial workers included downplaying the seriousness of the injury and fear of blacklisting by contractors. Subsequent research by Cherry, Galarneau, and Haynes (2020, 154) using WCB data and interviews with Albertan and Atlantic Canadian workers injured in Alberta found the median number of days of wage replacement was longer for the workers from the Atlantic provinces than for the Albertans, particularly among those who recovered in their home province. Multiple factors could help explain this outcome, including poorer access to specialist medical services and to expedited access to treatment and rehabilitation in the home province. The higher wage replacement paid by the Alberta WCB—reflecting Alberta’s higher incomes—may have exceeded the earnings available to workers in Atlantic Canada and thus played a role. The authors conclude that “the higher costs for wage replacement associated with extended time off work could be inherent to the practice of employing out-of-province workers for jobs for which there is a shortage of local labour” rather than implying the need to require them to seek health care only in Alberta (146). Research has found more generally that

compared to non-mobile or less mobile workers, mobile workers experience poorer work disability and return-to-work (RTW) outcomes following work-related injuries and illnesses. This is supported by research on workers who experience work-related injuries in different jurisdictions from where they are resident, such as immigrant workers, and inter-jurisdictional workers in countries where workers’ compensation falls under different provincial, territorial or state jurisdictions. It is also evident in research that compares work disability of workers from different areas based on their population size and commuting patterns, as well as commuting time and sickness absence. (Macpherson et al. 2024, 6)

Return-to-Work Rules: An Overview

Once coverage is granted, workers will be eligible for—and in some provinces, obliged to take up—offers of modified work. In every jurisdiction, the law provides for ways for a worker to return to work before they reach

the maximum medical recovery.³⁵ RTW programs are designed to reintegrate injured workers into the workplace before or after the healing or stabilization of the injury. There are specificities in each province, but employers have economic incentives to offer modified work that allows claimants to remain active in the workplace (Lippel and Walters 2019, 334; for a recent overview of RTW policies in different Canadian jurisdictions, see Keefe et al. 2023). Modified work is often used by employers when workers are recovering from a temporary impairment that caused a disability: “Work hardening entails providing a worker with the opportunity to gradually return to work (via increasing hours and work demands) in order to build stamina” (Foster and Barnettson 2016, 212). As Foster and Barnettson explain, some evidence suggests that workers with back pain recover quickly when they remain active. However, it is not clear how work “is analogous to the more generalized term activity,” in particular because of the power relationship inherent to the employment relationship (215). In addition, if this early RTW may prove beneficial for workers with back pain, it may not be adapted to all types of injuries (Lippel and Sabourin 2020; MacEachen et al. 2010; Lippel 2010).

RTW processes may vary from one jurisdiction to another, but in all jurisdictions, both employers and workers have the duty to cooperate in RTW.³⁶ The role of health professionals also varies from one jurisdiction to another (Hudon, Lippel, and MacEachen 2019, 545; Hudon, MacEachen, and Lippel 2022).

In Ontario, the RTW process consists of a series of activities and services, which can start as soon as the employer learns that a worker has suffered a work-related injury/disease. The employer may offer “suitable work,” which is defined as postinjury work that is safe, productive, and consistent with the worker’s functional abilities and that restores the worker’s preinjury earnings (WSIB Ontario 2021d). Eventually the WCB may have to identify a suitable occupation for the worker.

In Alberta, a worker may benefit from a temporary modified work program while still recovering. Temporary modified work includes any changes, restrictions, or limitations to a worker’s regular job duties required as a result of a work-related injury (WCB-Alberta 2023d, ques. 2). The goal is to return the worker to their preinjury job with the same employer. If that is not possible because of work restrictions, a suitable occupation

could be determined, ideally with the employer or in the general labour market (WCB-Alberta 2021a).

NL's WCB provides RTW services and programs. Workers may return to modified work or "ease back," which is a gradual return to the preinjury employment. The need for modified work is usually temporary, but it may be required on a permanent basis in some cases. Ease back to regular work allows injured workers to return to their preinjury jobs gradually while building up strength and tolerance in the process (WorkplaceNL 2016). The workplace parties (worker and employer) are responsible for determining whether a particular job that becomes available is suitable for the worker. NL's WCB will make the final determination if the workplace parties cannot agree (WorkplaceNL 2024). Suitable employment needs to meet the following criteria: "the work is within the worker's functional abilities; the worker has, or is reasonably able to acquire, the necessary skills to perform the work; the work does not pose a health or safety risk to the worker or co-workers; and the work restores the worker's pre-injury earnings, if possible" (WorkplaceNL 2023c, 2).

In Québec, the employer can offer a temporary assignment of work prior to maximum recovery; the health professional in charge approves the temporary assignment.³⁷ Since 2021, the WCB can also grant workers rehabilitation measures that are adapted to the state of their health and favour their vocational reintegration. The WCB can implement measures, such as gradual RTW, and must submit the measure to the health professional, "unless this measure has no effect on the patient's state of health."³⁸ When the injury is "consolidated," if the worker cannot return to their preinjury job, the WCB will determine, with the collaboration of the worker and the employer, a suitable employment. If the employer has no available suitable employment, the worker may have their vocational potential evaluated to help them determine what employment with another employer would be suitable for them.³⁹

Return to work while recovering: How does mobility come into play? As Lippel and Walters (2019) note, several issues may arise when it comes time to offer modified work to a worker who lives far from the job site and for those engaged in mobility as work (see Neis et al. [2025] on

the specific challenges that seafarers and other maritime workers can face when returning to work following a workplace injury; see also Shan et al. 2025). Even though the ability to do the modified work may not in itself be problematic, the worker may have difficulty getting to the workplace or to the point of departure. In evaluating workers' residual capacity before maximum medical recovery, it is possible that the actual travel requirements for getting to the place where suitably modified work is available will make it inappropriate for the worker to undertake the proposed assignment, even though the job itself could be compatible with the temporary functional limitations attributable to the occupational injury. Workers who decline opportunities offered may see their claims closed. There appear to be conflicting trends in case law as to how the health effects of travel are taken into consideration as well as important differences between jurisdictions. In fact, "some decision-makers refuse to consider the health effects of travel between the worker's home and the new assignment and conclude that if the tasks assigned are safe, then the traveling arrangements are irrelevant" (Lippel and Walters 2019, 334).

When workers are employed on a remote site, availability of medical services may determine whether the assignment is acceptable. In a case in Alberta, the remoteness of the workplace and the transportation it would entail for the worker were taken into consideration when assessing the benefits of modified work, particularly in light of the treatments needed.⁴⁰ In Québec, the appeals tribunal confirmed the appropriateness of light work offered to a worker who objected to a temporary assignment at the original work site, which required him to drive for several hours, because the employer had ensured that the required physiotherapy was available near the work site.⁴¹

As to travel requirements, Québec case law is divided on this issue. The appeals tribunal sometimes includes the travel requirements to get to work in its evaluation of whether or not the temporary assignment proposed is appropriate, given the worker's functional limitations.⁴² However, some decision-makers have refused to consider the health effects of travel between the worker's home and the new assignment and have concluded that if the tasks assigned are safe, then the travelling arrangements are irrelevant (Lippel and Walters 2019).⁴³ In a case where the employer

provided alternative transport to a worker who was unable to drive because of medication required by his occupational injury, the appeals tribunal found that the worker was not justified in refusing the modified work and further added that the employer was not required to provide alternative transport when the worker was unable to travel to and from work because of his injury.⁴⁴

There are cases where the worker's refusal to remain in a remote part of the province during their recovery was found to be unjustified, given that the employer offered an assignment in the remote workplace that was compatible with his abilities and that his reasons for not wishing to return to the remote workplace were not grounded in the evidence.⁴⁵ In cases where the temporary assignment requires the worker to travel some distance from the usual work site, the worker will be justified in refusing that work if the conditions are inferior to the usual conditions because of the travel costs.⁴⁶ However, if the conditions are similar, the fact that the assignment occurs in a different facility a little farther from the usual workplace will not justify the refusal.⁴⁷

In provinces such as Québec, where the worker's health professional must approve the temporary assignment of work proposed, there are cases where the health professional has refused the modified work because of travel requirements. This was the case for a worker whose employer offered an accommodation far from her home despite her temporary inability to drive to the work site. The worker had to care for a young child, and the health professional considered the remote accommodation wasn't appropriate because of the worker's personal situation.⁴⁸ If the worker's health professional refuses to authorize a temporary assignment proposed by the employer after a worker has moved to another city for personal reasons, the worker retains the right to benefits, as the treating health professional has the last word on the suitability of the modified work assignment in Québec.⁴⁹ Also, if the assignment has an impact on the injury and the required treatments, the refusal to undertake such assignment might be justified.⁵⁰

In Ontario, the evaluation of travel in determining the legitimacy of the worker's refusal to take up the modified work will be considered. When the employer has suitable work available that is within the worker's functional abilities but the worker is unable to get to and from work safely,

RTW may not be appropriate. When looking at suitable work in Ontario, the WCB must consider the worker's functional ability to travel safely to and from the proposed work site: Does the worker's work-related injury restrict their capability for safe travel? Does the mode of transportation the worker is required to use to travel to the proposed work site pose a health or safety risk to them or to the general public (WSIB Ontario 2021b)? Decision-makers must consider multiple criteria:

Can the worker use the same method of transportation, with or without accommodation (e.g. stopping for stretch break along route or traveling during off-peak hours) . . . ? Are alternative methods of travel available to the worker? Do the alternative method(s) of travel unreasonably impact the worker's commute to work? If the worker is able to travel to the worksite, are there any barriers to the worker getting to their workstation once at the worksite (e.g. the distance from the parking lot or bus stop, the terrain)? (WSIB Ontario 2021b)

Financial hardship will also be considered. In one case, the appeals tribunal concluded that "a worker should not have to incur additional travel expenses because the work-related injury temporarily dictates a particular mode of travel. When the employer has suitable work available that is within functional abilities, but the worker is unable to get to and from work safely, RTW may not be appropriate."⁵¹ The appeals tribunal also concluded that a worker was justified in refusing the modified work offered by the employer on the basis that her injury made it too difficult for her to drive to her work site. She lived 125 kilometres from work and had to drive there, since there were no other reasonable alternative means for getting to work: "Decision-makers should consider factors including the worker's normal method of transportation, whether the worker can still use that method considering the area of injury, whether alternative methods of travel are available and whether such alternative methods unreasonably impact the worker's commute to work."⁵²

In Alberta, it seems to be accepted that the work proposed must not "create financial hardship for the worker (for example, shift changes that require additional childcare costs, unreasonable travel to another location,

etc.)” (WCB-Alberta 2023d, ques. 3). Hence if a worker were provided with transportation to and from the remote location, including any necessary visits out for medical care, the appeals tribunal would likely conclude the absence of financial hardship.⁵³ In one case, a worker alleged that the offered modified employment was “not suitable” because it required “unreasonable travel” to attend the work site. The worker had a problem not with the modified duties being offered by the employer but rather with the fact that he had a three-hour bus ride to get from his place of residence to the job site, both of which were in the same city. The appeals tribunal found that a “worker’s commute to and from the job site, which is in the same locale as his place of residence, is not a basis upon which to determine modified employment to be ‘unsuitable.’” The criteria stated in the policy about “unreasonable travel to another location” seemed to be interpreted by this appeals tribunal as only relating to modified work that is in a different and remote location from where the worker resides.⁵⁴

In NL, when assessing the possibility for suitable employment, it is possible that the employer will offer work at another work site. In this case, the WCB will have to determine if the work sites are comparable. In doing so, the WCB will consider if “travelling to the proposed job is within the normal parameters of travel expected of a worker” (WorkplaceNL 2023c, 2).

It is also worth mentioning, as do Lippel and Walters (2019), the particular situation of fly-in/fly-out (FIFO) / drive-in/drive-out (DIDO) workers. As previously mentioned, these workers are usually hired on rotations that require intensive work shifts, followed by several days off, allowing them to return home between rotations when feasible. When light work or temporary assignment is offered, “the worker’s health may not permit intensive work so the alternative work may be only for a few hours a day, every day, potentially compelling the worker to stay in the remote location indefinitely. The worker must choose between remaining in the remote location or seeing benefits cut if he or she returns home” (Lippel and Walters 2019, 335).

What happens when a worker moves away from where they used to live and work? Compensation boards may have policies as to what happens when an injured worker moves out of the province after an injury. In Ontario, the worker would then receive partial benefits (WSIB Ontario

2021a). If a worker is unable to continue participating in an RTW plan⁵⁵ in Ontario because they have permanently relocated to another province or territory or outside the country before the plan is completed, the RTW plan will be closed by the WCB.⁵⁶ If the RTW plan is not fully designed to restore the preinjury earnings, the worker's loss of earnings benefit will be adjusted based on the identified suitable occupation and the wages of an experienced worker based on Ontario wage information (WSIB Ontario 2021a). If an employer is unable to provide suitable work, a worker may be provided with RTW services even if they permanently relocate to another Canadian province or territory or outside the country (WSIB Ontario 2021a).

In Québec, the WCB may reduce or suspend the payment of an indemnity if the worker “neglects or refuses to avail himself of a rehabilitation measure or his personal rehabilitation program” or “neglects or refuses to perform the work temporarily assigned to him by his employer that he is required to perform.”⁵⁷ The appeals tribunal has confronted this issue a few times. In one case, with consent from the WCB, a worker from France returned home for the period in which he was receiving therapy for a laceration, which confirmed that there were international social security agreements that allowed workers to return home under such circumstances.⁵⁸ However, the appeals tribunal ordered the worker's benefits to be suspended retroactively to the date of his departure, as he did not attend the medical exam required of him by the employer and did not furnish the name of his French physician to the WCB in a timely manner, which, according to the employer, prevented him from implementing the temporary assignment for the worker.

The same scenario would likely happen in Alberta; if a worker refuses the modified work proposed because they have moved out of the province, the WCB benefits will be terminated.⁵⁹ In NL, if the worker leaves the province and notifies their case manager and health care provider and receives medical approval, benefits may continue as long as medical treatment and early and safe RTW or labour market re-entry programs are not interrupted, delayed, or discontinued (WorkplaceNL 2018, 13).

Return to work after recovery. Vocational rehabilitation and returning to work after an injury are cornerstones of compensation regimes designed

to maintain the ability to work (Lippel 2012). As we have seen, it is possible for a worker to return to work prior to their maximum medical recovery. Once workers reach this plateau, they could well return to the preinjury job. In some cases, this is no longer possible, and suitable employment would then be identified by the WCBs. In Canada, employers have a duty to accommodate workers with disabilities. An employer must accommodate a worker's physical or mental disability, up to the point of undue hardship.⁶⁰ Once a worker's condition is deemed to have reached maximum medical recovery, an evaluation of their ability to return to preinjury employment will be made. If permanent functional limitations prevent the worker from returning to preinjury employment, they will be admitted into a rehabilitation program.

For the mobile workforce, different issues can arise when it comes to returning to the same job or rehabilitation and retraining. In some cases, the consequences of the injury do not affect the workers' ability to perform the work but may prevent them from travelling to and from work. Lippel and Walters (2019) emphasize that workers who used to be mobile, prior to their injury, may be presumed to be able to continue to be mobile workers once their injury has healed.⁶¹ But the difficulties associated with the travel to and from their original or new work may not be considered by the WCBs when assessing the worker's ability to effectively return to work.

When workers cannot return to their preinjury job, WCBs provide vocational rehabilitation, which includes the determination of "suitable employment," defining the objective of the vocational rehabilitation program, and determining the individual support that will be provided to the worker so they are able to return to the labour market. In some cases, the preinjury employer may offer the worker a job, and in those cases, it will be necessary to determine whether the job in question meets the regulatory criteria for "suitable employment."

A few cases have arisen in which workers could not get to work after recovery because their medication prevented them from driving or because the long distance to travel to get to work would exacerbate their condition. In Québec, the choice to live far from the place of employment is considered to be an individual preference, and as such, travel to and from work may not be considered in evaluating the individual's

ability to return to preinjury employment.⁶² In one case, the reasoning of the appeals tribunal was that if a commuting accident is not an occupational injury, then travelling to work is not part of the job's tasks.⁶³ In some cases, it will be necessary to determine whether travel requirements are suitable.⁶⁴

In some of the Québec cases, the appeals tribunal overturned decisions of the WCB that had found employment suitable despite the travel requirements. In one case, for example, the appeals tribunal accepted the worker's argument that the job proposed by the employer, which required him to travel three hundred kilometres each way, was not suitable. The appeals tribunal concluded the employment was not suitable as the travel required could exacerbate the worker's back problems.⁶⁵

For a worker with a pre-existing disability that prevented him from travelling in public transport, the proposed employment, which would have required a one-and-a-half-hour commute, was found to be unsuitable; his ability to travel to and from work was considered as part of the evaluation of suitability of the proposed employment.⁶⁶ However, the Québec appeals tribunal has stated a few times that the lack of transportation for a worker does not constitute an obstacle to the identification of suitable employment, since "it is the responsibility of the worker to take appropriate measures to search for and obtain suitable employment."⁶⁷

According to the Alberta WCB policy, to be suitable, the work must meet three criteria: "a) the work can be performed without endangering the worker's recovery or safety and the safety of others, b) the worker has the skills the work requires, and c) the work is reasonably available in a location to which the worker may reasonably commute or relocate" (WCB-Alberta 2021c, ques. 6). Even though the commute may seem to entail travelling a reasonable distance, the capacity of the worker to manage the daily commute has to be evaluated and taken into consideration by the Alberta WCB. In one case, the appeals tribunal found it was unable to determine if the position proposed was suitable, since it lacked information on whether the worker could take proper driving breaks during the commute because of his condition and could actually maintain this commute on a daily basis.⁶⁸ In another case, a suitable occupation as an oil field dispatcher was found to be unreasonable because it was not in the worker's locale and relocation of the worker was not reasonable

because of his family situation. Here, the fact that the worker maintained at all times a permanent residence in another province and was never a resident in Alberta seemed to play an important role in the appeals tribunal's decision.⁶⁹ It is worth noting that a few studies suggest that the rehabilitation mechanisms available through workers' compensation systems may not work as well when applied to workers living in rural areas and small towns (Lippel and Walters 2019, 337). In a study conducted in Alberta, the researchers concluded that Albertans living in rural areas had fewer modified work opportunities available and were less likely to be referred for rehabilitation than their urban counterparts (Lavoie et al. 2017).

In Ontario, the commuting capacity of a worker may be taken into consideration when determining if the proposed employment is suitable. In one case, the appeals tribunal had to evaluate whether the commuting asked of the worker in order to find suitable employment was reasonable, considering the functional limitations of the worker.⁷⁰ In NL, if the workplace is not the same when modified work is assigned, a "comparable work site to the pre-injury work site" will be evaluated. Pursuant to its policies, the WCB will consider if "travelling to the proposed job is within the normal parameters of travel expected of a worker" (WorkplaceNL 2023c, 2); the geographic location of a work site has to be considered. NL's WCB will evaluate if travelling to different job sites is the normal practice in the industry or was part of the employment contract. If an employer has numerous distinct plants or branches within the province, these have to be considered when looking at re-employment options (WorkplaceNL 2023d, 2024).⁷¹

It is also worth mentioning that in the four jurisdictions, the legislative frameworks foresee worker relocation as a vocational rehabilitation measure.⁷² In Ontario, if there is no suitable occupation in the local labour market for the worker, the labour market may be expanded to a broader market, and the WCB will pay for appropriate expenses associated with relocation (WSIB Ontario 2020). In Alberta, relocation might be deemed acceptable if the worker previously worked remotely.⁷³ If the worker no longer wishes to relocate, the WCB may calculate their benefits as though they had relocated and accepted employment (WCB-Alberta 2021b, ques. 4).

Levels of benefits for mobile workers. When a worker is injured and unable to work due to that injury, workers' compensation systems establish "wage replacement" mechanisms. Provinces have different wage replacement benefits for when a worker is unable to work. In Québec and Alberta, for example, it is set at 90 percent of the preinjury net income; in NL and Ontario, it is set at 85 percent. These benefits cannot exceed the annual maximum amount established by the WCB in each province. If the worker can return to their preinjury employment, this should allow them to regain their usual earnings. However, if a worker is left with a permanent injury and is unable to perform their preinjury job, suitable employment will be determined by the WCB, as discussed in the previous section. WCBs must assess the long-term consequences of the injury and determine a job that the worker can perform despite these limitations. An estimate will therefore be made of the worker's future earning capacity. In many jurisdictions, this process relies on assumptions regarding a worker's potential labour market participation after the injury, an approach that may generate important challenges and inequities for certain groups of workers. This process is called "deeming," and it is much decried by injured workers in some provinces, since it presumes that the injured worker has postinjury earnings from employment, whether those earnings exist or not (see, e.g., Harvesting Freedom 2022; see also general demands from IAVGO, n.d.).

This mechanism is particularly problematic when applied to workers from outside of Canada (especially the Global South), who are injured in Canada and return to their country of origin after the injury. These workers receive significantly higher salaries in Canada than they would in their countries of origin and, therefore, have demonstrated that earning capacity but will see their compensation payments evaluated as if they were still working in Canada in the deemed occupation, even if they have returned home and are unable to return.⁷⁴ As a result, their compensation benefits will not reflect their real loss of earnings, their earning capacity will never catch up to preinjury earnings, and no Canadian pension will be paid to offset the loss of earnings.⁷⁵

As in other jurisdictions, the Ontario WCB has often considered that the legislation did not intend to take into account labour markets that are outside of Ontario when determining the appropriate wage of the suitable job identified.⁷⁶ However, recent decisions rendered in Ontario by

the appeals tribunal concluded otherwise in the cases of four Jamaican workers injured while working in Canada through the Seasonal Agricultural Worker Program (SAWP). The appeals tribunal considered their ability to earn income in their actual labour market, Jamaica, and not based on the Ontario labour market.⁷⁷ The appeals tribunal decision led to an Ontario WCB policy change for SAWP workers in that province. As argued by Yachnin (2025, 102) in a recent review of this decision and policy change,

On May 15, 2024, the WSIB announced that, effective immediately, it will adjudicate SAWP workers' benefits and right to return to work support based on the reality of their home labor markets. Its President and CEO stated that its deeming policy toward migrant workers was "not fair" and "just wrong." The WSIB also committed that it would reconsider the decisions it had made in some 50 migrant worker claims dating back to 2007.

Unfortunately, the ruling only applies to those with permanent injuries and to those recruited through the SAWP program, not to IMWs coming into Ontario through other programs or to other provinces.

Interprovincial workers may face similar issues. Since Ontario's WCB policies are silent on the issue of wages that should be used when a worker resides in another province, the appeals tribunal has dealt with this matter a few times and applied the Ontario rates to determine the wage of a Newfoundlander who was working as a seaman in Ontario.⁷⁸ In Alberta, as is the case for modified work assignment prior to maximum recovery, if a worker moves out of the province after the injury, the WCB will estimate their earning capacity as if the worker had continued to work in suitable employment in Alberta,⁷⁹ reflecting the higher wages available in the Alberta labour market (that province has one of the highest maximum annual compensable earnings at \$102,100 as of January 1, 2023).⁸⁰ The residual earning capacity of a worker from NL or Québec injured while working in Fort McMurray will be evaluated in light of the Fort McMurray labour market. If flying in and out of Fort McMurray is no longer feasible because of the worker's disability, this might lead to a deemed earning capacity far higher than what they could realistically earn

in NL.⁸¹ Thus, these workers may be encouraged to seek employment in Alberta, although in reality, they are more likely to be able to find and hold a real job, as opposed to a deemed job, in their home jurisdiction.

Compensation for Commuting Accidents

As noted in chapter 1, in many European (for Germany, see Paridon, Paridon, and Bindzius 2007; for Spain, see López et al. 2015; for France, see Chappert and Therry 2017)⁸² and Asian (see, e.g., Bin 2014; Kang and Kwon 2011) countries, transit accidents occurring while the worker is travelling to and from work are compensable under workers' compensation legislation, but this is not the case in North America, where most categories of transit or commuting accidents are usually not covered. In Canada, in every province and territory, determination of compensability of commuting accidents has proved to be contentious. It is difficult to anticipate which circumstances will give rise to workers' compensation coverage and which will not, given the broad range of criteria that are considered in determining, in a given case, whether the injury occurred out of and in the course of employment.⁸³ Each province, except Québec, has explicit binding board policies on this issue, and there are hundreds of decisions rendered in specific cases, some recognizing compensability of an injury occurring during commuting, while others decline coverage, often in similar circumstances. Further complications arise because in any given case, it is sometimes in the interest of the worker that the act not apply so that the worker can sue those responsible for the injury, including the employer. Compensability as an issue is sometimes raised by defendants, notably employers, who seek to include commuting accidents in the purview of the definition of "work injury" to protect themselves from tort liability, while in other cases, it is the workers who seek compensation under the workers' compensation legislation. In Québec, no-fault automobile compensation legislation changes the process, as an injury will be compensable if an automobile is involved, regardless of the work relatedness of the injury.⁸⁴ Workers are therefore less often left without economic support, and employers may not be sued, whether or not it is a work-related injury.

Most WCB policies on this issue determine that injuries that occur while the worker is travelling to or from work are not compensable,

although, as we will see, there are exceptions. The policies are similar in all provinces examined here in that the determination of whether or not an injury arose out of and in the course of employment depends on a broad range of variables. If the commute, in light of the various applicable criteria, is seen to be work related, the usual duties of the employer under OSH legislation, such as the general duty clause, will be applicable. On the contrary, if the activity is judged not to be work related but rather an activity specifically attributed to a worker's personal decision to live at considerable distance from the workplace, then the legal obligations governing OSH protections will not be applicable to the commute. Also, specific legislation governing OSH in offshore petroleum activities explicitly includes the commute within the purview of the workplace.⁸⁵ It is also worth noting that the International Labour Organization's (ILO) Violence and Harassment Convention includes commuting to and from work.⁸⁶

Extended Daily Commutes

In the case of extended daily commutes in Canada, hazards associated with the commute itself are not usually considered to fall within the purview of the employer's duties of care. However, in some cases, appeals tribunals included the extended daily commute of a worker in the spectrum of "in the course of employment." In a specific case, Alberta's appeals tribunal concluded that an accident that occurred while a worker was returning to his temporary residence in east central Alberta after completing a one-day job in west central Alberta happened in the course of employment. The tribunal found it hard to imagine "this particular four and one half hour one-way commute to the job site constituted routine commuting."⁸⁷

In Ontario, the appeals tribunal will assess if the commute is a part of the conditions of employment or if the vehicle is under the control and supervision of the employer. In one case, the length of the drive to get to a remote work site wasn't considered excessive, and thus the appeals tribunal concluded that the driving was not a condition of employment.⁸⁸ In another case, a worker died in a motor vehicle accident while travelling from his home to a work site that was 360 kilometres away. The worker was paid a travel allowance and was travelling in a vehicle provided

by the employer. Though the appeals tribunal concluded the commute was not part of the worker's conditions of employment, it underlined that the employer had a detailed code of conduct relating to use of company vehicles. It was decided that the worker was travelling to and from work in a vehicle under the control and supervision of the employer and thus in the course of employment at the time of the injury.⁸⁹

In Québec, the different aforementioned criteria are assessed on a case-by-case basis when deciding whether a worker is in the course of employment. The usefulness of the activity in relation to the accomplishment of the employee's work will also be considered (Bruno, Martel, and Vallée 2018, 282); however, the fact that the worker is not travelling to their usual workplace but to another location may not transform the commuting into transportation controlled by the employer.⁹⁰ Once again, if the employer doesn't control the transportation mode or if they provide optional modes of transportation, it is less likely to fall within the scope of the compensation scheme.⁹¹ In one case, even though the worker was travelling to work with a colleague in the employer's van, the appeals tribunal rejected the claim because it considered the employer had no contractual obligation to provide the worker with transportation between their residence and the workplace. The mere fact that the vehicle was owned by the employer was not sufficient to establish that the worker was under the employer's responsibility and control when they suffered their injury.⁹²

When a worker is unionized, decision-makers may look to the collective agreement for indications of whether the parties intended for travel to be considered as part of the job. For example, clauses may require the employer to pay for transit to the worker's home in some circumstances.⁹³

Long-Distance Commutes in Remote Regions

Important changes have occurred over time in the practices of the extractive industries as they ceased to promote the creation of company towns built near the extraction project, choosing instead FIFO/DIDO arrangements and the provision of temporary housing for the workers in either camps or adjacent communities (Ryser, Halseth, and Markey 2020). Because the employer requires that its workforce temporarily travel to remote locations, one might expect that the employer would bear the

responsibility for the hazards associated with such commutes. In practice, things are more nuanced.

When long-distance commutes are required by work in remote regions, if transportation is organized by the employer, workers will generally be considered to be in the course of employment, even though they are travelling to or from work (WCB-Alberta 2023c; WorkplaceNL 2001; WSIB Ontario 2004c).⁹⁴ If the worker is returning to a work camp or heading home from the work camp,⁹⁵ the injury will generally be considered compensable if the transportation is under the control of the employer or part of the conditions of employment of the worker. In Alberta, a policy clearly states that when workers are travelling to take up employment at a distant location, coverage is extended when they have been assigned to the job, the distance from the worker's home to the job is such that the worker must temporarily reside at the job location, and the employer has made a commitment to pay for the travel time or expenses (WCB-Alberta 2023c, ques. 18). However, if workers are free to take whatever route they want or to leave or stay at the camp, the WCB might conclude that the worker's travel was "either personal in purpose and/or routine, but unrelated to his work duties."⁹⁶ In Québec, it was considered that the worker's transportation from his place of work (a construction site far from major centres) to his place of residence, organized and paid for by his employer, was an activity that was part of his working conditions.⁹⁷

The same logic operates in Ontario: The degree of control exercised by the employer over the transportation arrangements is a crucial factor. The appeals tribunal in that province has also taken into consideration the remoteness of the work site in order to assess whether the worker was or was not in the course of employment during the commute.⁹⁸ For instance, the appeals tribunal considered that getting to the work site was recognized as a term of the employment arrangement and ruled that a worker injured on his way to the airport was engaged in an employment activity.⁹⁹ In some cases, the long-distance commutes required by work in remote regions can be included within the purview of employment if obtained through either collective bargaining or individual contracts (nonunionized workers; for a detailed study of clauses in collective agreements in the construction sector, see Cake 2016).

Ownership of the Road

When the commute is not deemed to be a work-related activity, then duties set out in OSH regulatory frameworks are less likely to apply,¹⁰⁰ unless some other factor ties the commute to the workplace, as in cases where workers are required to commute on private roads owned by the employer. When the worker is travelling on a private road owned or leased by the employer, the injury will usually be compensable.¹⁰¹ In Ontario, appeals tribunal cases have found a road to be considered as part of the employer's premises based on aspects of control rather than outright ownership.¹⁰² NL's WCB's policy describes captive roads as a road that may be a public road but leads only to the premises of the employer and is under the control of the employer, meaning the employer is responsible for repair and maintenance of the road. In this case, the road is considered part of the employer's premises (WorkplaceNL 2001). In a Québec case, even though the road wasn't the employer's property, an accident that occurred on a logging road led to a compensable injury. The appeals tribunal considered that the worker had not yet reached his personal sphere, since he had to follow safety instructions, use the employer's vehicle, and transport his colleagues to the company's head office.¹⁰³

Workers with Multiple Workplaces or No Fixed Workplace

As for workers with no fixed workplace or multiple, transient workplaces, coverage will vary depending on the province in which the injury occurs. In Québec, if the worker who has multiple workplaces is injured while travelling to work from their home, going home after work, or going home for lunch, the injury will probably not be deemed to be work related, whether the worker is working for a temp agency¹⁰⁴ or providing home care services.¹⁰⁵ However, we have come across a few decisions where the worker was considered "in the course of employment" when an injury occurred prior to or after the workday. In one case, the appeals tribunal concluded that a home care worker was in the course of employment, since travelling to beneficiaries was part of her job duties.¹⁰⁶ A few other Québec cases also provided coverage for an injury sustained by workers when they were travelling between their home and the first client.¹⁰⁷ In

these cases, the fact that the use of the vehicle was incidental to the work performance played a major role in the assessment. However, an employer appealed the decision of the WCB, which initially accepted the claim of a home care worker who, while between two clients, decided to drive around town. The appeals tribunal ruled in favour of the employer and concluded that the worker exited the professional sphere.¹⁰⁸ Conversely, coverage will generally be provided if the worker is travelling between clients.¹⁰⁹

Policy and case law in Alberta and Ontario converge toward a slightly broader inclusion criterion to foresee the reality of work arrangements that inherently require travel as a work task.¹¹⁰ In Ontario, “the worker is considered to be ‘in the course of employment’ when the conditions of the employment require a worker to drive a vehicle to and from work for the purpose of that employment, except when a distinct departure on a personal errand takes place enroute” (WSIB Ontario 2004e, para. 3).¹¹¹ Nevertheless, in the case of a worker who was a cleaner and was injured when they stopped briefly for coffee, this was considered to be in the course of their employment.¹¹² In another decision, the appeals tribunal concluded that “it was irrelevant whether the accident happened while the worker was on her way to see her first client in the morning, travelling between clients, or on her way home from her last client.”¹¹³

In Alberta, workers are not covered during routine travel to and from the work site unless there are employment obligations or duties associated with the travel, regardless of the remuneration received (WCB-Alberta 2023c, ques. 3). In one case, the appeals tribunal concluded that the travel to the first client of the day was an expected part of the worker’s duties, and thus compensable, because “when there are employment obligations or duties associated with the travel, workers are covered during routine travel to and from the worksite.”¹¹⁴

However, home care workers in NL are not covered for transit accidents to, from, or between clients according to a study by Fitzpatrick and Neis (2015, 58):

Homecare workers employed by an agency meet the definition of “worker” and are eligible for workers’ compensation if they are injured on the job while performing tasks approved by their

homecare agency. Homecare workers injured while commuting between home and work are ineligible for compensation, but those injured while travelling for work are eligible. It is less clear whether workers injured while travelling between workplaces would be eligible for compensation. If homecare workers are injured while commuting between home and work when they have down time, such as when they work split shifts, they are not eligible for compensation. Conversely, full-time NL community nurses are likely to be eligible for workers' compensation if they have an accident while travelling directly from one client to another (between workplaces) because they are paid a mileage allowance and travel time when driving between clients' homes, as outlined in their collective agreement.

More generally, NL's WCB policies do not cover all possible situations, leaving legal gaps for different forms of mobility. These policies only address the exclusion of routine commuting, the transportation controlled by the employer, deviations from the expectations and conditions of employment, and so on and not the situation of workers travelling between clients (WorkplaceNL 2001).

In Canada, compensating for transit accidents is contentious. The circumstances that will give rise to workers' compensation coverage depend on a broad range of criteria. Injuries that occur while workers must undergo long-distance commutes to remote areas or while travelling on a private road owned or leased by the employer will generally be deemed compensable, but daily commutes are generally excluded from being considered in the course of employment. For workers with no fixed workplace or multiple, transient workplaces, coverage will vary depending on the province in which the injury occurs.

When looking at transit accidents, we can see clearly that the mobile labour force is, in multiple situations, excluded from access to adequate compensation.

Compensable Status of Accidents in Work Camps and Other Forms of Housing

Some mobile workers often live away from home for periods of time. Shifting policy boundaries about coverage arise when workers are injured in work camps or other facilities provided by the employer. In some provinces, policy is explicit with regard to injuries in work camps.

In Alberta, a WCB policy that was adopted in June 2023 provides that when, because of the nature of employment, some workers have no reasonable alternative of accommodation and stay in employer-provided residential facilities, injuries that occur in those facilities are generally compensable as long as the worker is making “reasonable use” of the facility and the injury arises from a hazard of the premises or equipment provided (WCB-Alberta 2018d, ques. 17). Prior to 2023, the Alberta WCB considered workers in these facilities to be “captive workers.”¹⁴⁵ Hence slipping in the shower,¹⁴⁶ receiving an electrical shock in the residential facility,¹⁴⁷ or being assaulted by a roommate¹⁴⁸ are all situations that have been deemed compensable. The hazard must not, however, be introduced by the worker.

The hazards of residential facilities are not considered to be employment related if the worker lives in “employer-provided premises with the same rights and privileges as those which normally exist between landlord and tenant” (WCB-Alberta 2018d, ques. 17). When a worker accepts a job in a remote location and establishes a temporary residence, the worker does not have coverage while occupying the temporary residence or for the routine commuting between there and work, regardless of the type of temporary residence (e.g., trailer, motor home, motel, hotel, or private residence). This is the case even if the worker is paid a living-out allowance, as the worker is not considered to be under the employer’s control while occupying the temporary residence (WCB-Alberta 2023c, ques. 18).

In NL, policy defines “captive workers” as workers “who, because of the circumstances and nature of their employment, have no reasonable alternative to living in an employer-provided facility” (WorkplaceNL 2001, sec. 1[f]). This applies to workers living in remote or wilderness camp sites.

These workers are considered to have less control over their environment, and coverage is more comprehensive. Therefore, unlike other situations, injuries that occur during leisure or recreational activities may be an extension of employment if the injury results from a hazard of the equipment or facility, such as loose flooring or employer-provided equipment that fails (WorkplaceNL 2001, sec. 1[f]). If the employer provides a fitness facility, the captive worker who is injured while making a permitted and reasonable use of the facility will be covered (sec. 1[g]).

In Ontario, coverage extends to injuries occurring in such places as hotels when the employer is paying the worker's expenses. The worker will then be covered should they suffer an accidental injury at any time while engaged in reasonable acts in the hotel, such as dining in the restaurant and using washroom facilities.¹¹⁹ The WCB policy seems to have been broadly interpreted, with decision-makers concluding that workers who rented a room near the work site were covered.¹²⁰ Ontario case law has generally determined that workers who are required to sleep away from their own homes for work-related reasons are in the course of their employment at the time of an injury, even when they are not performing work-related tasks. However, "travelling workers have been found not to be in the course of their employment where the worker's activities at the time of the injury have introduced a significant personal element," such as visiting a friend.¹²¹ Ontario also has a policy that applies to "foreign agricultural workers," which provides that these workers are covered during periods of leisure and meals and while sleeping in employer-provided quarters (WSIB Ontario 2009).

In Québec, decisions on the compensable status of injuries occurring in employer-provided housing are not consistent. The appeals tribunal will consider if the event has sufficient ties with the particular work conditions,¹²² but the mere fact that an injury occurred in a camp used for an employer's activities is not sufficient to tie the injury to the course of employment.¹²³ For example, in the case of a worker who fell on her way to the site cafeteria after finishing her day, the appeals tribunal concluded the injury did not occur during work. They concluded that even if she was still being paid, there was no longer a relationship of subordination with the employer and that the purpose of the activity was not work related. The appeals tribunal assimilated the fact that the worker was

residing in a camp, on a remote work site, to a “life condition” and not a “work condition.”¹²⁴ Conversely, the isolated environment and the difficult working conditions can make the injury compensable.¹²⁵

As Lippel and Walters (2019, 332) point out, some WCBs seem to treat injuries occurring in living facilities during a business trip differently from those incurred in living facilities provided to industrial workers:

This distinguishes regimes governing gold-collar mobility from those applicable to blue-collar mobility, yet we see no legal justification for these distinctions which systematically favor gold-collar workers who benefit from a broader interpretation of the concept “arising out of and in the course of employment.” Distinctions appear to be arbitrary and the boundaries between compensable and non-compensable injuries shift according to circumstances and sometimes depending on type of mobile work.

There are some circumstances where a transit accident is likely to be covered by all workers’ compensation legislation—for example, an injury occurring while the worker is on a business trip¹²⁶ or an overseas mission prescribed by the employer.¹²⁷ As policies in Ontario,¹²⁸ Alberta,¹²⁹ and NL¹³⁰ show, these workers remain continuously in the course of their employment, except when a distinct departure from the professional sphere is shown.¹³¹ The Québec case law on this matter is clear that there is not one criterion that could apply to all circumstances, and the facts of every case have to be considered. Thus, in one case, a worker was injured in his hotel room, and the appeals tribunal concluded there was a relationship of subordination given that the employer chose and paid for the hotel where the worker had to reside during the business trip.¹³² However, the mere fact of being, at the time of the incident, in a hotel room paid for by the employer may not necessarily be sufficient to assert that the purpose of the activity was related to the employer’s activities.¹³³ A flight attendant injured on the stairs of a metro station in Paris while he was on a layover was injured in the course of employment, according to the appeals tribunal.¹³⁴

Conclusion

This chapter explored workers' compensation-related policies and practices, case law, and appeals tribunal decisions in four Canadian provinces, identifying multiple challenges and ambiguities related to filing for and accessing workers' compensation and its benefits in the context of inter-jurisdictional mobility, commuting, and living at work. As argued by Lippel and Walters (2019), although Canada's provincially and territorially based no-fault workers' compensation regimes are governed by an interjurisdictional agreement designed to ensure workers will have access to workers' compensation when they work in another jurisdiction (assuming their occupation is not excluded from workers' compensation in that jurisdiction), some of these workers can "fall through the cracks" of the regulatory schemes. It is clear that, in some cases, a work injury could have been covered in a given jurisdiction, but access to compensation was delayed or denied because compensation authorities considered they had no jurisdiction to adjudicate the claim (330). Furthermore, "definitions of compensable injuries and diseases differ between provinces, and levels of benefits may also differ. These are complex regulatory systems that are not easy to navigate even for specialists. When workers are mobile, complexity can be exponential as there are interjurisdictional issues that potentially compound the problems raised by a given claim" (329). Lippel and Walters—and our own investigation—also identify issues with access and benefits for those living and working within the same jurisdiction, including "assignment of modified work after injury and before maximum medical recovery, determination of benefits, access to social and vocational rehabilitation, and access to justice issues. All themes are inter-related, for example failure to take up proposed modified work will compromise the right to benefits" (329).

Finally, as argued by Lippel and Walters (2019), access to benefits is linked to medical evaluations, to which access and acceptance by workers' compensation agencies are mediated by ERGM, as is the case for the level and duration of benefits. They identify three issues with benefits, including the amount payable in a given jurisdiction, the risk of benefit suspension when workers don't accept employers' options for modified work, and, for workers unable to return to their previous job, the ways the residual

benefits to which they are entitled (the difference between workers' compensation benefits and what workers' compensation deems they could be earning) are calculated based on wages available in the labour market where the injury occurred (335). This is particularly challenging for inter-jurisdictional workers and IMWs who travel from low-wage to high-wage areas for work, but it can also affect those who live in rural areas within the same jurisdiction where they were working when injured.

This chapter touched on IMWs and workers' compensation issues, but chapter 5 will deal with these issues in more depth as part of a larger discussion of OSH and IMWs. We also did not examine the relationship between mobility as work and workers' compensation with respect to transportation, seafaring, fishing, and ride-hailing/gig delivery workers. As noted in chapter 1, these sectors are all associated with many hazards and high injury and fatality risk. In some cases, as with long-haul trucking and seafaring, they entail interjurisdictional mobility, and as indicated in research on seafarers on the St. Lawrence Seaway, some commute long distances to engage in mobility as work (Shan and Lippel 2019; Shan and Neis 2020). When injuries happen at work in these sectors, access to workers' compensation should be more straightforward than with commuting to work, and there should be no ambiguity about off-duty injuries, but this needs to be examined. Access to coverage is likely more variable in the case of self-employed transportation workers, for gig ride-hail and delivery workers who are treated as self-employed by platform owners, and for fishermen who are excluded from coverage in some jurisdictions (Tran and Sokas 2017; AWCBC 2024).

Given rotational work, whether rotations consist of several days on the road or at sea or are a feature of long-haul trucking, rail work, and some seafaring and aviation work, it is likely that there are similar challenges to the provision of reduced hours or modified work in these sectors. While this requires more research, long shifts, high rates of overtime and piece work in trucking and fishing, in addition to the challenge of working on moving platforms, could also constrain RTW and contribute to longer periods on disability (Ju and Belzer 2024; Shan, Ochs, and Prakash Yadav 2023). Delayed RTW could also increase the risk of termination of benefits and deeming in these sectors.

Unfortunately, there appears to be very little research on workers' compensation and RTW in these sectors in Canada and globally. Some ongoing Canadian research on maritime workers' access to compensation and RTW has identified potential conflicts with the federal marine medical certificate requirement for seafarers and their access to compensation in situations where the WCB rules they can return to work but doctors won't renew their medical certificate, potentially leaving them without employment and compensation (Shan et al. 2025). This may also be the case among those truckers in Canada and elsewhere who require medical certificates. These certificate requirements are linked to their employment in transportation sectors and the public health risks associated with accidents in these sectors. US and Canadian studies indicate truckers tend to underreport opiate use in certificate renewal medical appointments, for instance, even though these may be prescribed for work-related injuries. Furthermore, medical surveillance may be relatively weak within Canada's trucking sector given reliance on general practitioners rather than specially trained health care workers (Scholl, Thiese, and Handy 2022; Johnson, Terry, and Vingilis 2022).

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5 International Migrant Workers

Every year, many thousands of international migrant workers (IMWs) are hired by Canadian employers through temporary migration programs. In addition to the fact that their length of stay in Canada will be limited and predefined under these programs, restrictions will also be placed on their occupational mobility within the Canadian labour market.¹ Formally, IMWs can access labour rights just as any other worker. Nevertheless, while the temporary nature of the employment can, in itself, be a source of insecurity, restrictions on the occupational mobility of IMWs and their protean dependence on their employers can also generate challenges with regard to the effectiveness of occupational safety and health (OSH) regulation. Moreover, IMWs often have a limited understanding of their labour rights and the institutions that enforce them (for an overview of issues, see Sargeant and Tucker 2009; Marsden 2019; Vosko, Tucker, and Casey 2019).

IMWs have been the subject of a broad range of studies, including on the OSH challenges that are represented by this type of work, although most studies have focused on agricultural migrant workers (Salami, Meherali, and Salami 2016) and live-in caregivers (Hill et al. 2019; Vahabi, Wong, and Lofters 2018; Vahabi and Wong 2017; Robillard et al. 2018; Malhotra et al. 2013; Radio-Canada 2023a).

In this chapter, we will give a brief overview of the programs allowing employers to hire IMWs. We will then examine a range of general challenges that some IMWs are likely to face with regard to the effectiveness of OSH and workers' compensation regulation and policies, including when injured at work, as well as specific challenges associated with seasonal agricultural and live-in caregiving work. We will not specifically address the overarching challenge of cultural integration of these workers into the Canadian workforce and the frequent ostracizing of the workers by colleagues at work and in communities where they are living. Nevertheless, the psychosocial hazards associated with social exclusion must not be neglected when reflecting on the health effects of these programs (Foster and Taylor 2013; see also Tucker 2017). We will conclude the chapter by looking at the possible responses that could, at least in part, improve OSH regulatory effectiveness and redress the structural vulnerability of IMWs.

Temporary Migration Programs in Canada: An Overview

In Canada, a foreign national may be authorized to work in Canada either as a permanent resident or as a temporary resident.² A permanent resident is "a person who has been granted permission to stay permanently in Canada," whereas a temporary resident is only authorized to stay in Canada for a limited period. While a permanent resident has access to similar advantages as Canadian citizens, including unlimited access to the Canadian labour market as well as occupational mobility, a temporary resident's access to the Canadian labour market and state services is more tightly regulated through migration programs.

IMWs can access the Canadian labour market through two main migration programs: the Temporary Foreign Worker Program (TFWP) and the International Mobility Program (IMP). Both programs aim at filling Canadian employers' labour needs for a short period of time (IRCC 2022). In 2024, Canada issued around 192,240 work permits under the TFWP and 719,280 under the IMP (Lu and Hou 2023; IRCC 2017a, 2017d).

IMWs authorized to work in Canada will receive a work permit issued by Immigration, Refugees and Citizenship Canada (IRCC), which defines the conditions of employment (type of work, employer, location, and

duration; Service Canada 2021). Work permits can be divided into two categories: closed work permits and open work permits. A closed work permit will only allow the IMW to work for a predesignated employer, with the location and duration mentioned on the permit (Service Canada 2021). Thus, these IMWs' occupational mobility is limited, as they will need to obtain a new work permit if they wish to change employers. An open work permit is not tied to the employer; therefore, these IMWs have greater freedom of movement within the Canadian labour market (Service Canada 2021). Nevertheless, these permits have a limited duration and, when they expire, can lead the IMW to be legally excluded from the Canadian labour market.

Temporary Foreign Worker Program

The TFWP is one of the two main federal programs under which Canadian employers can hire IMWs. Its main objectives are “to facilitate economic growth by responding to labour market needs, while ensuring a balance is kept between the interests of businesses and those of the Canadian workforce” (HUMA 2016, 1). The TFWP encompasses various other sub-programs, including the agricultural stream, the Seasonal Agricultural Worker Program (SAWP), the Global Talent Stream (GTS), the high- and low-wage stream, and the in-home caregiver stream (ESDC 2024b). Thus, Canadian employers can hire foreign workers for any legal employment as long as they comply with the program's requirements.

Under the TFWP, Canadian employers are authorized to hire foreign workers only when they cannot fill positions with Canadian citizens or permanent residents (IRCC 2023a). Thus, they are required to submit a Labour Market Impact Assessment (LMIA) application before they can hire an IMW.³ The LMIA is a document issued by Employment and Social Development Canada (ESDC), which certifies that the IMW is filling a labour shortage and that no other Canadian worker or permanent resident is available to fill the position. While the application for an LMIA differs slightly according to the subprogram of the TFWP, obtaining this LMIA generally requires employers to demonstrate they have made adequate efforts to advertise the position and have tried to recruit Canadian citizens or permanent residents.

After the LMIA application is approved, employers must then provide a copy of the LMIA letter as well as a mutually signed employment agreement in order for the worker to apply for a work permit at IRCC prior to the LMIA expiry date (for the requirements after applying for an LMIA for the high- or low-wage stream, see ESDC 2023a). IMWs under the TFWP will receive a closed work permit, the duration of which will vary depending on the program (usually from eight months to three years). An extensive literature has highlighted the effects of closed work permits on the precariousness and vulnerability of IMWs (Weiler 2018; Vosko 2022).

Regarding OSH, employers must follow employment laws, provide training to IMWs to allow them to perform the work safely, and give IMWs appropriate protective equipment (ESDC 2023d). Moreover, employers cannot force IMWs to perform work that is dangerous. IMWs have the right to refuse work that they think is dangerous until both the IMW and the employer agree that the danger is removed or the problem no longer exists or the IMW has received the proper equipment and training (ESDC 2023d). If workers are injured or sick because of their work, they are allowed to claim workers' compensation benefits if they are employed in a sector covered by workers' compensation in that jurisdiction (ESDC 2023d).

On September 26, 2024, the Canadian government imposed new restrictions on employers hiring IMWs in low-wage positions. It tightened the eligibility criteria to reduce the use of IMWs (Emilien and Jalette 2024; Radio-Canada 2024). Low-wage LMIA applications were no longer processed in metropolitan areas where the unemployment rate was 6 percent or higher. In some regions, the initial enterprise-level 20 percent IMW limit for low-wage positions was reduced to 10 percent (ESDC 2024b). The IMW cap on the proportion of low-wage positions in the construction and health care sectors was reduced to 20 percent regardless of the geographic region. In addition, the maximum period of employment for low-wage positions was reduced from two years to one year. LMIA applications submitted for low-wage positions in the Montréal area were suspended for almost a year, from September 3, 2024, to November 30, 2025. This refusal to process applications also applied to Laval from March 3 to November 30, 2025. These federal government measures were intended to encourage companies to hire workers already present in Canada (Radio-Canada 2024).

Seasonal Agricultural Worker Program

The SAWP is a stream of the TFWP that operates based on bilateral agreements between Canada and participating countries. Under the SAWP, Canadian employers are authorized to hire workers only from participating countries: Mexico and Caribbean countries (ESDC 2023b). Employers can hire foreign workers only for occupations related to primary agriculture or for occupations listed on the national commodity list. As for other streams of the TFWP, these employers need to apply for an LMIA.

One specificity of the SAWP is that participating foreign governments are in charge of recruiting and selecting migrant workers, maintaining a pool of qualified workers, and making sure that workers have the necessary documents to apply for a work permit (ESDC 2023b). IRCC issues closed work permits for SAWP workers for a maximum period of eight months and with a minimum of 240 hours of work within six weeks (ESDC 2023b). Agricultural migrant workers' transfer from one employer to another is authorized, provided the employer has the worker's consent and prior written approval from both the foreign government representative in Canada and ESDC/Service Canada. Additionally, under the SAWP, employers must provide IMWs with adequate, suitable, and affordable housing that has been previously inspected by the appropriate authority. Deductions from workers' pay for this housing are strictly regulated according to the province and must be listed in the employment agreement.

International Mobility Program

The second major migration program in Canada is the IMP (IRCC 2022). The IMP "is deemed to create significant social, economic, or cultural benefit to Canada, or where the work creates reciprocal opportunities for Canadians and permanent residents to work abroad" (IRCC 2022). Under this program, employers are exempt from the requirement to obtain an LMIA. The program encompasses a variety of streams, among which are the postgraduate work permit program, intracompany transfers, International Experience Canada, spouses of skilled workers and students, and so on (IRCC 2023b; O'Donnell and Skuterud 2022). Under

the IMP, participants can receive either an open work permit or a closed work permit depending on the stream of the program. Between 2002 and 2024, the number of permits issued under the IMP (many of which do not require a labour market assessment) grew from 69,275 to 719,280, whereas permits issued under the TFWP (i.e., involving labour market testing) grew from 64,025 to 192,240 (Lu and Hou 2023; IRCC 2017a, 2017d). In the IMP, family members such as spouses or common-law partners of international students can also apply for open work permits (IRCC 2024b). However, in January 2024, IRCC (2024a) introduced changes to the eligibility criteria. While previously available across all levels of study, including undergraduate and college programs, open work permits for spouses were subsequently limited to those whose partners were enrolled in master's and doctoral programs.

While IMWs are theoretically protected by Canadian labour laws, the literature shows that in practice, the exercise of rights is compromised by their precarious migratory status (Gesualdi-Fecteau 2015; Hastie 2017; Strauss and McGrath 2017; Cedillo, Lippel, and Nakache 2019; Hanley et al. 2020; Depatie-Pelletier and Dumont Robillard 2013). Some workers are reluctant to exercise their rights for fear of losing their jobs and being deported; others avoid exercising their rights to avoid jeopardizing their chances of obtaining permanent residence. Closed permits tie the worker to the employer, which can accentuate the power imbalances between the employer and the worker. This is especially true for workers in low-wage positions hired under the TFWP (Strauss and McGrath 2017; Wright, Groutsis, and van den Broek 2017). Employers' control over IMWs is particularly problematic when the closed work permit is combined with the requirement to reside at the workplace, as is generally the case with SAWP workers. In this case, the risk of IMWs becoming geographically isolated and controlled by the employer is increased (Depatie-Pelletier and Dumont Robillard 2013).

A discussion of the effectiveness of OSH regulation in relation to IMWs needs to focus on both the type of work and the characteristics associated with the status itself. Specific programs encourage recruitment of IMWs in specific sectors, while others encompass all sectors where there is a labour shortage (for a larger discussion on "justice gaps," see Marsden, Tucker, and Vosko 2021; Marsden 2014, 2019; Gesualdi-Fecteau 2014, 2015). While

specific hazards are associated with sectors where a large number of IMWs are hired (e.g., agricultural work, health care, live-in care work, trucking, and construction), regulatory challenges are associated not only with the jobs themselves but also with the precarious migratory status of IMWs, regardless of the work undertaken.

In the next section, we will discuss some challenges that IMWs in low-wage positions are likely to face when seeking full protection from the OSH regulatory framework. Whether IMWs are hired through the IMP or the TFWP, workers in low-wage positions are likely to work in a vast array of sectors. Several studies have looked at the reality of agricultural migrant workers and caregivers, but IMWs are also likely to work in hospitality, food processing, fisheries, forestry, and construction (Lu 2020). While all IMWs in low-wage positions grapple with intersecting constraints on regulatory effectiveness, including precarious employment and immigration status, and constraints on autonomy, control, voice, and visibility to OSH regulators, many also experience challenges related to gender and race. Agricultural migrant workers and caregivers are likely to face specific challenges.

Challenges

The rules set by temporary migration programs make IMWs unable to claim job security.⁴ Like their stay, their employment contract is necessarily temporary and of a fixed duration. Thus, their job insecurity is inextricably linked to the precariousness of their migratory status. Although IMWs in low-wage positions can rarely hope to immigrate permanently to Canada, as McLaughlin and Hennebry (2013) point out, given the socioeconomic conditions in the countries of origin of these workers, they are likely to develop a strong economic dependence on this temporary employment. At the same time, IMWs with closed permits are, however, deprived of the ability to “vote with their feet”—that is, to change jobs when working conditions prove unsatisfactory.

General Challenges International Migrant Workers Can Face: A Review

In this section, we will explore the challenges that IMWs in low-wage positions are likely to face. This will be followed by a discussion of the specific challenges confronting seasonal agricultural migrant workers and caregivers. IMWs may face an accumulation of vulnerabilities when it comes to OSH—namely, precarious immigration status, limited public health care entitlements and access, precarious employment, low income, and racial discrimination (Hanley et al. 2014; see also Boocock et al. 2011). Several categories of IMWs in low-wage positions are not allowed to migrate with their families. The inability to benefit from family reunification makes these IMWs more “available” and generally more likely to work long hours.

Employer-provided housing may increase the degree of control that the employer can exercise over these workers outside the periods of formal availability. Living at the employer’s home or in the vicinity of the work site can have the effect of “blurring” the line between work and nonwork time.

Many IMWs in low-wage positions, although this is not universally true, do not speak the language of their employers, be it English or French. Some share the language of a majority of their colleagues, particularly the agricultural migrant workers who are recruited from the same geographic areas: the Caribbean and Central America (Hanley et al. 2019, 67). In other cases, workers from a variety of countries may find themselves in a workplace where there is no common language shared by most workers. Even when most of the migrant workforce shares a common language, this is rarely the language of the community in which they are working, nor is it the language of the regulator and the provider of tools and documentation to assist in training (Premji, Messing, and Lippel 2008).

On the one hand, language barriers might expose workers to additional hazards, as safety instructions are not necessarily provided in a language understood by workers, making IMWs more vulnerable to occupational injuries and diseases (Thibault-Leblanc 2021, 169; Premji, Messing, and Lippel 2008; Dabrowska-Miciula 2023, 79; Preibisch and Otero 2014; Cedillo, Lippel, and Nakache 2019; Sargeant and Tucker 2009; Gravel

et al. 2014; Caxaj and Diaz 2018). On the other hand, in many provinces, OSH public legal education tools to better understand the applicable regulatory framework are not available in the language of the worker, and there is an important variation between provinces in this regard (Gravel and Premji 2014; Kosny et al. 2014). As Kerry Preibisch (2004) points out, IMWs are therefore generally deprived of community ties and have limited access to forms of “social membership.” This linguistic and geographic isolation can constitute the basis for social isolation, contributing to the marginalization of these workers from their host community.

In sum, precarious immigration status and the related conditional and temporary nature of their stay, the communication difficulties for workers who do not speak French or English, and their lack of financial resources are all factors that may contribute to a lack of awareness of rights and of the institutions responsible for their implementation. These constraints will influence when and how IMWs will resort to drawing on OSH regulatory protections and accessing workers’ compensation regimes.

The key regulatory instruments in all provinces rely on workers’ participation in the protection of their health, and the right to refuse dangerous work is a cornerstone of OSH law. McLaughlin, Hennebry, and Haines (2014), in discussing OSH legislation in Ontario and based on their findings from an empirical study, suggest that the design of legislation in that province with regard to agricultural migrant workers makes it unlikely that workers would have access to mandatory health and safety committees in their workplace. In addition, fear of being sent home can mean that IMWs will not speak up.⁵

OSH legislation also requires that workers be provided with adequate training and information about the hazards to which they are exposed,⁶ adequate protective equipment, and, in some provinces, access to occupational health care services. Most OSH laws assume, and require, that workers participate in the identification of hazards and their elimination, and when that is not the case, regulatory failure may easily ensue. While some regulators attempt to provide enhanced services to IMWs, they are not necessarily successful. Interactions with public institutions are sometimes in themselves a source of stigma and intimidation for IMWs.

The IMP is currently the primary program through which IMWs enter Canada (IRCC 2022; Coderre and Nakache 2021; O’Donnell and Skuterud

2022). This program encompasses a variety of subprograms with varying bilateral agreements and regulations, thus leading to differences in admission and employment conditions in Canada (IRCC 2022; Coderre and Nakache 2021). The International Experience Canada subprogram enables young citizens from designated countries to enter Canada through the Working Holiday, Young Professionals, or International Co-op (Internship) programs (IRCC 2023c). Studies reveal that beneficiaries of IMP programs also experience precariousness and insecurity in both their employment and their residency status (Vosko 2023; Coderre and Nakache 2021).

The willingness of the OSH inspectorate to conduct preventive inspections seems limited, at best. In most provinces, this inspectorate does not have a precise understanding of where the IMWs are employed, limiting their capability to run extensive information campaigns or to conduct preventive inspections. In some provinces, however, the OSH inspectorate has partnered with specific consulates to provide education to IMWs about health and safety standards—systemic measures are still awaited (for an overview of health and safety resources available in various Canadian provinces, see Agnieszka Kosny and Marni Lifshen 2011, 57).

The enforcement of OSH regulations and constraints on access to the workers' compensation regime are largely based on worker-initiated complaints and compensation claims. Most Canadian provinces fail to routinely track complaints made by migrant workers: Only Alberta, Saskatchewan, and Newfoundland and Labrador (NL) were said to do so in 2014 (Hildebrandt 2014; this has been identified as an issue in other regional contexts, such as in Europe [Guldenmund, Cleal, and Mearns 2013]), and not surprisingly, research has shown that IMWs underreport compensable injury (Cedillo, Lippel, and Nakache 2019; Hanley et al. 2014; Yanar, Kosny, and Smith 2018; Preibisch and Hennebry 2011).

IMWs will encounter a broad range of obstacles if they seek to obtain just compensation. In a study that included employers of IMWs, employers themselves acknowledged that workers were afraid to declare their injuries for fear of losing their jobs or being deported (Gravel et al. 2014).⁷ As shown by Basok, Bélanger, and Rivas (2014), IMWs often adopt calculative and reflexive practices to avoid deportation and secure their own employment. And a recent study of the return-to-work (RTW) process

after injury among migrant agricultural workers in Québec and Ontario found evidence of workers pressured to RTW prematurely, bureaucratic and other challenges dealing with their relevant workers' compensation board (WCB), and that injury and failure to RTW negatively impacted their long-term well-being (Mayell et al. 2025).

The fear of not being called back explains the reticence of workers to declare injuries and to speak up about hazardous working conditions and poor housing conditions (Salami, Meherali, and Salami 2016; Gallié, Ollivier-Gobeil, and Brodeur 2017; see also Allen 2017). It goes without saying that undocumented migrant workers are even more vulnerable to denunciations by anyone, including the employer or their fellow workers (on the specific vulnerabilities that undocumented workers face with regard to access to health care and OSH schemes, see Hanley et al. 2014; Campbell et al. 2014; Magalhaes, Carrasco, and Gastaldo 2010; Yu et al. 2020; Cedillo, Lippel, and Nakache 2019; Alberta Workers' Health Centre 2017; Foster and Luciano 2020).

Previous research has also shown the impact of the recruitment process on the strategies of IMWs during their employment in Canada (Gesualdi-Fecteau et al. 2017). Indeed, most IMWs arriving in Canada are recruited through intermediaries operating abroad who are responsible for the recruitment and allocation of IMWs to Canadian employers. The costs associated with the recruitment process, such as medical examinations, visa fees, health insurance, or other administrative costs, are typically charged to the worker. In many cases, workers resort to taking loans from relatives or financial institutions to cover these costs. As recruitment intermediaries have considerable influence over the recruitment process, workers must abide by the fees and procedures imposed by these entities. If IMWs are indebted during the recruitment process, they are very unlikely to voice their concerns about working conditions out of fear of jeopardizing their current employment, being deported, or being blacklisted from future employment opportunities and unable to pay off these debts.

A study conducted by Cole et al. (2019) confirmed that IMWs face structural challenges related to accessing health services, including lack of adequate translation/interpretation services and information about insurance coverage, scheduling conflicts between clinic hours and IMWs'

availability, and difficulties in arranging follow-up tests, treatments, and examinations. In Canada, eligibility for public provincial health care varies among IMWs (Hanley et al. 2014). Although most programs grant these workers access to publicly funded health care, their temporary ineligibility during the initial three months of employment in specific provinces presents a significant obstacle (Sikka, Lippel, and Hanley 2011; Hennebry, McLaughlin, and Preibisch 2016). During this period, employers are required to offer medical insurance for their employees; however, the associated costs can be prohibitive for many. Moreover, reliance on private insurance can also present challenges, as, in some instances, health care providers have rejected private insurance for IMWs (Hennebry, McLaughlin, and Preibisch 2016). Access to provincial health care is further complicated by the fact that IMWs rely on employers to provide them with the health cards necessary for accessing provincial health care services. Research reveals that despite having legal access to publicly funded health care, in some cases, very few IMWs actually possess the necessary provincial health cards (Hennebry, McLaughlin, and Preibisch 2016).

IMWs' access to health care is sometimes jeopardized in other ways as well. In some cases, they are denied access to a health care professional by their employers and their agents. In other cases, the employer's agent sometimes accompanies the worker when attending a medical exam, which raises issues of confidentiality and privacy (Hennebry, McLaughlin, and Preibisch 2016). A Québec study of agricultural migrant workers found that very few knew they were covered by workers' compensation and could access free health care (Amar et al. 2009, 22). Language differences and long hours of work are also often cited as limiting such access (Hennebry, McLaughlin, and Preibisch 2016).

IMWs who develop an occupational illness and go back to their home country may lose benefits because of the complexity of their situation, where "medical and administrative continuity is blurred" (Gravel et al. 2014, para. 76; our translation). Further complexity may arise when the illness develops only after IMWs have returned to their homelands, and they may have difficulty accessing benefits in the country where they contracted the illness (Temple Newhook et al. 2011). Investigations by journalists have shed light on the hardship IMWs may face when they are injured at work (Champagne 2023a). The fact that IMWs also generally

live in employer-provided housing adds another layer of complexity. For instance, while healing in Canada, the worker may have difficulties finding proper accommodation (Champagne 2023b).

Rapid consultation with a health care professional is one of the most critical factors in successful workers' compensation claims. In some cases, IMWs will prefer consulting a health professional in their countries of origin or turn to their social networks for health advice, such as help with self-diagnosis or tips on self-care (Hanley et al. 2014; for a review of the specific challenges that undocumented workers face, see Sikka, Lippel, and Hanley 2011). Health professionals are generally not trained to deal with IMWs. Some Québec health care professionals believe, erroneously, that these workers are not covered by workers' compensation or Québec's health insurance. When workers receive treatments, research has found that almost without exception, there was no follow-up; in one study, several workers explained that they never received results of X-rays or other tests (Hennebry, McLaughlin, and Preibisch 2016).

When an IMW is injured, transnational challenges can arise around continuity of care, as in some cases, IMWs leave Canada during / prior to receiving care (Cole et al. 2019).⁸ When a non-Canadian worker returns home after an injury and requires medical care as a result of an injury found by a Canadian WCB to be compensable, there has sometimes been litigation regarding the cost of health care outside of Canada.⁹ Also, medical evaluation may be problematic for IMWs when the worker returns home and can only access health care providers who are unknown to the WCB managing their claim. In this instance, credibility of medical opinions can be questioned, particularly when the opinion is not written in French or English. Furthermore, specialists may not be available in the home locality of the worker, whereas they are available in the province managing the claim (Lippel and Walters 2019, 335). Researchers Gravel et al. (2014) also emphasize that when IMWs return to their home countries after an injury, they may lose the benefits of compensation because of the complexity of the administrative and medical processes.

Despite contributing to employment insurance while in Canada, IMWs have trouble accessing benefits when their contract ends and they return to their home country (CBC News 2024).

If a worker who does not speak French or English manages to file a compensation claim in a timely manner, they may encounter problems understanding the documentation sent in response to the claim. The workers' compensation filing procedure is complex, with each province having a different procedure. There are documented cases where procedural confusion has led to workers missing deadlines to file a claim; a disproportionately high number of IMWs file their claims past the deadline when compared to other claimants (Allen 2017). Appeals tribunals may be sensitive to these obstacles and extend appeal deadlines,¹⁰ but the worker needs to know to ask and, ideally, needs to be there to explain why an appeal was late, something that is hard to do even when the worker is present at the hearing and very difficult to do after the worker has returned home.

Assignment of modified work for IMWs may be complicated by immigration rules, as work visas may not be compatible with the modified work assignment. For some workers, deportation will follow a work injury, and as Orkin et al. (2014, E196) mention, "There are perhaps no other Canadian occupational settings where workplace injuries and illnesses . . . result in employment termination and deportation without further medical care or income security."

The RTW process can also be jeopardized by the precarious migratory status of IMWs and language barriers. On the one hand, injured IMWs are likely to be repatriated prior to recovery and thus do not benefit from re-employment, retraining, and/or reintegration into the labour market (Hennebry and Williams 2015; Orkin et al. 2014; Yachnin 2025; Mayell et al. 2025).¹¹ On the other hand, language barriers are also likely to impair the RTW process (Mayell et al. 2025).¹² A study conducted by Premji et al. (2021) shows that workers who experienced language barriers had limited labour market opportunities. Interviews revealed that workers were often required to do jobs that were unsuitable (e.g., menial, not considerate of functional limitations, and requiring assistance that is not provided) and, in many cases, exacerbated the injury or caused reinjury. These workers reported difficulties negotiating their working conditions directly with their supervisor or employer because of the unequal power dynamics, to which language barriers contributed.

Specific Challenges Faced by Agricultural Migrant Workers and Caregivers

While agricultural migrant workers are likely to share similar OSH concerns as other groups of seasonal workers,¹³ several studies have examined the working conditions of agricultural migrant workers in Canada. In their review of the literature on the hazards to which farm workers are exposed, Preibisch and Otero (2014, 180–81) include “exposure to agrochemicals, plants, soil, insects, sun and climatic extremes; hazards posed by machines, vehicles, and confined spaces; and repetitive and stressful ergonomic positions” (see also Hennebry, Preibisch, and McLaughlin 2010).¹⁴ These authors conclude that occupational issues for this workforce are attributable to accidents, musculoskeletal disorders related to repetitive motion and poorly designed work methods, acute and chronic problems related to exposure to chemical and biological toxins, and transport-related accidents. Pesticide exposure and transport accidents were identified as significant hazards for horticultural workers employed in Québec (Gravel et al. 2014; see also Amar et al. 2009, 56–57),¹⁵ sometimes leading to fatal accidents.¹⁶ As we will discuss in chapter 6, research has also shown that agricultural migrant workers were disproportionately harmed by the COVID-19 pandemic (Caxaj, Tran, Mayell, et al. 2022, 98; see also Vosko and Spring 2022; Caxaj, Cohen, and Colindres 2022).

Access to the farms is challenging for those who serve as traditional sources of OSH information, including unions and inspectors (see Law Commission of Ontario 2012; McLaughlin, Hennebry, and Haines 2014; Hennebry and McLaughlin 2016; Basok et al. 2023). Furthermore, the agricultural sector is exempted from some regulatory protections in several provinces, including OSH protections as well as access to unionization (Sargeant and Tucker 2009).¹⁷

Regarding access to unionization, in Ontario, the Agricultural Employees Protection Act¹⁸ only provides basic rights for agricultural workers, such as freedom to join an employee association, assemble, and make representations. However, its protections do not extend to the right to collective bargaining (McLaughlin, Hennebry, and Haines 2014). In Québec, a superior court ruling declared the exclusion of agricultural workers from unionization rights unconstitutional.¹⁹ However, the *Loi*

modifiant le Code du travail à l'égard de certains salariés d'exploitations agricoles²⁰ only ensures basic rights for farm workers, granting them the ability to communicate concerns to their employer, who must listen, but it does not permit collective bargaining (Hanley et al. 2020; Soussi 2019). In NL, the Labour Relations Act²¹ regulating labour relations and collective bargaining in the private sector does not exclude agricultural workers. In Alberta, agricultural workers are excluded from the Labour Relations Code,²² which guarantees the right to form unions. Instead, farm workers are covered by the Farm Freedom and Safety Act.²³

Concerning OSH protections, in Ontario, farm workers were excluded from the Occupational Health and Safety Act²⁴ until 2006. This act guarantees rights such as to be informed about potential workplace hazards, to participate in addressing health and safety concerns at the workplace, and to refuse unsafe work (Vosko, Tucker, and Casey 2019; McLaughlin, Hennebry, and Haines 2014). Agricultural workers are covered by the Workplace Safety and Insurance Act,²⁵ providing access to workers' compensation benefits (McLaughlin, Hennebry, and Haines 2014). In Québec, agricultural workers fall under the protection of both the Act Respecting Occupational Health and Safety²⁶ and the Act Respecting Industrial Accidents and Occupational Diseases.²⁷ In NL, agricultural workers are not excluded from the Occupational Health and Safety Act²⁸ and the Workplace Health, Safety and Compensation Act.²⁹ Alberta only included the agricultural sector within the purview of its health and safety legislation in 2016. It was only after this inclusion that OSH regulators were mandated to consider hazards in that industry and the particular challenges associated with protecting the health and safety of IMWs. In Alberta, the Farm Freedom and Safety Act³⁰ outlines how legislation applies to farms and ranches. The Occupational Health and Safety Act³¹ sets the minimum standards for protecting waged, nonfamily farm and ranch workers, while the Workers' Compensation Act³² requires compensation coverage for farm workers.

Even where regulatory protections and training requirements exist, they are not adequately enforced, as can be seen from the findings regarding OSH training of agricultural migrant workers in BC (Preibisch and Otero 2014, 190). In Ontario, employers reported feeling under-supported by the state with regard to training in health and safety issues,

which they were required to provide to their agricultural migrant worker employees (Narushima and Sanchez 2014).³³

A study found that the repatriation rates varied between agricultural migrant workers in Ontario, depending on the country of origin, which suggests to the authors that consular practices may differ between countries providing labour (Orkin et al. 2014). This study provided a description of the types of injuries that led to repatriation to the worker's home country between 2001 and 2011. Only 13 of the 787 repatriations were at the request of the worker, with the 787 repatriations representing a rate of 4.62 repatriations per 1,000 workers. The diagnostic categories justifying repatriation were primarily medical/surgical and external trauma, with the most common health problems being musculoskeletal and digestive conditions and traumatic injuries.

While different categories of IMWs are likely to be dependent on their employer for housing, agricultural migrant workers and live-in caregivers will generally always stay in employer-provided housing, sometimes located at the work site. Employer-provided housing can expose these agricultural and caregiver migrant workers to further hazards and increase their dependency on the employer (Preibisch and Otero 2014, 189–90; Helps 2020). A 2017 Québec study documented poor living conditions of agricultural migrant workers (Gallié, Ollivier-Gobeil, and Brodeur 2017), and in 2018, there was a tightening of requirements imposed by ESDC (n.d.), which has been inspecting housing provided to agricultural migrant workers since 2014.³⁴ In North Carolina, where the quality of migrant farm worker housing is explicitly regulated, researchers found that violations of housing regulations were common (Arcury et al. 2012).

Some studies, to which we now turn, have focused on the specific OSH hazards and challenges faced by migrant caregivers in Canada (Hill et al. 2019; Vahabi, Wong, and Lofters 2018; Vahabi and Wong 2017; Robillard et al. 2018; Malhotra et al. 2013; Radio-Canada 2023a). These studies highlight the numerous OSH risks that can be intensified by the unique nature of the work carried out in isolated private residences and the challenges related to accessing OSH protections for this category of migrant labour.

The World Health Organization (2017, 43) recently published a report noting “a significant knowledge gap exists regarding the influences on migrant care workers’ health.” Nicole S. Hill et al. (2019) studied

the experience of migrant workers employed as live-in caregivers in Fort McMurray, Alberta. They identified four types of hazards: fatigue, psychosocial stress, physical hazards, and exposure to harassment and abuse. They underlined, using a multiscale (im)mobilities approach (399), the peculiar situation of these workers, where important transnational migration processes overlay a mix of mobility and immobility in regard to their employment. These workers participated in Canada's Caregiver Program (formerly known as the Live-In Caregiver Program) and came to Fort McMurray in order to care for the children of workers in the oil industry (399). They described to the researchers long hours of work and unpredictable schedules, depending on their employers' daily or weekly rotations and shifts (405); isolation, due in part to the remoteness of Fort McMurray; long, cold winters; and limited transportation options. Some reported violence and exposure to physical health hazards because of ergonomic conditions of work or exposure to chemical or biological hazards. These findings echo those of other studies that have identified a broad range of hazards (Malhotra et al. 2013), both physical and psychosocial (Vahabi and Wong 2017; Vahabi, Wong, and Lofters 2018), some stemming from vulnerability attributable to their isolation (Fudge 2011), such as violence and harassment (Robillard et al. 2018). Other hazards are intrinsic to the nature of the work, including exposures to cleaning products, pets, ergonomic hazards, biological hazards, and so on (Hanley et al. 2010).

Recent developments in regulatory protections for domestic workers include International Labour Organization (ILO) Convention 189 and Recommendation 201.³⁵ In Ontario, the Occupational Health and Safety Act³⁶ does not cover live-in caregivers and other domestic workers, but they are protected by the Workplace Safety and Insurance Act.³⁷ Until 2021, domestic workers were excluded from the purview of Québec's AIAOD,³⁸ although they are covered as employees by the Act Respecting Occupational Health and Safety.³⁹ In NL, both the Occupational Health and Safety Act⁴⁰ and the Workplace Health, Safety and Compensation Act⁴¹ include domestic workers. Until 2018, Alberta entirely excluded live-in caregivers and domestic workers from the ambit of its Occupational Health and Safety Act,⁴² and although changes have been made,

certain OSH rules, such as the Occupational Health and Safety Code, still don't apply to domestic workers (Hill et al. 2019).⁴³

Responding to Challenges: Best Practices

In recent decades, various avenues have been used to try to respond to the challenges that IMWs face. While many studies identify the same or similar challenges, there is less convergence when it comes to recommendations. In addition, priority issues vary considerably from province to province and from one category of IMWs to another. This section offers some high-level recommendations that seem to have achieved consensus support across Canada. In some cases, resorting to the courts will increase the visibility of OSH issues confronting IMWs. While generalizing best practices developed by different social actors (inspectorate, unions, employers, etc.) has been highlighted as an important avenue for change, addressing structural vulnerabilities sometimes requires changes in public policy. Sending countries have also put in place some measures to support their citizens.

IMW Occupational Safety and Health Issues in the Courts

In recent decades, IMWs and their allies have resorted to the courts to increase the visibility of injuries and deaths sustained by these workers. These strategies have been more or less successful depending on the case, but from a strategic litigation point of view, they have also sought to shine a spotlight on the realities of IMWs. The following subsection provides some examples of such cases while recognizing that several more could be discussed.

In 2013, Justice for Migrant Workers, an organization supporting the rights of migrant workers in Canada, filed a complaint with the Ontario Human Rights Commission to obtain a coroner's inquest following the death of an agricultural migrant worker (O'Toole 2013).⁴⁴

IMWs are often vulnerable to blacklisting and intimidation. For example, in BC, consular officials tried to undermine a drive for unionization of seasonal farm workers by preventing those favourable to the union from returning to Canada. This led to a series of complaints filed by the union at the BC Labour Relations Board and subsequent litigation by the Mexican government. The latter pleaded "state immunity" so that its behaviour

could not be scrutinized by the Labour Relations Board, an argument disallowed by the Court of Appeal.⁴⁵

After two workers were killed and two others were seriously injured, charges were laid against Sinopec Shanghai Engineering Company of Canada, leading to a conviction and a sentence that required the company to pay a total of \$1.5 million, including \$1.3 million destined to a “new program teaching temporary foreign workers about their rights when it comes to safety on the job” (*CBC News* 2013a, para. 7)—an illustration of ways in which creative sentencing can provide constructive support for vulnerable workers.

In Ontario, Industrial Accident Victims’ Group of Ontario (IAVGO), a legal clinic that provides free services to injured workers, led successful litigation on behalf of injured IMWs. As a result, the Workplace Safety and Insurance Board (WSIB) adopted a policy (applicable since January 15, 2018) that facilitates access to medical services in Ontario and informs agricultural migrant workers injured in Ontario that their health care in their own country will be paid (IAVGO 2018). As discussed in chapter 4, IAVGO also recently won a case before the workers’ compensation tribunal on behalf of four injured agricultural workers that overturned a long-standing WCB policy in Ontario. The tribunal concluded that the WCB “must evaluate these workers’ ability to return to work, access retraining, and receive compensation based on their labor markets in Jamaica—instead of based on fictional job prospects in Ontario. The tribunal also called out the need to consider systemic anti-Black racism in workers’ compensation law and policy” (Yachnin 2025, 96; see also Mayell et al. 2025).

A group of agricultural migrant workers in Québec successfully sued their employer under the psychological harassment provisions of the Labour Standards Act. The tribunal found that inadequate housing, denial of basic necessities, humiliation at work, requirements to fumigate without protection, disregard for sleep deprivation, and underpayment of workers while suggesting they still earned more than in their home country cumulatively constituted psychological harassment. The employer was required to pay to each worker the sum of \$3,000 in moral damages and an additional \$3,000 in punitive damages, as well as the cost of psychological care for one of the complainants and the costs of interpreters, lost salaries,

and expenses associated with the hearing of the harassment complaints, including the travel expenses incurred by the workers who had returned to Guatemala and had to testify in Québec.⁴⁶ It is important to note that the Act Respecting Labour Standards (ARLS) ensures the provision of free counsel to claimants who show a *prima facie* case, so the workers were represented by counsel appointed by the Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST), the agency responsible for the implementation of Québec's ARLS.

Despite the multiple layers of vulnerability experienced by undocumented workers, the case law pertaining to these workers has long been highly disadvantageous. Since the end of the 1990s, however, a trend has emerged in administrative law that favours a broader interpretation of the notion of contract of employment in a context where the work was performed in the absence of a valid work permit. Thus, a legal theory has been developed that does not automatically exclude recognition of the validity of the contract to the extent of the worker's "good faith." Gradually, administrative tribunals have come to recognize that immigration offences, including the prohibition of employment without a work permit, do not systematically affect the validity of the employment contract.⁴⁷ Undocumented workers have, albeit sometimes unevenly through time and from one province to another (Bihari 2011), gained better access to workers' compensation regimes and to broader labour protections.

Sending Country Initiatives

In some low- to middle-income countries where the remittance economy is important, the state has arrangements in place that claim to offer protection for nationals involved in overseas employment. A case in point is the Philippines, which is one of the world's largest exporters of labour and is where the remittances from these workers form a major element of the national economy. In the Philippines, the state intervenes in a variety of ways to promote and facilitate overseas employment of its nationals while at the same time claiming to offer them a degree of protection by extending to them a Philippine jurisdiction and regulatory requirements concerning labour standards and health and safety protections (Dacanay

and Walters 2011). There are various institutional means by which it purports to do so.

In the case of seafarers, for example, workers are recruited through crewing agencies to work, usually on a short-term contract, on board ships of the global merchant fleet, where they represent the largest single national contingent of a multinational workforce. Ship managers and their principals are obliged to form a relationship with the crewing agency in order to access these workers. The agency, although a private venture, is in turn licensed and controlled by a responsible Philippine state department. The terms of the contract with the seafarer are set out in a standard employment contract to which all actors—crewing agency, foreign principal, and seafarer—are party. It is subject to Philippine law, and its terms and conditions may be tested in Philippine courts (Dacanay and Walters 2011).

In principle, this system could help prevent the exploitation of migrant workers through a free market race to the bottom in which the aims of employing the cheapest labour under the poorest of labour standards might be prevented. Unfortunately, the Philippine state has very little in the way of means with which to undertake surveillance of the conditions on board the ships on which their nationals work. Furthermore, these workplaces are not within their jurisdiction except when they are in Philippine waters. Thus, the seafarers' actual experience of work at sea may not be quite as protected as indicated by the terms of the standard contract of employment. Moreover, numerous other aspects of the process suggest that, in practice, its real purpose is to maintain the attractiveness of Filipino and Filipina seafarers as affordable commodities on the global seafarer labour market; crewing agents, the state, and even trade unions collaborate to ensure that the image of the Philippines remains that of a source of cheap and trouble-free labour (Dacanay and Walters 2011).

Conclusion

The IMWs discussed here are generally the most vulnerable segment of Canada's mobile labour force. They often work in hazardous sectors. Their vulnerabilities to regulatory failure include multiple determinants encompassing precarious immigration status, precarious employment,

constraints on visibility, voice, and issues of race, gender, and class. In recent decades, several researchers have documented the specific issues IMWs confront that constrain the effectiveness of different legal frameworks intended to regulate their living and working conditions. The challenges IMWs face as members of Canada's mobile labour force are distinct because their stay and employment in Canada are mediated by both labour and immigration regulations. Bridging between these regulatory frameworks, which do not have the same objectives and functions, generates several complexities. Yet IMWs are not a homogeneous group. Some categories of IMWs are likely to navigate the institutional landscape supporting these frameworks more easily than others, with undocumented IMWs likely most at risk.

As shown in this chapter, the stay and length of employment of IMWs are of fixed duration. Most IMWs in low-wage positions can hardly hope to immigrate permanently to Canada and will often not be allowed to migrate—even temporarily—with their families. IMWs in low-wage positions often face limited public health care entitlements, will live in the vicinity of the work site, and struggle with sociolinguistic isolation, as they often do not speak the language of their employer. Hence IMWs in low-wage positions are likely to develop a strong economic dependence on their employer. As seen in this chapter, from an OSH perspective, such layers of vulnerability can concretely impede the effectiveness of OSH regulations as well as constrain access to workers' compensation. Nevertheless, solutions to help address their challenges have been identified, ranging from helping identify their OSH issues to policy recommendations.

In chapter 6, we will turn to the impacts of the COVID-19 pandemic on Canada's mobile labour force. We will explore how and why the COVID-19 pandemic, an infectious disease, created particular challenges for diverse segments of the mobile labour force, often by aggravating pre-existing constraints on the effectiveness of OSH and workers' compensation protections for these workers.

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COVID-19 Occupational Safety and Health Challenges for Mobile Workers

From the start of the COVID-19 pandemic in 2020 in Canada and many other countries, sectors dominated by mobile workers were among those deemed “essential” and thus where workers continued to go to work. By providing ongoing access to food and other items as well as to transportation, care, public safety, and other services, these workers’ participation in various forms of employment-related geographical mobility (ERGM). ERGM made it possible for the rest of us to stay home, thereby limiting the spread of infection and “flattening the curve” (Neis, Butler, Shan, et al. 2021). Their ongoing mobility and working conditions, including, for some, mobility as work and living at work, came at a price: disproportionate risk of infection, illness, and death, as well as exposure to numerous psychosocial and other stressors. These exposures and their consequences varied across the spectrum of mobility and were mediated by the determinants outlined in figure 1 (chapter 1), including precarious immigration status and employment, gender, race, visibility, time, and space.

The pandemic years, from 2020 to 2022, coincided with the winding down of eight years of On the Move Partnership (OTM) research on ERGM in the Canadian context, much of which has informed this book. Not surprisingly, team members quickly saw the mobility and work

situations they had been studying begin to appear in media coverage of the pandemic and its effects. As a result, two of this book's coauthors and others from OTM, along with many other occupational safety and health (OSH) researchers, began to monitor media coverage and emerging COVID-related research and to document and comment on issues as they emerged.

Retaining our focus on mobility-related hazards, risk, and determinants of regulatory effectiveness in the Canadian context, this chapter synthesizes key insights from multiple OTM pandemic-related publications, supplemented by insights from more recent sources (OTM sources include Neis, Butler, Neil, et al. 2021; Lippel, Neis, and James 2021; Neis, Butler, Shan, et al. 2021; Neis, Neil, and Lippel 2020; Dorow 2020; Shan 2020b, 2022b). It explores how and why the COVID-19 pandemic, a public health and OSH threat, created new challenges and exacerbated pre-existing pitfalls constraining the effectiveness of OSH and workers' compensation protections for workers engaged in extended/complex mobility for, within, and as work. The COVID-19 pandemic and related regulatory interventions contributed to the visibility of these workers while also creating new and significant risks to their health.

As with other hazards, COVID-19 exposure risks and outcomes varied across populations, putting international migrant workers (IMWs), precariously employed workers (including low-wage, agency, and gig workers; MacEachen, de O'Campo et al. 2024; Rijk, et al. 2022; see also Premji et al. 2024), and ethnic or racial minority workers at higher risk of infection, morbidity, and fatality (Côté et al. 2021, 2024; McLafferty and Preston 2023; Caxaj, Tran, Mayell, et al. 2022; Purkayastha et al. 2021; Handal et al. 2020; Morgan, Hoogeveen, and de Leeuw 2021). As argued by Yancy (2020, 1891) in his discussion of higher disease risk and fatality rates among Black Americans, "The most effective strategy known to reduce COVID-19 infection is social distancing, but herein lies a vexing challenge. Being able to maintain social distancing while working from home, telecommuting and accepting a furlough from work but indulging in a plethora of virtual social events are issues of *privilege*. In certain communities these privileges are simply not accessible." Indeed, they were *not* accessible to many segments of Canada's mobile labour force. But COVID-19-related

measures also resulted in OSH threats other than infection, including longer and more challenging work and travel processes, more extended absences from families, constrained access to mobility supports such as washrooms and restaurants, and, in some cases, blaming and shaming on the part of the wider community.

A key dimension of the COVID-19 pandemic context in Canada was the proliferation of standards and controls that were introduced, often with little consultation or insight into their potential effects, including on segments of the mobile labour force. Guided largely by public health concerns in the first instance, federal, provincial, and municipal jurisdictions implemented a variety of sanitary measures such as quarantine procedures, mask mandates, social distancing, closure of workplaces or mandatory telework, curfews, and lockdowns, as well as monetary measures to compensate for lost employment and reduced business. Changes in border controls (by both the federal regulator for international borders and provincial and territorial regulators for interprovincial/territorial and, in some cases, intrajurisdictional movements) were also part of the regulatory response. This proliferation of controls and standards generated its share of confusion and created both constraints and challenges for, among others, members of the mobile labour force.

The invisibility of the mobile labour force; the related lack of knowledge among regulators about ERGM, including its diverse forms, spatial and temporal complexity, and intersections with work and home life; and the regulatory weaknesses and gaps identified elsewhere in this book contributed to the pandemic-related risks and challenges confronting the mobile labour force. As some of us argued elsewhere,

In Canada as elsewhere, pandemic planning and management have reflected poor understanding of the distribution and dynamics of extended/complex work-related mobility, resulting in *post hoc* and often fragmentary responses to concerns among and about these workers. A related outcome [was] enhanced and more sustained vulnerability to COVID-19 outbreaks, illness, and sometimes death than necessary among many of these workers. This vulnerability [was] sometimes . . . coupled with COVID-19-related scrutiny, stigmatization, and constraints on their work-related mobility

and ability to connect with family and friends. Illness, scrutiny, and constraints . . . had significant social, economic, and health impacts on these workers and their families. (Neis, Butler, Neil, et al. 2021, 2)

The remainder of this chapter explores the OSH hazards associated with the COVID-19 pandemic and ways these hazards intersected with ERGM to enhance both physical and psychosocial risk across the spectrum, from international labour mobility; to fly-in/fly-out (FIFO), drive-in/drive-out (DIDO), and daily commutes; to single and multi-site work environments; and finally, to mobility as work. The chapter illustrates key regulatory effectiveness challenges associated with the pandemic, as mediated by a variety of determinants.

COVID-19 and International Migrant Workers

As outlined in chapter 5, IMWs engage in complex and extended mobilities to work in Canada, where those on closed work permits might be (im)mobilized in the homes of employers, as with live-in caregivers, or in crowded living quarters near enterprises, as with farm workers. At the onset of the pandemic, all travel into Canada was forbidden except for returning Canadian citizens and some mobile workers deemed essential (principally truckers and seafarers). IMWs were not initially included among the exempt categories of individuals allowed to enter Canada. Theresa James (2021) tells us how this caused an outcry from Ontario's agricultural sector, "as farm employers had time-sensitive demands for the SAWP [Seasonal Agricultural Worker Program] labour that they were used to relying on annually." The federal government rapidly granted travel exemptions for migrant farm workers and workers in some other sectors, such as seafood processing.

Migrant Workers Alliance for Change (MWAC) reports how the initial border closures resulted in delays in workers' travel arrangements, often leaving the workers stranded in cities to which they had travelled from their rural communities in order to catch their flight (MWAC 2020; James 2021). These delays affected the length of their work stay and, inevitably, their income. The MWAC tells the story of some workers who suffered from these delays:

Many of the workers we heard from live in communities where there are few or no cases of COVID-19, and were concerned about travelling to Canada because of the risk of exposure. Without income support from the Canadian government and no other employment options, workers were forced to do what they could to come to Canada to work. The majority of migrant farmworkers come from rural communities. Travel to Canada involves first taking public transportation to a major city, where they are housed for a few days in cramped quarters awaiting flights. Workers from disparate regions then boarded chartered flights that were full. Upon arrival, many migrants were transported to farms in buses that were full. Throughout their entire journeys, most workers were not provided with Personal Protective Equipment. (2020, 16)

Upon their arrival, according to federal quarantine guidelines, IMWs had to self-isolate for fourteen days, during which the employer was supposed to pay for the equivalent of thirty hours per week (18). In addition, some provinces/territories or even regions adopted guidelines and protocols, resulting in “a patchwork of regulations, protocols and access to supports” (MWAC 2020, 18; for a clear picture of the jurisdictional framework in regard to the regulation of IMWs, see Vosko et al. 2022a). However, reports indicate that quarantining wasn’t always adequately provided and monitored, workers were not always paid for this time, and there were crucial gaps in oversight and standardization (Caxaj, Tran, Mayell, et al. 2022). Caxaj, Tran, Mayell, et al. (2022) encountered, for example, one worker who tested negative for COVID-19 on arrival but then tested positive ten days later after sharing a room with three other workers during quarantine. As reported by the MWAC (2020), the quarantine guidelines adopted by the federal regulator at the outset of the pandemic were designed to protect the nonmigrant population, meaning the goal was to prevent migrant workers, when they arrived in Canada with an infection, from infecting the host community. The measures were not always designed to ensure that migrant workers themselves were protected from risk of infection during and after quarantine (18).

The COVID-19 pandemic highlighted the dangers related to poor housing of IMWs (Weiler and Caxaj 2022; see also Vosko et al. 2022a), which

placed them at a greater risk of contracting COVID-19 (Neis, Butler, Neil, et al. 2021, 12). As noted in chapter 5, the precarious living conditions of IMWs, particularly in the agricultural sector, have long been identified in the literature as posing a risk to their health and safety (Caxaj, Tran, Mayell, et al. 2022; Preibisch and Hennebry 2011; Perry 2018) but had been ignored by regulators for many years. The pandemic drew attention to these long-standing problems, as they ultimately contributed to the risk of outbreaks (Weiler and Caxaj 2022).

In a 2021 report from the Office of the Auditor General of Canada, for instance, it is noted that advocates for IMWs have long expressed concerns about the living conditions of the workers. That report notes that Employment and Social Development Canada (ESDC) had acknowledged these concerns and committed to establishing minimum accommodation requirements. However, the Office of the Auditor General (2021) notes that with the onset of the pandemic, “inspections provided little assurance of protection for the health and safety of agricultural temporary foreign workers” (7) and that ESDC “did not address long-standing concerns about worker accommodations” (34) and “did little to meet the commitments to improve living conditions for agricultural temporary foreign workers that it had made in previous years” (7). Among the inspections conducted by ESDC to verify employers’ compliance with the COVID-19 regulatory requirements, the Auditor General found problems in about 73 percent of the quarantine inspections they examined in 2020 and up to 88 percent when they examined the department’s 2021 quarantine inspections. A few cases made the news where it was revealed workers were living in unsanitary conditions—for example, by having to isolate upon their arrival in rooms where the only furniture was a mattress on the floor (Lavigne 2021).

During the pandemic, provincial governments and regional health units provided employers with different quarantine guidelines on how to better protect agricultural migrant workers’ health and safety (Vosko et al. 2022a, 20–21). But still, existing guidelines were not adequately enforced, and it was not always clear who had jurisdiction to intervene. In Québec, an investigation by journalist Natasha Lavigne covered the living conditions of about eighty Guatemalan workers who lived in three houses and a former motel in the Saint-Nicéphore area in Québec.

Lavigne discovered crowded spaces, inadequate access to showers, and facilities covered in mould. The Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST) confirmed that it had received two complaints about health and safety concerns in the company's homes. However, since the housing was located outside the workplace, the CNESST stated that it did not have jurisdiction to intervene and had apparently reported the matter to Service Canada (the federal regulator) and to the Centre intégré universitaire de santé et de services sociaux de la Mauricie-et-du-Centre-du-Québec (a provincial health care organization), leaving it to these agencies to intervene. This situation reveals the highly problematic dynamics at play, where different regulators seem to have been playing a game of hot potato with the living conditions of IMWs.

In light of the migrant worker OSH issues highlighted by the pandemic, Weiler and Caxaj (2022) call first for clear and consistent national housing standards, where the federal government coordinates with other levels of government in order for these workers to “no longer fall through the jurisdictional cracks” (for the different recommendations on housing, see Caxaj et al. 2020). Those housing standards could align “with recognized international standards such as the Guidelines for the Implementation for the Right to Adequate Housing (2019) provided by the United Nations Special Rapporteur on adequate housing” (Caxaj, Tran, Mayell, et al. 2022).¹ They also ask for “proactive, unannounced and thorough housing inspections,” echoing the report from the Office of the Auditor General of Canada to make sure that compliance exists not only on paper (Weiler and Caxaj 2022).²

Caxaj, Tran, Mayell, et al. (2022, sec. 4b) note that even though migrant agricultural workers in Ontario are eligible for workers' compensation benefits if they become ill or injured at the workplace or in employer-provided living quarters, there were no protocols in place during the pandemic to “investigate these deaths as work-related incidents, nor to ensure that families of deceased workers had a clear path to accessing eligible compensation through the provincial workers' compensation board.” Based on an analysis of the coroners' files in Ontario from January 2020 to June 2021, Caxaj and colleagues noticed the blurred lines between what constitutes a work site and a place of residence. They indicated that reports from the Ministry of Labour would, for example, indicate

that workers “had not reported to the worksite,” even though workers were actually residing in an employer-organized quarantine site (sec. 4b). The researchers asked the Ontario government to clearly define what an “employer-provided accommodation” is in order to include such accommodation in the work site: “This will address the fact that living conditions are outside of workers’ control, especially (but not strictly) during the quarantine period” (Caxaj, Tran, Tew, et al. 2022, 11). They also asked that worker deaths be investigated for potential work-related associated factors: “This is essential for a comprehensive root cause analysis of these workers’ deaths, whose only reason to be in Canada and in their unique situation is because of work demands” (11).

Vosko et al. (2022a, 36) report that the COVID-19 pandemic “amplified migrant farmworkers’ deportability.” In order to avoid deportation and the loss of income it entails, IMWs may have adopted behaviour such as avoidance of testing and monitoring if they did not experience strong symptoms (Côté et al. 2021).

Finally, the COVID-19 pandemic sometimes prompted highly dubious practices. For example, investigative journalist Sara Mojtahedzadeh (2020) revealed how some workers had been asked to sign COVID-19 waivers releasing the Jamaican government of any liability due to exposure to COVID-19 as a condition to participate in the Seasonal Agricultural Worker Program (SAWP).

We have mainly discussed agricultural workers, but it is worth mentioning that meat-packing and other food-processing plants often employ IMWs. Some of these plants were the scene of several major COVID-19 outbreaks, as reported by Neis, Butler, Shan, et al. (2021, 69).

Mobility to Work

Ongoing efforts to explore links between work and transmission mainly focus on COVID-19 outbreaks. Such efforts have been hampered by the fact that information about work collected from those who tested positive was incomplete and minimal (Curran, Davis, and Smith 2021). Furthermore, while it is not uncommon for research on work and COVID-19 to mention commute mode to work and commute dynamics as risk factors, such studies rarely systematically examine mobility and risk. For instance,

a study of outbreak-associated COVID-19 cases in Ontario found 12 percent of cases among working-aged adults from April 2020 to March 2021 were attributable to workplace outbreaks, with the highest incidence rates in agriculture, health care and social assistance, food manufacturing, educational services, and transportation and warehousing. Unfortunately, the study did not deal with ERGM (Buchan et al. 2022).

In the UK, a national-scale study of COVID-19 workplace outbreaks explored their association with employee, workplace, and population characteristics, including where workers lived and worked, their ability to maintain physical distance at work, their vaccination status, and, unusually, their modes of commute. This study found that a higher risk of workplace outbreaks was associated with physical proximity in the workplace in most sectors, the proportion of workers on permanent contracts, vaccination rates, and a higher proportion of individuals from Black ethnicities living in deprived areas. In terms of modes of commute, they found that “workplaces where a higher proportion of employees were expected to use taxis (or travel as a passenger in a private car) and other forms of transport were found to have increased outbreak risk for many industries, with trains or single occupancy typically associated with the lowest risk” (Overton et al. 2024, 97). In this case, other forms of transport exclude bus/metro/tram, taxi, train, and private vehicle use. While important, the focus in that UK study was on forms of transport rather than on the more complex mobility dynamics and characteristics that are our focus here. There is more to be said and more to be done related to those engaged in various forms of daily ERGM and COVID-19 risk.

Even though telework was much more widespread during the pandemic than it had been in the past, some workers still needed to travel to work on a daily basis. In the Greater Toronto Area, even though the Toronto Transit Commission saw a major drop in ridership overall, there were a few specific routes where the number of commuters remained extremely high. These routes, which remained crowded, served many precariously employed workers who depended on public transit to get to their jobs in warehouses and food-processing plants and who were deemed essential during the pandemic (Neis, Butler, Shan, et al. 2021, 71). These segments of public transit were crowded with workers from high-risk workplaces that often lacked social distancing opportunities.

Many of these workers also lacked access to sick leave benefits (which would permit them to remain home when ill) and likely had less access to vaccinations that could reduce transmission risk than other groups (Neis, Butler, Shan, et al. 2021, 71; see also McNamara, McKee, and Stuckler 2021; McLafferty and Preston 2023). In this situation, a bus driver may well be eligible for workers' compensation if they were deemed to have contracted COVID-19 while driving busloads of workers (even though, as we will see, this may not be a straightforward case), but the workers themselves who contracted COVID-19 while riding the bus would not be eligible for compensation in Canada because, in that context, commuting is not considered to be part of work.

Many FIFO/DIDO workers were deemed essential during the pandemic, particularly in the mining and oil industry (Lippel, Neis, and James 2021; Hall et al. 2023). COVID-19-related issues arose from the particular nature of their employment, which, as documented elsewhere in this book, involves both long-distance travel, often using multiple transportation modes, and "stuckedness," since they often live in remote work camps (Dorow 2020) or other potentially crowded, congregate settings.

Long, often multimodal journeys to and from the work site rendered these workers more exposed than others to the virus during travel time. In Alberta, although workers travel to the oil sands both from within the province and from elsewhere, they were not always required to quarantine upon arrival (Public Safety Canada 2021; Office of the Chief Medical Officer of Health 2020). Interjurisdictional workers were accused of being the cause of outbreaks in some oil sands sites. For example, in a press conference in May 2021, former Alberta Premier Jason Kenney put the onus for outbreaks on these workers: "It's regrettable that we have seen the recent surge. I do believe it probably is connected to travel with workers coming in from out-of-province and out-of-country. As you know, the government of Canada controls international travel quarantine requirements" (quoted in Yourex-West 2021, para. 16). However, this ignores the potential contributions to outbreak risk of working and living conditions on site and from intraprovincial mobility within Alberta.

FIFO/DIDO workers were also at risk of blame and shame in their home communities. In her reporting, journalist Malone Mullin recounted how these workers and their families in Newfoundland and Labrador (NL)

could be publicly shamed, particularly following COVID-19 outbreaks in work camps, and could end up bearing “the brunt of blame” (Mullin 2020) in social media postings for outbreaks in their home regions.

As for life in work camps, some camps were reported to be “packed” with workers during the pandemic (Dorow 2020, para. 8; Mullin 2020). This was the case for oil sands workers but also for other kinds of FIFO/DIDO workers in the mining industry and some parts of the construction industry (Purkayastha et al. 2021). In some workplaces, investigative journalism reported that work and living conditions were exposing the workers to dangerously high levels of risk of contracting the virus because of inadequate physical distancing, sanitizing, and testing (Snowdon 2021). Besides their long-distance travels, some workers might have to travel to the work site by shuttle bus on a daily basis: “Dwellers get on shuttle buses together each day, and collectively shuffle in and out of common spaces like dining halls and gyms and sometimes bathrooms” (Dorow 2020, para. 8).

In May 2020, more than one hundred confirmed cases of COVID-19 were traced to one oil sands site, a quarter of them among people who resided outside of Alberta (Dorow 2020). According to Alberta Health, as of the fall of 2021, a total of 5,432 workers in Alberta oil sands were infected by the COVID-19 virus across 20 workplace outbreaks during the third and fourth waves of the pandemic. Among those workers, 431 were commuters from outside Alberta. Eleven deaths were reported (Wilson 2021). There were also some outbreaks at mining sites across the country (Neis, Butler, Neil, et al. 2021). During the following months, throughout different waves of the pandemic, outbreaks were legion in the Alberta oil patch, forcing some employers to work with fewer staff and to focus on routine operation (Stephenson 2022). While these FIFO/DIDO workers were vulnerable to infection in multiple places, those from Indigenous communities working in the camp sometimes travelled out of the camp, potentially exposing their own community to the risk of infection (Morgan, Hoogeveen, and Leeuw 2021, 416). Those from Atlantic Canada often had to quarantine when they returned home. And as infection rates were generally low in those areas, for them, transmission risk was probably greater on the road, at the work site, and in their

accommodations and host communities (Neis, Butler, Neil, et al. 2021). The laws in place seem to have been unable to effectively protect these workers.

These FIFO/DIDO workers faced other types of hazards in this pandemic in addition to exposures to the COVID-19 virus. As noted in chapter 1, FIFO workers normally live with the strain of schedules that mean they are away from family and friends for prolonged periods with potential consequences for their relationships and mental health (Dorow 2020). During the pandemic, certain types of rotations, such as two weeks on / two weeks off, were not feasible because of quarantine requirements in their home provinces and, often, on the work site. Some companies extended rotations to accommodate this challenge, and some workers opted not to travel home to visit their families (Neis, Butler, Neil, et al. 2021). Longer rotations imply longer periods where workers are living in the camp and are away from home, which can also mean longer periods working without breaks. In a preliminary study on FIFO workers in the Alberta oil sands industry, Dorow et al. (2021, 33) reported that participants interviewed in the early months of COVID-19 pointed to growing anxieties “stemming from unpredictable travel, new rounds of layoffs, increased workloads, and work and camp conditions conducive to transmission.” Some workers reported “not seeing their families for months” (Dorow 2020, para. 10).

In Alberta, the workers’ compensation board (WCB) has classified different situations where claims for COVID-19 are acceptable or not. Whereas an acute care hospital worker is deemed to have an acceptable claim, a captive worker in a camp setting is considered to have a “possibly acceptable claim” only if the employer “requires [the worker] to reside within a camp setting, and an outbreak of . . . SARS/COVID-19 is confirmed within the camp” (WCB-Alberta 2022, 1). To come to this conclusion, the Alberta WCB has to consider that captive employment can put the worker at greater risk than the general public and that this was the source of the condition. In every situation, the WCB will adjudicate work relatedness based on the circumstances of each claim (WCB-Alberta 2022).

Mobility Within Work

Employment in multiple workplaces also likely played a role in COVID-19 virus exposure risk. In the health care system, many provinces relied on temporary placement agencies to address labour shortages. Some health care workers were assigned to an establishment for either very short periods (a few days a week, if not every day [Armstrong, Armstrong, and Bourgeault 2020, 422]) or longer periods. At this time, as more generally, health and home care workers continued to provide care to clients in their own homes and might have to travel between different workplaces during the day. The fact that these workers could be assigned to different establishments or required to visit multiple clients in their own homes was identified as conducive to the spread of the virus among beneficiaries (Estabrooks et al. 2020, 36). While they were at risk of exposing others, their own health was also at risk because of their mobility: They may have lacked familiarity with work sites, and they often lacked personal protective equipment (PPE; Neis, Butler, Shan, et al. 2021, 72). These and other multisite workers “can’t work from home and don’t have an office to go to at work where they can manage their exposures. Instead, they deal with the public or with clients who move in and out of their spaces (taxis) or are required to move in and out of spaces that are open to changes in potentially infected personnel (as with cleaners, warehouse workers), clients (long-term care), and the public (retail) in order to do their jobs” (Neis, Butler, Neil, et al. 2021, 47).

Armstrong, Armstrong, and Bourgeault (2020) discuss the different types of elder care that take place in Canada and underline how privatization had expanded in the past decade. However, this privatization and the for-profit model of nursing home care have had a major impact on the quality of care and on the quality of jobs offered in nursing homes, where employers rely on fewer staff, who often have fewer formal qualifications and are paid less (Armstrong, Armstrong, and Bourgeault 2020, 452). The repercussions during COVID-19 were significant: “Part-time staff not only move from home to home, as has become obvious during this pandemic, but they are often without the benefits that would enable them to stay home when sick” (460). Hence these workers were at risk at work, in situations where other workers, family members of clients, and possibly

the clients themselves were coming and going. They would also have been at risk when travelling to work and between workplaces if they had to use public or shared transportation.

As mentioned in chapter 2, compensation coverage is not homogeneous across jurisdictions in Canada, and while public long-term care homes are covered under the Workplace Safety and Insurance Board (WSIB) in Ontario, coverage of private care homes is not mandatory. This left “many Ontario workers at the heart of the pandemic without workers’ compensation and those employers vulnerable to lawsuits” (Armstrong, Armstrong, and Bourgeault 2020, 478). Also, several workers were left without support from WCBs across Canada (a problem not limited to mobile workers). In fact, data comparing the number of outbreaks and workers’ compensation claims in Ontario revealed that workers were either unaware of their rights to claim or afraid to report an infection (Marotta 2021). In these cases, workers and their families would be the ones required to manage the burden of costs associated with the illness.

Paramedics are another example of frontline workers who work on the road but whose work often requires them to move in and out of client homes and health care institutions as well. The pandemic drastically changed their way of working (Arthur 2020), and certain issues were raised regarding their health and safety and the type of personal protective equipment they should use (Lacoursière 2020). There was also some confusion related to which recourse these workers had if they needed to protect their health and safety. The appeals tribunal in Québec concluded in a few cases that a paramedic could ask for protective reassignment³ if their personal health was impaired and the exposure to a contaminant in the workplace (the virus) would be dangerous because of this impairment.⁴ In other cases, however, the tribunal decided that the COVID-19 virus was not a “contaminant”⁵ and rejected such demands, leaving workers without this means of recourse.

Mobility as Work

Workers in the ground transportation industry, such as truckers, bus drivers, taxi drivers, and delivery drivers, faced particular challenges

during the pandemic. On the one hand, lockdowns and business closures reduced the traffic on the roads, thereby reducing the risk of traffic crashes and injuries. On the other hand, new OSH risks emerged. Trucking was deemed an essential service in Canada from the outset of the pandemic (Lippel, Neis, and James 2021). As this work entails stopping at different places, truckers were at risk of infection at pickup and delivery sites and also at restaurants, stores, and garages along the route (Lippel, Neis, and James 2021; see also Qureshi et al. 2024). As a journalist reported, “Truck drivers practice social distancing all the time. They drive alone. They often sleep in their cabs. You might think the pandemic-required isolation would be business as usual. But they still must eat, shower, and use the bathrooms” (Norton 2020, para. 1). Indeed, truck drivers who travel long distances need rest stops and are required by regulation to stop driving after particular periods of time. In the first few months of the pandemic, many service places were closed, and prolonged periods without access to washrooms were an issue: “These constraints can affect the mental and physical health of truckers and contribute to the risk of humiliation and social isolation, particularly for women; they also force drivers to drive longer than they would like” (Lippel, Neis, and James 2021, 138). Researchers Vassyukova et al. (2024, 4) reported food insecurity (due to the closure of establishments), parking shortages (drivers having to park in unsafe locations), inadequate access to facilities (compromising their personal hygiene), and inadequate health care accessibility. As noted in chapter 1, trucking is “a high-risk occupation associated with stress, fatigue, . . . and other hazards,” and COVID-19 threats and infection control measures could exacerbate those hazards (Lippel, Neis, and James 2021, 139). A recent study of perceptions of long-haul truck drivers underlined fears some drivers had regarding their own health conditions when they had to drive to high-risk areas (Crizzle 2022, 175; see also Lemke, Apostolopoulos, and Sönmez 2020). Conversely, some truckers were stigmatized as “virus spreaders” (Vassyukova et al. 2024, 8).

Ground transportation workers were particularly prone to receiving different guidelines from different organizations related to COVID-19. Côté et al. (2024) highlight the confusion and lack of clear information arising from guidelines issued by various organizations. They report the experience of a taxi company manager and a school bus driver

who received different information and recommendations from different stakeholders (e.g., employers, public health authorities, and OSH authorities such as the CNESST in Québec, not to mention social media): “This overload of information can therefore cause confusion among workers as well as the general population, and possibly frustration at finally having to synthesize the information themselves according to what ‘logic’ tells them” (7).

Trucking associations and researchers in the US and Canada pushed for priority access to vaccinations for truck drivers (Neis, Butler, Shan, et al. 2021; Lemke 2021), but not all provinces in Canada were willing to give these and other essential transportation workers high priority in their vaccination programs (Neis, Butler, Shan, et al. 2021; Villella 2021).

Other ground transportation workers, such as public transit workers, taxi drivers, and delivery workers, were part of the urban mobile labour force who went “to work during the pandemic, putting themselves at risk to support the mobility of others, including essential workers, and helping others when they self-isolated at home” (Neis, Butler, Neil, et al. 2021, 50). Several decisions have been rendered by the Québec appeals tribunal in order to determine whether the drivers had in fact contracted COVID-19 in the course of employment. In many decisions, the CNESST refused the claim of a worker, stating that the worker had not demonstrated that they had been in direct or indirect contact with the secretions of persons infected with the COVID-19 virus. After thorough examination of the presence or absence of outbreaks at work, contacts with infected coworkers and/or possibly infected users, and the worker’s personal environment, the tribunal often overturned the WCB decision and considered it to be probable that the onset of the disease stemmed from the particular hazards of the bus driver’s job during the period in question.⁶

As for platform workers, such as those working for Uber or Lyft and food delivery platforms, many are considered to be self-employed, meaning they are not covered by OSH and workers’ compensation schemes. Ineligible for paid sick leave, these workers might have had incentives to continue to work despite symptoms in order to avoid loss of income. Some platform companies introduced safety measures, such as contactless delivery, and offered financial support for COVID-19 illnesses, but for

these drivers, their “perceived COVID-19 risks remained high because of platform-related work pressures, including rating systems” (MacEachen, Meyer, et al. 2022, 731). For delivery workers, risks remained, since they had to pick up food at sometimes crowded restaurants or had to deliver within buildings where social distancing was not always possible. As for drivers, some platforms put in place questionnaires for passengers in order to reduce the risk of drivers having to carry a symptomatic passenger. However, MacEachen, Meyer, et al. (2022, 738) report that this proved rather ineffective, and drivers reported being exposed to the virus.

Seafaring is one of the most dangerous occupations globally, and international seafarers, in particular, experience weak OSH standards on board (Shan 2022b; Shan and Lippel 2019). These workers face many OSH hazards, including extreme physical injury risks, mental health challenges, and workplace fatigue (Shan 2022b, 270). In addition to being employed in mobile workplaces, these workers also rely on multiple modes of mobility as they may commute long distances between their residence and ports of departure or disembarkation (Shan and Neis 2020; Neis, Butler, Shan, et al. 2021, 66). Within Canada, some may work regionally, but many are interjurisdictionally mobile, and some, particularly international seafarers, will live within their work site for months at a time, as seen elsewhere in this book.

During the pandemic, seafarers were deemed to be essential workers and hence were expected to go to work in Canada (Lippel, Neis, and James 2021) and globally. COVID-19 created multiple new challenges for these workers and underlined pre-existing ones. During the first wave of the pandemic, outbreaks were common on cruise ships and had devastating impacts on both customers and crew (Stannard 2020), but there were outbreaks and cases on board other types of ships as well. Controlling the spread of COVID-19 on board vessels once an infection occurs is challenging, and during the pandemic, vessels with cases on board sometimes experienced difficulty finding a port of refuge and accessing appropriate medical care (Lippel, Neis, and James 2021). Desai Shan (2020b) reminds us that self-isolation of an infected seafarer in their cabin is hazardous for customers and for other crew because the ventilation systems may bring the virus to all cabins, as was the case on the infamous *Diamond Princess* cruise ship. If seafarers were to contract the virus while on board, they

were particularly vulnerable to serious illness or even death because of limited medical facilities on the ships (Neis, Butler, Neil, et al. 2021 provide an overview of the different outbreaks that occurred on Canadian ships in the first year or so of the pandemic). On cruise ships, passengers were at some point allowed to leave the ship, but in some cases, cruise crew remained stuck on board, waiting to be repatriated and to return home (Neis, Butler, Shan, et al. 2021, 67).

A crucial problem faced by seafarers during the pandemic was shore leave refusal. As reported in April 2020, Canadian crews working internationally could be restricted to their vessels for up to three months at a time (MacDonald 2020; see also Doumbia-Henry 2020). Such measures may have reduced the risk of outbreaks on board ships, allowing the industry to continue to operate, but also resulted in excessively prolonged periods at work and confinement (Lippel, Neis, and James 2021). Given that communication tools like Wi-Fi and satellite phones are not always available aboard cargo ships, these workers struggled with social isolation (MacDonald 2020). Negative mental health consequences for these workers as well as workplace-related fatigue were reported (Lippel, Neis, and James 2021; Pauksztat, Grech, and Kitada 2022). Also, without proper shore leave opportunities because of denials from port authorities, the access of seafarers to primary health care was certainly a challenge (Shan 2022b, 280). In Canada, it appears there was some jurisdictional confusion related to seafarers and COVID-19. Transport Canada (2020b) promised to ensure the essential movement of domestic and international seafarers, including crew changes. But it appears that some ports denied shore leave despite the federal guideline (Shan 2020b). Indeed, provincial/municipal health authorities could possibly deny entry into their territories, outside the port property, since they are in control of the movement of persons and operation of businesses inside the province. However, the situation for Canadian seafarers was generally less severe than that for other seafarers, including particularly international migrant crew (Shan 2020c, 2022b; Pauksztat et al. 2020).

Crew changes were also problematic. Shan reports that crew changes are crucial to protect seafarers' health and safety (2022b, 276; see also Shan et al. 2024) "in that they relieve seafarers from their heavy workloads at sea and enable them to have a period of rest and to spend time with

families and friends between voyages” (2020b, para. 9). During the pandemic, it appears that some foreign companies would extend contracts up to a year, a clear violation of the Maritime Labour Convention, 2006 (Shan 2020b; MacDonald 2020).

Fish harvesting is also a hazardous occupation associated with mobility as work. Some of the safety risks related directly to the COVID-19 pandemic were exacerbated by features of the industry. Neis et al. (2022, sec. 1.1) identified these features as the following:

- a) mobility of crews to and within work and interactions with shore crew during offloading, which presents opportunities for infection;
- b) frequently crowded working and living conditions onboard vessels, complicating adherence to physical distancing guidelines;
- c) limited ventilation in fishing vessel holds and sleeping quarters;
- d) potentially constrained resources in fishing communities for pandemic education, communication and for monitoring safety practices by health and safety and public health authorities; and,
- e) limited access to health care during prolonged periods at sea, and in remote communities.

Neis and colleagues emphasize the tension between economic pressures and safety concerns: Fish harvesting is a crucial segment of the economy in some places like NL, but it wasn't clear for a while, from the point of view of public health and other regulators, how fish harvesters could do their work in a safe manner. In 2020, the startup of some seasonal fisheries was delayed in NL during discussions about whether it was even possible to provide safe conditions for the fish harvesters (Neis et al. 2022). It is also worth noting that in August 2020, the federal government set up a program to help compensate self-employed fish harvesters for their losses during that fishing season (Fisheries and Oceans Canada 2023).

Notably, international fishermen shared similar issues to those of international seafarers in terms of “employment disruptions, extended periods at sea, loss of access to shore leave, limited access to health care and other services, and challenges returning home due to closed borders” (Neis, Butler, Neil, et al. 2021, 31).

The airline industry was affected by massive layoffs after the onset of the pandemic. However, airline workers who continued to work put their health at risk when helping international travellers return to their home countries: “Between March 13 and 27, 2020, 158 international flights into Canada had at least one infected passenger. Close proximity of flight attendants put workers at high risk of COVID-19 . . . , and more than 1,000 flight attendants went into 14-day quarantines” (Neis, Butler, Neil, et al. 2021, 34) [original references omitted]. After the peak of the pandemic and the lifting of travel restrictions, a massive travel rebound occurred. Because of different factors, there were many delays in flights and lost baggage, and airline workers faced verbal abuse and physical threats from frustrated passengers (Reynolds 2022).

Conclusion

This case study of COVID-19 and the mobile labour force is instructive at a number of levels. While most research linking mobility and OSH focuses on injury-related risk, COVID-19 is an example of an occupational disease where we have documented exposure risk, spread, and impacts at work and while living at work, in transit, and at home. There is also clear evidence of heightened illness and fatality risk among members of the mobile labour force who kept going to work, many deemed essential, relative to those privileged enough to work from home, live at home, and travel alone during the pandemic. For the former, the pandemic highlighted the variable but inherent relationship and inter-connections between work requirements in some sectors and ERGM. Predictably, as shown here and elsewhere, congregate work, travel, and living situations (as with international migrant agricultural workers) were associated with a higher risk of outbreaks. While the precise origins of exposures and illness were somewhat masked among workers living, travelling, and working in congregate settings, with employers often pointing to situations outside of work as the main threat and source of outbreaks, they were less ambiguous when FIFO and DIDO workers experienced outbreaks at work and in camps. Quarantine requirements designed to protect communities and regions with low infection rates reduced the risk of returning workers infecting families; however,

social isolation and prolonged periods apart created huge challenges for those workers and their families.

Mobility between work sites, as with temp agency health care workers, influenced both worker and client risk, as did living in crowded situations outside of work, such as apartment buildings, where workers from multiple high-risk work and ERGM situations might share living space. Further exacerbating transmission and other health risks across the spectrum and throughout the home-mobility-work cycle was more limited access to vaccinations, paid sick days, health care, and personal protective equipment and other infection control measures, particularly among precarious status IMWs and precariously employed, low-wage, racialized, and nonunionized workers.

COVID-19 effects and regulatory responses combined to make ERGM more visible to regulators and to the public but too often led to immobilizing mobile workers such as seafarers, truckers, and others within work sites and camps for prolonged periods with significant mental health and other consequences. These effects and regulatory responses highlighted ways siloed public health, occupational health, immigration, and transportation regulatory and inspection frameworks could contribute to both worker and public risk with economic, social, and health impacts.

As with the rest of this book, this exploration of COVID-19 and its impacts on the mobile labour force calls into question the separation in law and policy between “travel time” and “work time” that underlies employment standards, OSH, and compensation regulations, treating the former as a matter of choice, separate from employer and state control and influence. An alternative view, informed by the literature on IMWs and precarious employment but seen through a mobility lens, draws our attention to ways employer practices intersect with current and past state policies, such as patriarchy, racism, and colonialism, to influence not only which workers do what types of jobs and their control over their working conditions but also where they live and their mobility both to and within work. An important factor, then, in employment relationships is the mobility regimes of employers and how these operate to constrain worker control, voice, and engagement with OSH and the compensation system. We turn to this in the concluding chapter.

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Conclusion

Research on the world of work has often neglected potential relationships between work, mobility, and safety and health. Conversely and until recently, mobility studies have not focused substantially on work-related mobilities (Roseman, Barber, and Neis 2015; Cresswell, Dorow, and Roseman 2016). With a focus on the Canadian context, members of the On the Move Partnership (OTM) sought to address this gap by identifying the regional and sectoral distribution of diverse forms of extended/complex mobility *for, within* and *as* work across the spectrum from daily to international employment-related geographical mobility (ERGM) in the Canadian labour force. Team members drew on statistical research to conclude that extended/complex geographical mobility was a poorly understood but core feature in the work, family, and community lives of a significant share (14–16 percent) of Canada’s labour force. Findings from extensive field and policy research provided insights into its complex dynamics and pointed to its impacts on workers, their families, and their communities and issues with regulatory effectiveness that needed to be addressed. Building on a 2019 special issue of *New Solutions* on occupational safety and health (OSH) and the mobile labour force in Canada and on broader research (Lippel and Neis 2019), this book has explored the

relationship between these different forms of mobility, hazard exposures, and injury risk.

The main body of the book used a combination of case law, policy review, and field research findings to examine potential issues with regulatory effectiveness that constrain diverse groups of mobile workers' access to OSH protections and compensation. This concluding chapter returns briefly to the larger purpose and objectives of the book, including how it contributes to research. It then provides a brief overview of key insights from each of the chapters. We then return to the conceptual framework of determinants of regulatory effectiveness for the OSH hazards and risk associated with different forms of extended/complex ERGM laid out in chapter 1 that has informed the discussion in the main body of the book to flag some key issues and themes. In the section entitled "Moving Forward," we identify some broad strategies that could help strengthen OSH regulatory effectiveness for the mobile labour force in the future and identify some key areas for future research.

As noted by Lippel and Walters (2019, 318),

Workers have always engaged in mobility to, from, and often within work. More recently, the promotion of flexibility to meet the demands of the employer, as well as the externalization of production and services, urbanization, and poor urban planning have contributed to both an increase in nonstandard employment and the complexity and diversity of employment-related geographical mobility. . . . Although much research has examined the occupational health and safety (OHS) and social security implications of nonstandard or precarious employment (i.e., temporary, part-time, and triangular employment relationships), and to a lesser extent OHS experiences and challenges of temporary foreign workers, the relationship between E-RGM and nonstandard employment is understudied, as are the implications of E-RGM associated with standard employment for regulatory effectiveness of OHS and social protections such as workers' compensation. [Original references omitted.]

Thus, while extended/complex work-related mobility is not new, larger sociopolitical issues need to be considered in assessing its relationship with OSH.

All too often, the underlying assumptions in OSH and workers' compensation research and policy are that workers travel on a daily basis from a single residence to a single fixed place of work within the same jurisdiction. In this context, the dynamics and consequences of ERGM would be largely dictated by decisions and preferences of workers and their families. This assumption reflects the biases toward standard employment relationships that have been strongly critiqued in the literature on precarious employment, including its relationship to health and access to workers' compensation (Vosko 2006; Benach et al. 2014; Underhill, Lippel, and Quinlan 2011; Koranyi et al. 2018; Lippel, MacEachen, and Senthana 2020). It also reflects the common regulatory distinction in Canada between "travel time" and "work time," with OSH and labour standards regulations often encompassing only the latter (Gesualdi-Fecteau, Nakache, and Matte Guilmain 2019).

There is a robust literature linking downsizing, outsourcing, subcontracting, and home-based work to enhanced OSH and other health risks. Quinlan, Bohle, and others, for example, have applied their pressure, disorganization, and regulatory failure model in studies of various forms of precarious employment to identify some of the mechanisms associated with increased physical and psychological injury risk. Consistent with the employment strain approach to OSH developed for the precariously employed (Lewchuk et al. 2003), they go beyond exposures in the immediate work environment to include other factors such as pressure from reduced job security, increased workload intensity, low or irregular pay and payment based on results, poor training and supervision, constraints on workers' ability to organize, and gaps in coverage and enforcement (see, e.g., Quinlan and Bohle 2009; Mayhew and Quinlan 2006; Quinlan 2023). While important, these approaches do not incorporate explicit attention to ERGM as an OSH determinant that can intersect with these other mechanisms to enhance risk.

Premji (2018, 106) goes beyond workplace and industry dynamics to argue that for immigrant women, precarious employment encompasses "powerlessness, economic insecurity, work for multiple employers,

nonstandard and unpredictable schedules, hazardous working conditions, and lack of benefits and protections.” She maps the pathways and mechanisms by which it threatens their health and well-being, including through “stress, material and social deprivation, and exposure to hazards, as well as commuting difficulties and childcare challenges” (106).

In contrast to mainstream economics and work-related policy frameworks that treat ERGM as the product “of rational individuals seeking to maximize their income and employment” (Roseman, Barber, and Neis 2015, 188) and often as independent of work, we and other OTM researchers start with the premise “that inequalities influence not only which social groups engage in different types of ERGM, but also its conditions (for example, who pays), rhythms (that is work schedules) and specific consequences. These inequalities are produced by convergences between gender, class, citizenship, region, ethnicity/racialization, disability/ability, age, and sexuality” that “are played out through employment contracts and negotiations, workplace dynamics, the experience of mobilities, intrahousehold relationships, and membership in broader communities” (Roseman, Barber, and Neis 2015, 178). As shown clearly in the feminist literature on social reproduction and on gender and the journey to work, strong intersections exist among the policies, social relations, and rhythms that shape diverse households; those associated with journeys to, within, and as work; and the types and conditions of work done by diverse groups (for an overview of some of these literatures, see Roseman, Barber, and Neis 2015; Neis et al. 2018; Barber and Neis 2021). Many struggle to achieve even fragile synchronicities between interlinked and increasingly precarious employment, often precarious complex mobilities (Roseman 2020), diverse family situations and needs, and increasingly costly and constrained housing options (Neis et al. 2018). These struggles have OSH consequences, the effects of which are often borne by workers and their families, despite mobility dynamics and decisions being mediated, to varying degrees, by employer and state policies and practices.¹

Chapter 1 of this book showed that diverse forms of extended/complex employment-related geographical mobility (the ERGM spectrum) are a pervasive aspect of Canadian society found across multiple and often expanding sectors and influencing the work, family, and community lives of up to 14–16 percent of the labour force. The ERGM spectrum includes

“diverse situations that nonetheless share potentially burdensome travel costs, time pressures, tradeoffs around health and quality of life and other challenges” (Cresswell, Dorow, and Roseman 2016, 1788). Based on findings from a review of the OSH literature, chapter 1 explored the hazards and risks associated with these diverse types of work-related geographical mobility. It concludes by outlining key mobility-related determinants of regulatory effectiveness (our focus in the remainder of the book) that mediate (often negatively) access to protection and to compensation among diverse groups of workers engaged in complex/extended ERGM in Canada.

In chapter 2, we provided an overview of the OSH and workers’ compensation regulatory frameworks relevant to the Canadian context, including international, federal, and those in four provinces. That chapter also introduces international agreements on social security relevant to international migrant workers (IMWs) in the Canadian context and the Interjurisdictional Agreement on Workers’ Compensation (IJA) that guides compensation for interjurisdictionally mobile workers. It notes the very limited extent to which Canada has ratified relevant international conventions dealing with workers’ OSH and working conditions. It also identifies some challenges with the IJA and its effectiveness for ensuring access to compensation, particularly for interjurisdictional workers who develop occupational diseases with potential exposures in multiple jurisdictions. In terms of OSH more generally, we have seen how the different regulatory frameworks that coexist, and sometimes overlap, may create gaps in protections for interjurisdictionally mobile workers.

In chapter 3, we examined key hazards and sources of vulnerability associated with ERGM within Canada using the lens of challenges for OSH regulatory effectiveness. We focused on hazards associated with road conditions, the state of the vehicle, and long hours and fatigue. Sources of vulnerability for some mobile workers include remoteness and dispersion, living at work, and socio-occupational issues such as separation from families, communications challenges, and conditions that make it difficult to generate worker OSH awareness and solidarity, to which we return later.

As shown in chapter 4, the complex regulatory system and the compensation process it entails may prove difficult to navigate for mobile workers. In determining benefits, maximum insurable earnings vary across

provinces. When the worker lives in a province with low maximum insurable earnings and works in a province where maximum insurable earnings are high, the option to accept compensation in the home province may force the worker to be compensated at a far lower rate than that provided in the province where injury occurred. In determining benefits in the context of the deeming process, many provinces consider the labour market in which the injury occurred in order to determine the residual earning capacity of the worker living outside the jurisdiction. This leads to workers being deemed capable of earning a salary that would be impossible to earn, given their limitations, in their home province or, in the case of IMWs, their home country. Policy and legislation relating to coverage of injuries incurred in work camps and housing provided by employers are uneven, and in some cases, OHS-related regulatory protections are nonexistent.

In chapter 5, we shifted our focus to IMWs. As outlined in chapter 1, IMWs hired by Canadian employers through various temporary migration programs comprise a significant proportion of the Canadian labour force. The chapter draws on the growing body of literature on IMWs and OSH and compensation, much of it focusing on agricultural and caregiving workers but some, including from OTM researchers, looking at other sectors. It lays out both the formal rights of IMWs and the multiple factors that constrain their capacity to exercise those rights as they relate to OSH and compensation protections. It includes a brief discussion of best practices and policy recommendations for responding to the challenges confronting IMWs, including efforts to use the courts to address regulatory gaps and enhance protections. The chapter highlights two key issues identified by legal scholars that regulators need to address to improve IMW working conditions and protections: limiting precarious immigration status (a federal responsibility) and provincial law reform to shift away from purely complaints-based systems. Sending countries could also do more to protect IMWs.

In chapter 6, we provided a case study of the COVID-19 pandemic and Canada's mobile labour force. That chapter illustrates both the roles played by mobile workers in providing services essential to lockdowns and what issues with management of the pandemic can teach us about OSH challenges linked to infectious diseases within the mobile labour force in contributing to the risk of exposure, illness, and fatalities.

The chapter draws on OTM and other research carried out during and since the pandemic to explore how the risk of illness and death and access to compensation were mediated not just by modes and dynamics of ERGM but also by other determinants of regulatory effectiveness to which we return in the next section.

Determinants of Regulatory Effectiveness

Chapter 1 presented a conceptual framework outlining the determinants of OSH regulatory effectiveness within Canada's mobile labour force. These determinants include intersections between regulatory inconsistencies and gaps, autonomy, space (dispersion/distance/crossing jurisdictional boundaries), time (duration of travel/absence), visibility, and voice, as well as class, gender, race, precarious employment, and precarious immigration status. The achievement of fundamentally important OSH regulatory protections, including workers' rights to know, to participate, and to refuse, can be challenging even in the context of sustained employment in fixed workplaces; these challenges multiply as we move outside fixed workplaces, across the ERGM spectrum from mobility as work through international migrant work and through different types of employment and household situations. For many, these determinants coalesce to produce multiple layers of vulnerability (Sargeant and Tucker 2009). In this section, we briefly summarize ways these regulatory effectiveness determinants can mediate injury risk and access to compensation within the mobile labour force, including through variable constraints on autonomy, visibility, voice, and other determinants.

From the point of view of autonomy, as argued in chapter 6, for those able to access this, the freedom to work from home, while not without OSH risks, limits exposure to mobility-related hazards, injury risk, and the social and economic burdens associated with much ERGM. For extended complex mobility as, to, and within work, constrained levels of control and thus autonomy related to distance, timing, frequency, and complexity of travel and other factors, such as weather risks and vehicle maintenance and repair, negatively impact OSH. In the case of fly-in/fly-out (FIFO) / drive-in/drive-out (DIDO) workers and IMWs, constraints on autonomy can also extend into their lives at work in camps

and other employer-controlled accommodations, with implications for not only physical but also mental health (Fruhen, Gilbert, and Parker 2023). It is important to note, however, that particularly when workers exercise control over travel modes and travel time, ERGM can also be a source of autonomy and contribute to well-being when it allows them to leave unsafe jobs and travel to safer and better-paid ones.

In the case of space as a determinant of OSH and regulatory effectiveness, dispersion can have a significant impact on communication, workers' voice (the capacity of workers to exercise their rights), and visibility. The effects of dispersion on communication (as well as the risk of violence) can be worse for those working alone (as in home care and live-in caregiving), in small groups, and in remote areas, particularly when workers do not come from or return to the same places on a regular basis. Its constraints on communication are exacerbated in situations where workers are segmented by job, immigration status, language, and culture.

Dispersion and transience across space also influence regulatory effectiveness by mediating the visibility/invisibility of mobile workers. Visibility has relevance on a number of levels. In the policy arena, the primary question relates to workers' visibility to the state regulator, employers, and unions. For instance, IMWs are visible to federal immigration regulators but may also be visible and indeed subject to social exclusion in the communities in the area where they work (see, e.g., Preibisch 2004). They are also potentially subject to hypersurveillance by employers both at work and away from work when they live on site. Provincial regulatory bodies, however, including the OSH and labour standards inspectorates, have limited information with regard to these workers. As part of the larger OTM study, Lippel and Walters (2019) interviewed members of OSH inspectorates and regulators who were aware of the challenges related to OSH in a mobility context. The situation of IMWs had reached the radar of some of them, but provincial-level regulators had only recently started to require registries for IMWs in some provinces to facilitate the gathering of information that helps ensure compliance with provincial labour law.

Members of other categories of the mobile workforce who do not require state permission to travel within or between provincial regions or from one province to the next in order to work may well be invisible to policymakers. While less invisible than undocumented workers

and IMWs, FIFO/DIDO workers living in camps, as in northern British Columbia and the Alberta oil sands, are often referred to as “shadow populations” (Foster and Taylor 2013; Foster and Luciano 2020; Haan, Walsh, and Neis 2014; Aylward 2006) and are likely to be invisible to other actors, like unions, who have more difficulty accessing these workers, for instance, than they would workers working in the same workplace and living in adjacent communities. In terms of mobility within regions, as in large cities like Toronto with high housing costs, precariously employed gig workers are spatially dispersed from each other and only remotely engage with the companies controlling the apps that guide their work. This, coupled with their treatment as solo, self-employed workers, poses challenges for regulation and for unionization.

In those provinces and sectors where employers manage OSH through risk assessment mechanisms and OSH management systems, some of the challenges identified in the literature with regard to contingent (temporary/part-time/casual) workers may also apply to those whose mobility requires they move to isolated, remote, distant, and transient work sites, whether or not they are precariously employed (Quinlan et al. 2000). The employer responsible for OSH may, for example, be absent from the actual work site and not see the worker driving or being transported in an unsafe vehicle. Employer subcontractors with little knowledge of the hazards in the work site to which they are providing labour and with little knowledge of the housing conditions provided to the workers may well be providing an unaccompanied workforce.

There is also the issue of constrained access to emergency services in remote areas and the problem of invisibility of occupational injuries to regulators, which mobility and remoteness can exacerbate. We have previously discussed the report of the BC Forest Safety Ombudsman (2017) recommending improvement in the emergency services provided in remote locations. Rather than focusing exclusively on workers’ needs for such a service, the report looks to other jurisdictions and defines the needs of the remote communities, mainstreaming the workers’ needs with those of the local inhabitants.

In 2017, Alberta addressed the issue of invisibility of occupational injury by requiring that the OSH regulator be informed of work injuries that require admission to a hospital.² However, when other legislation was

adopted in 2020, the legislator replaced this obligation with the obligation to report only if “there is reason to believe the worker has been or will be admitted to a hospital beyond treatment in an emergency room or urgent care facility.”³ This certainly waters down the strength of the previous obligation. In Québec, there is no obligation on the employer to report work injuries under the workers’ compensation legislation, a situation that stands out in relation to the legislation in all other Canadian jurisdictions. The only reporting requirement in Québec falls under the Act Respecting Occupational Health and Safety, and the Alberta inclusion of hospitalization as a reason for reporting under that act would strengthen the current legislation, which only applies to catastrophic injury (death, amputation, etc.) or important material damages.⁴

The invisibility of Indigenous workers and communities must be taken into consideration in future research. Some authors have noted tension between Indigenous and non-Indigenous residents in communities when the distribution of costs and benefits of natural gas exploitation development is uneven (Buse et al. 2019). Researchers Neil and Neis (2020b, 116) emphasize that Indigenous workers are neglected in the literature on ERGM; thus, they may face specific challenges that are unknown (see also O’Faircheallaigh 1995). For example, Indigenous workers encountered challenges during the COVID-19 pandemic when many of their communities went into lockdown in order to prevent outbreaks in the community: “This effectively prevented mobile Indigenous construction and other workers from going to work if they wanted to return to their communities” (Haan et al. 2020, 295).

Mobility may also impede workers’ voice, which is crucial to them exercising their rights: “Employee voice is an expression used in literature exploring workers’ reasons and practise for speaking up at work” (King et al. 2019, 7). A few studies have reported on workers’ voice in the context of health and safety rights. As noted elsewhere in the book, workers may fear speaking out because of risk of reprisal or the belief that it will not make a difference. Hierarchy and power dynamics have been identified as having a negative effect on safety voice (Morrow, Gustavson, and Jones 2016; cited in King et al. 2019). According to Wayne Lewchuk (2013, 809), respondents in precarious employment relationships were six to seven times more likely to report being concerned about the effect

of voice on future employment than workers in more secure employment relationships. As noted in chapter 5, constraints on voice are particularly great among IMWs who are precariously employed and who experience precarious immigration status linked to their mobility across international borders, placing them at risk of blacklisting and deportation. These workers also often confront linguistic and other barriers.

Barriers to unionization and to communication and engagement within unions (Tucker and Jowett 2014) can also intersect with ERGM to constrain workers' voice. Trade unions play a crucial role in enforcing health and safety regulations, within Canada and internationally, and in helping workers access workers' compensation. They often determine the effectiveness of health and safety representatives' actions (Walters 1996), and their presence is associated with a better outcome in regard to the role of joint health and safety arrangements (Johnstone, Quinlan, and Walters 2005). In diverse contexts, the exigencies of additional hours of travel required of workers, coupled with, for FIFO/DIDO workers, long shifts and extended rotations followed by widespread dispersal, are not conducive to worker participation in activities taking place after work. These barriers may constrain worker consultation around work-related hazards and the mobilization of joint health and safety committees, even in those situations where mobility is not associated with geographical remoteness, as in the case of extended/complex daily commutes in large urban centres. Layers of vulnerability around both engagement and consultation are likely particularly great among groups such as precariously employed immigrant workers who confront language and other barriers, work multiple jobs or transition regularly between jobs, commute for long periods of time, and work night and split shifts (see, e.g., Premji 2017).

FIFO/DIDO workers, IMWs, and workers for whom mobility is an inherent part of their work will not only have difficulties participating in union activities; they may also find it extremely difficult to organize using traditional organizing strategies. This is not only because, as noted earlier, they may be invisible to union organizers who can't get access to the remote work sites or can't see them when they are constantly on the road but also because they are less likely to feel part of a collective and may fear repercussions. An exception to this might apply in the case of mobile workers living in proximity to each other in a work camp, but access to

these workers by union organizers remains a problem. An OTM policy report on the issues of mobility and collective bargaining documents these challenges (Tucker and Jowett 2014), and they are further illustrated in a case study by Eric Tucker (2020). Tucker and Jowett (2014, 2) identified different challenges that ERGM poses for the ability of workers to establish and sustain effective collective bargaining relationships because of “the mismatch between their reality and the design and operation of Canada’s collective bargaining laws.” The authors consider their report to be a “first-look at the intersection of ERGM and collective bargaining law,” given the scarcity of case law and commentary on the subject (3). They discuss the structural features of the Canadian collective bargaining regime and how the models don’t enable unionization and effective protection for mobile workers. It is important to keep these different challenges in mind when thinking about OSH and regulatory effectiveness.

Susan Cake (2016) studied worker mobility in Alberta as a union issue. She found that through collective agreements, mobile workers tended to be treated as a “distinct category of worker”: Local workers were given a preference for employment, but also most collective bargaining agreements included a process for layoffs, where generally, the first people laid off are “probationary union members and those from outside of Alberta, otherwise known as travel card members or permit holders” (337). She discussed how camp accommodations have become union issues and noted an agreement that outlines “behaviours (e.g., violence, bullying), substances (e.g., illegal drugs) and items (e.g., firearms, ammunition) prohibited on camp property, in addition to the rules governing the social reproduction of the labour force while workers are living in the camps (e.g., food allocations)” (337). The camps have separate rules but also “separate grievance procedures provided in the camp rules that mimic union collective agreements” (337).

Many seafarers in Canada are represented by trade unions; however, pursuant to the work of Walters and Bailey (2013), Shan and Lippel (2019) found that individual safety representatives on vessels are more likely to be marginalized and isolated. They thus recommend that seafarers should have access to a workplace health and safety committee on board (391).

In Lippel and Walter’s (2019) investigation for OTM, they could not find systematic strategies mobilized by unions to address OSH challenges

and to ensure protections for any specific category of the mobile workforce. Walters et al. (2018) had previously found, however, that some mining unions have mobilized technologies “as tools to get workers involved in health and safety issues when they are the most available—while being transported by the employer to and from the closest municipality,” adding that “health and safety information is more welcome when received in a text message while on a bus going to a mine site than it would be if sent during the very long work shifts, or during time while workers are at home with their families” (Lippel and Walters 2019, 338).

The ambiguity of what is work related and what is not, which is associated with extended/complex and often multimodal ERGM, also weighs in the balance when, for example, a worker wants to speak up about hazardous commuting conditions or living conditions. Threats to income for workers who refuse to undertake a hazardous journey or are concerned about the safety of their accommodations and may, as a result, lose a full rotation and possibly be disciplined are strong incentives for workers to take chances and remain silent when confronted with hazards. Refusing dangerous work—a worker’s right and related to workers’ voice—can also be a challenge for mobile workers employed in mobile workplaces, such as truck drivers, or in multiple workplaces, such as home care workers. These workers often work alone, with little or no guidance from their unions or supervisors. They may also work in remote and in some cases mobile or transient workplaces (as with tree planting, logging, and fishing) that are less accessible to labour inspectors who have the final say on the right to refuse (Lippel and Walters 2019).

Inspectors struggle to reach remote, dispersed, and mobile workplaces, hindering their ability to respond to worker complaints or hazardous work refusals in person. Additionally, safety representatives face difficulty accessing workers constantly on the move. Access to remote workplaces, particularly smaller ones lacking safety representatives, is further hindered by communication challenges like poor cell phone coverage and limited satellite communications. Notably, the effective Swedish system for regional health and safety representatives who represent the interests of workers in small firms, initially designed for regional health and safety representatives to safeguard construction and forestry workers, highlights

the need for protection in remote areas where workers engage in high-risk activities without adequate OSH support (Frick and Walters 1998).

Although health and safety representatives are mandatory in most provinces, roving health and safety representatives who could play a role in multiple workplaces within the same firm or union do not exist in Canada. This is a model worth exploring to meet the OSH needs in small workplaces and also in remote workplaces, particularly where workers, such as tree planters and some other forestry workers, are transient and scattered over a wide territory.

It is well recognized that gendered divisions of labour, including within the same job descriptions, contribute to different occupational exposures and thus different injury patterns for women and men (Messing 1998; Lippel and Premji 2019). ERGM is also gendered, with men more likely to engage in long-distance FIFO/DIDO types of work, although work camp employees and live-in caregivers who support these mobile workers are more likely to be women and, in some cases, IMWs. In urban areas, women's daily journeys to work tend to be shorter and more complex than men's due in part to their responsibilities for childcare and household work. In FIFO/DIDO types of work, a macho masculinist work culture has been linked to gendered harassment and related threats to physical and mental health (Dorow, Hilario, and O'Leary 2023). Gender is thus a determinant of both patterns of ERGM and work-related exposures and injury/illness risk. Finally, class and occupational segregation by racial and immigration status intersect with gender and with modes, timing, cost, and other aspects of mobility to influence risk. This is illustrated by Premji's (2018) work on precariously employed, recent immigrant women and men who travel by public transit often during off-peak hours (with more prolonged trips and enhanced risk of violence).

Across the spectrum, ERGM intersects with other determinants to influence not only injury risk but also access to health care, compensation, and return to work. As outlined in chapters 1 and 6, those engaged in mobility as work, including truckers, seafarers, fishermen, and others, may have constrained access to treatment when they are injured or become ill on the road, at sea, and following plane crashes, and such delays can be potentially life threatening (Neis et al. 2025). In some contexts, as noted in chapter 1, coworkers on the same truck or vessel, and those on others

in the vicinity, will have to take on the role of first responders during the period of time between the incident/illness and access to health care, and this can threaten their own psychological health. As discussed in chapter 4 and shown in recent research on interprovincial migrant workers in Alberta and British Columbia (Cherry et al. 2019, 491; Macpherson, Neis, and McLeod 2022) and research among IMWs, long-distance labour migration and rotational work are often accompanied by pressures to work through injury and while ill rather than filing compensation claims. Finally, in terms of psychosocial risks, Lippel and others have highlighted ways in which issues around access to workers' compensation for the precariously employed can contribute to psychological injury among workers. These issues can be amplified, along with potential psychosocial risks, for some interprovincial mobile workers, seafarers, IMWs, and others who face particular challenges when injured on work sites a long way from their families (Lippel 1999b, 2007).

Moving Forward

In this section, we bring together some of the key issues with regulatory effectiveness identified elsewhere, highlight the related policy issues, and identify some potential ways forward. We work from the premise that workers often want to maintain as much control as possible over their ERGM, in part because of the challenges that come with synchronizing their work, mobility, and home lives. However, work location and organization, shift and rotation scheduling, mobility options, accommodation options, and, to varying degrees, the effort required to synchronize work, complex mobility, and family dynamics can significantly jeopardize their physical and psychological safety. This is perhaps particularly the case when responsibility for mobility is offloaded onto workers and their families and when mobility-related costs, including injuries, are not an intrinsic part of risk management by employers, workers, and the relevant regulatory agencies.

Mobility as Work

As noted in chapter 1, while mobility as work in, for example, land, sea, and air transportation, shipping, and fishing was not the main focus of this

book, research has shown that these are high-risk sectors associated with multiple and diverse hazards. These are also sectors within which mobility, with the exception of commuting, is considered to be part of employment and thus subject to OSH regulations. In these sectors, mobility-related injuries and fatalities are generally compensable (although not always, as with gig workers who are treated as contractual and self-employed). Despite fewer challenges to regulatory effectiveness around work relatedness, some challenges persist. These challenges relate to overlaps between occupational and public safety and related jurisdictional divisions and potential overlaps and ambiguities between transportation safety and OSH. Like workers in other segments of the mobile labour force, these workers also share—to varying degrees depending on gender, class, citizenship, and employment precarity—dispersal and transience in terms of space, long hours, and, for some, multiday rotations with associated risks of fatigue, as well as constraints on both voice and visibility from the point of view of inspectors. In some cases, they are mobile across jurisdictional boundaries, such as those engaged in FIFO/DIDO and IMWs with related potential ambiguities and complications around both regulations and access to compensation. As outlined in chapter 1, some attempts have been made in some sectors, such as trucking, to mitigate the risk of fatigue-related injuries, but when combined with other constraints and realities in the lives of some truckers, these initiatives can create new challenges and pressures to break rules. There is growing attention to fatigue as a hazard in some of these sectors, but as indicated in a recent study on fatigue in Canadian seafaring completed for Transport Canada, more work needs to be done (Shan, Ochs, and Yadav 2023).

Addressing the “Dangerous Commute”

Actual commuting to work, be it a complex/extended daily commute, FIFO/DIDO work, or IMW mobility, is frequently multimodal, variable, and often an invisible occupational hazard—for instance, because of weather, traffic, or, as with IMWs, the inadequacy of vehicles/vessels or drivers provided by the employer. Existing regulatory frameworks largely treat the dangerous commute as the product of worker decisions on where to live, but as argued in chapter 1, this oversimplifies complex situations,

and research findings show linkages between employer decisions and management strategies, work design and other factors, and the nature and consequences of OSH hazards and compensation outcomes associated with ERGM, even for daily commuters.

To get a sense of how many people die while commuting to and from work, Bittle, Chen, and Hébert (2018) examined both Statistics Canada data on commuting patterns and Transport Canada data on motor vehicle fatalities. They found that from 2010 to 2014, an average of 199 fatalities occurred during the morning commute and an average of 350 fatalities occurred at the end of the workday for an overall average of 549 annual fatal collisions during regular commuting hours (171). They highlight that it's impossible to know if these persons were in fact commuting or if they were driving for work (and in the course of employment, for example, and in the official data of WCBs) but also note that these data exclude shift workers who do not have standard working hours. They conclude by estimating that during their study period, approximately 466 annual collision fatalities had “the potential to be work related” (172) and thus that many workers

lose their lives simply trying to get to and from work, and although these deaths occur outside of legally defined working hours (an ideologically based decision, not a fact), they nevertheless only occur because workers are on the roads at a time when many people are sick, tired, and/or distracted and roads are crowded and, in many instances, dangerous. (170)

As we have previously seen, the question of whether various situations confronted during a commute are or are not considered to “arise out of and/or in the course of employment”—the requirement for compensability—is extremely complex and can't be answered without research or consultation. Each case has to be evaluated in light of a broad range of issues, and the approach may differ from province to province. General duty provisions, which are defined in broad terms as employer obligations to protect workers' health and safety, may apply in some cases. In the absence of provisions specifically addressing the commute in law, policy, or case law, however, questions remain about the effectiveness of

the current regulatory framework for protecting worker health within diverse segments of the mobile labour force.

In thinking about policy and regulation, since commuting accidents are generally not considered to be work related, there is an inherent difficulty associated with tracking work-related automobile injuries in many jurisdictions. In the US, it has been proposed that driver safety policies should be established and enforced to help workers recognize the potential hazard (Hamel 2020). Keeping in mind variable constraints on the capacity of workers to “choose” their mode and conditions around ERGM, distinctions may also need to be made between the long commute that is required by the organization of the job and the long commute that is the personal choice of the worker. While the regulatory requirements would theoretically differ depending on whether the employer controlled the need for the long commute, the OSH consequences may be similar. A very long drive is a very long drive, regardless of the reasons behind it. It is worth asking, however, if it is always appropriate for regulators and employers to consider the parameters of the process by which workers get to work, as is done in many European countries? Are there tensions between OSH challenges and privacy issues in those cases where the worker’s personal choice is to commute rather than to move their family, for example?

Guidance material suggests ways in which workers or organizations can contribute to the prevention of transit accidents (e.g., the Canadian Centre for Occupational Health and Safety [2024] provides guidance to workers on avoiding accidents with wildlife; see also Workplace Safety North 2023). The European Transport Safety Council has documented the business case for the prevention of roadway accidents and has produced guidelines showing ways in which employers can contribute to their prevention, whether they involve their employees as commuters or as drivers at work (Bidasca and Townsend 2014). In addition, guidance material destined to businesses requiring international travel of their employees describes “a travel risk management system” and provides an overview of health hazards associated with international travel missions and prevention strategies for employers (Prevent 2015). These could serve to structure discussions on ways to move forward.

At a minimum, there is a need to clarify employers' responsibilities with regard to commuting conditions, a step that will have repercussions both in terms of better management of OSH and in terms of coverage for workers' compensation purposes.⁵ It is also important to address the shifting status of the "commute" to and from work in order to ensure that rights and obligations of workers and employers are appropriately regulated so as to ensure the regulatory objectives of OSH legislation and related statutes. For instance, policies governing transit to and from remote communities, affecting isolated commuters, those in chartered/corporate collective transportation, or some combination of these, should be in place. These policies could include oversight requirements as to the safety of the means of transportation as well as requirements to ensure workers' ability to communicate in a timely manner with the employer regarding the conditions of transit if they expose the worker to hazards that could justify employer intervention or the exercise of the right to refuse.

Refusing to commute under certain circumstances, such as bad weather, can have disproportionate economic consequences for some workers and may even lead to job loss. Even in those sectors that are carefully regulated with regard to duty time, such as the aviation sector, the time required to travel to the plane (David-Cooper 2019) or, in the case of seafaring, to the ship (Shan and Neis 2020) is not considered within the regulatory frameworks. As Desai Shan's work has shown, contractual best practices can be found in some collective agreements or individual contracts; however, the more precarious workers within these sectors are less likely to benefit from these provisions (Shan and Lippel 2019; Shan and Neis 2020). Similarly, Archibald and Tucker's (2017) study of collective agreements in the home care sector found that clauses allowing workers to refuse to undertake commutes made dangerous because of bad weather were rare; when the issue was addressed, it was more common to find clauses granting the employer the power to determine whether the weather justified cancellation of a visit.

Based on findings outlined in this book, regulators and workplace parties should reflect on the following questions:

1. Should the general duty clause in OSH legislation be interpreted to include transport to and from the workplace in some situations?

2. In what circumstances should inspectors be alerted to dangerous travelling conditions?
3. Should those responsible for transporting workers, be they seasonal agricultural workers or others, be regulated through licensing and vehicle inspection?

As previously mentioned, in some circumstances, workplace parties agree implicitly that a transport worker is justified to refuse to take to the road in bad conditions (Gendron 2018), but this seems to be the exception that proves the rule. Gesualdi-Fecteau et al. (2022, 157), studying the legal framework of working hours, emphasize how, generally, a worker cannot invoke their own health condition, like fatigue, to refuse work if the work conditions are not abnormal.

Collective agreements could provide incentives to workers to not undertake commutes in dangerous conditions by ensuring that employers pay the cost of time and travel home, as is done for some management and other employees. By stipulating that travel time is work time, they can also reduce the ambiguity surrounding the status of the commute between clients or work sites for those working in multiple sites. Collective agreements that provide for accommodation to sleep in the community where the airport or other employer-supported transport system picks up the workers would reduce the temptation to travel overnight and then begin a very long shift in safety-sensitive positions.

In Canada, the Transportation Safety Board provides a wealth of information gleaned from investigations of serious incidents involving various means of transportation, in many cases involving those segments of the mobile workforce for whom mobility is work. A systematic examination of these reports of incidents involving either passengers being transported to a work site or mobile workers involved in incidents related to aviation, seafaring, or rail transport could provide useful information on prevention for policymakers and workplace parties. Currently, those reports are not easily used as research material because of limitations in the search functions, and those responsible for the publication of those reports may want to consider improving accessibility for researchers and policymakers.

Addressing Fatigue-Related Risks

Regulators and workplace parties need to address fatigue-related risks associated with extended/complex ERGM across the spectrum. As outlined in chapter 1, there are some fatigue-related regulations in place for some kinds of mobility as work, particularly in trucking and in the airline sector. However, when travel involves crossing several time zones or travelling many hours, should the regulation of working hours, be it in legislation or collective agreements, provide for a paid rest period before the start of a shift? In addition, in what, if any, circumstances should employers be obliged to provide work-related transportation, such as when getting to work requires travel beyond a specific distance?

Long, daily commutes contribute to workers' desire for long shifts: If it takes a very long time to get to work, it is preferable to stay at work for a longer period so as to attend work less frequently during the course of the week. Researchers have also documented the desire to work longer hours among FIFO/DIDO workers, those working in remote workplaces (Gesualdi-Fecteau and Nakache 2017), and, to a certain extent, some IMWs, as well as truckers, seafarers, train and aircraft personnel, taxi drivers, and others. Finally, studies have shown that accreditation systems for pilots (David-Cooper 2019, 128–29) and seafarers (Shan and Neis 2020, 174), for example, are based on the number of hours of flying or sailing time. This means that the younger the worker, the greater the need to work long hours; therefore, there is a risk that young workers with the least experience are most likely to want the extra hours in these safety-sensitive jobs.

A mandatory fatigue management system could be implemented to address issues of fatigue in the same way that mandatory risk assessment for violence prevention is applied to workplaces. However, ensuring that organizations address the determinants of fatigue requires regulatory changes federally, as noted by the Transportation Safety Board of Canada (TSB), and, in some cases, provincially. In some provinces, such as Québec, ensuring that work organization does not undermine workers' health and safety is an intrinsic part of the employer's general duty clause.

While employers cannot control how well a worker sleeps, they can adjust the workplace to mitigate fatigue, particularly through shift

scheduling. As Foster and Barnetson (2016, 125) emphasize, “Employers can ensure shifts are not too long or too close together as well as avoiding dramatic shifts,” and they “can also ensure that workplace temperatures are not too high, work is interesting and engaging without being too strenuous, and adequate opportunities for resting, eating, and sleeping (if necessary) are provided.”

In the US, the National Institute for Occupational Safety and Health recently hosted a national forum on working hours, sleep, and fatigue designed to review current evidence about related risk and to identify effective measures for countering this risk. This resulted in a special issue of the *American Journal of Industrial Medicine* that included six sector-specific literature reviews, including those for key sectors discussed in this book, and a discussion of the value of identifying common risk factors across the sectors and sharing evidence related to risk mitigation. This is a valuable resource for future work (see Wong and Swanson 2022).

WorkSafeBC, British Columbia’s compensation and inspection agency, provides documentation about how fatigue can be prevented in the workplace—in particular, what can be done about the schedule of workers and identifying irregular or extended hours, night shifts, shift rotation patterns, back-to-back shifts, and overtime (WorkSafeBC 2023). Regulators and workplace parties should reflect on these issues and on the questions related to them. For example, should there be better coordination between regulatory measures in labour standards legislation that address long shifts or maximum hours on the one hand and the evaluation of working hours for the purpose of preventing hazardous levels of fatigue on the other? In addition, how can workplaces and regulators ensure that travel time and travel conditions preceding the beginning of a shift are considered when evaluating fitness for work? Would a mandatory fatigue management program applicable to all workplaces with safety-sensitive jobs, large and small, provide the necessary incentives for prevention of fatigue, including while travelling within and after work? And how can regulators provide oversight to ensure appropriate implementation of such a program?

When designing regulatory and policy provisions and when negotiating collective agreements, workplace parties and regulators should identify and consider removing systemic incentives for the least experienced

workers to accept the longest working hours in some sectors. More generally, there is also a need to ensure protection from lost income, reprisals, and constraints on the right to refuse dangerous work linked to ERGM. Thus, workers should have the right to refuse to drive in the context of dangerous weather and other conditions without fear of reprisal, including job loss. This is important to protect not only the workers' health but also the health of those who share the vehicle, highway, seaway, or airway. Regulators and workplace parties could also consider provisions in legislation or contractual arrangements and collective agreements governing consequences of arriving late or leaving early when difficult conditions associated with ERGM affect the worker's ability to arrive on time or require that they depart before the end of the regular shift in order to get home safely.

Addressing the Challenges FIFO/DIDO Workers Face

For FIFO/DIDO workers, issues with fatigue and the pressure to engage in dangerous commutes may be exacerbated by rotations that involve both extended travel and long periods at work, followed by relatively short periods off, with the latter further reduced by travel times. Given mounting evidence from Australia and Canada that such rotations can also affect the mental health and family relationships of these workers, as summarized in chapter 1 (see, e.g., Dorow, Hilario, and O'Leary 2023; Fruhen, Gilbert, and Parker 2023; Martin 2020; Neis and Neil 2020), there is a need for both regulatory and policy action. Australian government studies have made a series of recommendations, some of which are relevant in Canada (Parker et al. 2018; Asare, Thomas, et al. 2021). The Australian reports recommend the development of codes of practice for improving OSH outcomes for FIFO workers, and these may provide appropriate tools for Canadian regulators and workplaces. Dorow et al.'s (2021) recent study of FIFO/DIDO and mental health among male and female oil sands workers also contains recommendations.

From a regulatory perspective, it is important to ensure that the protection of workers' psychological health falls clearly within the purview of OSH legislation. This is now true in most Canadian jurisdictions because of explicit language in the respective OSH acts.⁶

No regulation currently exists to ensure that workers have access to adequate telecommunication systems when they are working and living in remote locations, be they farm workers, seafarers, or FIFO/DIDO workers. While contractual provisions may address these issues, regulatory provisions could require provision of adequate telecommunication equipment to all workers living and working in remote sites. Requiring access to a telephone in the mid-twentieth century would have seemed at the time to have been a reasonable requirement. It seems reasonable to require that, in 2025, employers provide free access to cell coverage and the internet for workers far from their families for prolonged periods of time.

Other OSH challenges pertaining to remote workplaces that need to be addressed include situations that involve working alone, including while mobile, or with others some distance from headquarters, in situations where inspector access is reduced and where the chances of the employer being forewarned of the arrival of inspectors are much higher. One of the issues here is the need to ensure adequate communication between workers, management, and families. In cases of physical distance between the mobile worker and a spatially distant employer,⁷ discussion is needed around what communication strategies should be required to allow workers to exercise their rights to be informed of the hazards of their work and to refuse dangerous work. Access to regular, dependable means of communication is also critical to workers' mental and psychosocial health by allowing them to maintain regular contact with family and friends. Communications options should be free and need to protect workers' right to privacy.

Addressing the Complexities of Interjurisdictional Mobility

It would be helpful to examine the strengths and weaknesses of the Interjurisdictional Agreement on Workers' Compensation (IJA) to improve protections and ensure workers do not fall through the cracks because they are interjurisdictionally mobile. Aside from the issue of occupational disease, specific provisions in each province/territory determine which jurisdiction has authority on a given case, but these provisions are asymmetrical rather than mirroring the provisions in neighbouring provinces.

This leads to the possibility that no province could have jurisdiction over an injury to some individuals caused by work. Nothing indicates that this is the intention of the regulators, so there is room for improvement with regard to this highly technical question that leads to individual cases of injustice and unnecessary litigation.

Similarly, policy and practice in the application of coverage for injuries occurring during various categories of travel are uneven between jurisdictions. While each province is sovereign, we suggest that the disparities between policies and practices in different provinces be brought to the attention of those responsible for policy so that they have the opportunity to revisit their policies in light of practices in other provinces.

Mobility may decrease the visibility of both duty holders (employers) and workers not only for unions (see Tucker and Jowett 2014) but also for regulators and regulatory agencies, be they mandated to collect taxes, fund workers' compensation, or ensure compliance with OSH requirements. Traditional surveillance methods for occupational health problems among migrant workers have been shown to be ineffective in the US. This has led to the development of alternative strategies focused on working with local health centres not only to facilitate access to health care but also to track health hazards to which the workers—in this case, agricultural workers—are exposed (Earle-Richardson et al. 2003). This should be done more consistently in Canada.

In the case of inspectors, in a context of cutbacks, new mechanisms for ensuring compliance for OSH have emerged in some priority sectors, such as mines, that are more traditionally targeted by regulators and OSH actors. Other activities, such as work on land-based rigs in oil and gas, work on ice roads, and home care work, have received little attention. Hill et al.'s (2019) report on the status of domestic workers in Alberta indicates, for instance, that "Alberta's OHS system has relatively few inspectors (approximately 140 for 1.8 [million] workers). Additional inspections for domestic work would require either the redeployment of existing inspectors or additional financial resources to hire new inspectors" (415). In addition, policymakers are reported to be uncomfortable subjecting caregivers' employers to additional regulation, as evidenced by the 2017 decision to exclude caregivers from the ambit of the Occupational

Health and Safety Code. This suggests a lack of political will that makes additional enforcement unlikely.

Improving Regulatory Effectiveness for Living at Work

As we have seen, those in the ERGM spectrum who do not return home for days, weeks, or, as in the case of IMWs, months or even years have needs relating to the quality of the housing provided and the amenities available to them. The literature provides illustrations of tools developed in response to the needs of workers in camps in Canada, models that may be useful in other places (see Angel 2014; see also Fionda 2017). Protections for improving the quality of housing and food provided by employers, communications tools, and provisions ensuring security for women should be put in place to ensure that living conditions are included in the mandate of those responsible for workers' health (both OSH regulators and consulates responsible for IMWs). Currently, the shifting boundaries of the status of the housing occupied by mobile workers, even housing owned by the employer, mean that regulators do not get involved in housing issues in some provinces, which leads to worker exposure to hazards that remain unaddressed.

Better Protection for International Migrant Workers

Several recommended best practices pertain to the language barriers that IMWs are likely to face as well as to their lack of training in OSH. Some have recommended that mandatory contractual provisions proposed by Employment and Social Development Canada (ESDC) could include provisions to address this gap (Allen 2017, 124–25), while others have recommended that hazards be posted in the workplace, using plain language that workers can understand (British Columbia Coroners Service 2012). Best practices in this regard include those in BC, where WorkSafeBC provides easily accessible OSH information in a large number of languages. While there are still problems with the actual dissemination of that information, the situation there is preferable to that in other provinces, such as Québec, where very little information is available in languages other than French. Some believe that requiring a medical exam each year or season could help prevent OSH issues (Amar et al. 2009, 56–57).

Other best practice recommendations target the return-to-work (RTW) process specifically. Premji et al. (2021) point to the importance of systematically conducting formal language assessments prior to establishing RTW plans when there are suspected or known language barriers. Language should be considered in RTW plans, including in the determination of accommodations, modified work, suitable work, employability, rehabilitation, training, and job search. Language skills in themselves should, according to the authors, be considered to be as important as job skills for RTW. Moreover, mechanisms for complaints with regard to modified work or accommodations should be established to minimize the need for workers to negotiate directly with their employer; the need for proactive follow-ups by compensation staff should also be foreseen (Premji et al. 2021).

Many have pointed to the need for proper training of officials of the OSH inspectorate and WCBs and of health professionals so that these actors can better understand the realities confronting IMWs as well as the challenges they face (Premji et al. 2021; Cole et al. 2019). Research that has focused on migrant caregivers has insisted on the use of a multifaceted approach to improving their OSH. Alongside policy changes, some novel responses could involve establishing a program for subsidized housing so that caregivers can truly access the live-out option in the regulations and providing financial support to local, ethnospecific settlement and faith organizations that provide IMWs with social support as well as information about their rights and how to access health and social care (Vahabi and Wong 2017, 498).

Overall, it is likely that multiple initiatives are needed to better protect the occupational health of IMWs and to ensure their access to compensation. The Alberta Workers' Health Centre (2017) published a list of recommendations that includes the creation of an Office of the Worker Advocate to support and advocate for workers navigating OSH, employment standards, and workers' compensation protections. They also recommended that dedicated resources be provided to develop worker-focused legal information and that community organizations be funded to develop and support collective and community-based workers' networks.

Studies by legal scholars on access to decent working conditions conclude that two key issues must be addressed by regulators: limiting

precarious immigration status, which requires reform of the federal immigration legislation, and provincial labour law reform so that systems are no longer purely complaints based (see, e.g., Allen 2017, 124–25; Faraday 2012, 120). Thus, to remedy the shortcomings of closed permits, many authors recommend that the Canadian government turn to open work permits or sectoral permits (Weiler 2018; Tungohan et al. 2015; Nakache 2013, 30; Wright, Groutsis, and van den Broek 2017; Fudge and MacPhail 2009). In fact, according to some, a sectoral work permit would make it possible to fill a labour shortage in a specific industry or sector while reducing power imbalances and facilitating a change in employer (Nakache 2013; Wright, Groutsis, and van den Broek 2017). The Canadian government has attempted to address the shortcomings of closed permits by introducing an “open work permit for vulnerable workers.”⁸ However, research has shown that fear of employer retaliation makes IMWs reluctant to apply for this type of permit and that it does not eliminate the structural vulnerability of migrant workers (Depatie-Pelletier, Deegan, and Berze 2022, 36).

For years, Québec’s Commission des droits de la personne et des droits de la jeunesse has been monitoring the extent to which international migrant workers’ equality rights under the Québec charter have been violated, particularly with regard to the prohibition of discrimination on the basis of “ethnic or national origin, race, social condition, language, and, in the case of live-in caregivers, sex” (Carpentier and Fiset 2011, 25). In 2011, they published a report concluding that migrant workers were victims of systemic discrimination, and they made a series of suggestions to improve the autonomy of IMWs, including a recommendation that provincially based sectoral work permits be granted. The report also calls for permanent immigration programs intended for IMWs and the prohibition of the requirement of living in employer-provided housing.⁹

Bolstering the OSH Inspectorate

In theory, process-based approaches in combination with so-called smart regulatory strategies have a greater chance of addressing the consequences of structural and organizational changes at work and in labour markets, including those involving either new or existing challenges resulting from ERGM, than do more traditional prescriptive approaches. They

specify goals to be achieved in terms of outcomes and place an onus on duty holders to put systems in place to achieve desired outcomes. They are thus by definition more flexible and likely to be more responsive to unconventional risk scenarios such as those experienced in relation to ERGM (whether they are new or long standing). Their weaknesses are, however, essentially twofold. Firstly, the regulatory measures that adopt such approaches do not specify detailed standards and are therefore not helpful to duty holders who either don't know or are unwilling to adopt best practices. Secondly, the shift to the adoption of process-based regulatory reforms has occurred within a wider political and economic climate where the state has withdrawn from its role in regulation and where there is emphasis on support for economic competitiveness in global markets. Taken together, these have the potential to lower standards of protection offered to workers where costs are a consideration while simultaneously reducing both the will and capacity of state inspectorates for their enforcement (Walters et al. 2011). Thus, many of the strategies necessary to achieve better reach for effective surveillance can at the same time be seen as "softer" forms of such surveillance. Where regulatory agency resources are limited, such options may become the only means of discharging surveillance responsibilities rather than effective additional tools for ensuring better coverage.

In their study on workers' voice in Ontario, King et al. (2019) report how workers do not speak to inspectors about OSH hazards mostly because they are unaware of their rights or are fearful of speaking up because they are afraid of losing their jobs. They report how inspectors know that some workers do not want to approach them and that workers working illegally may avoid them (59–60).

Challenges posed by such hard-to-reach scenarios as those associated with ERGM increase demands on the reach and relevance of conventional inspection strategies. Responses of labour inspectorates to these challenges might include the following: (1) moving toward a greater role for strategic coordination, stimulation, and promotional activities designed to enhance reach and "buy-in" from duty holders in achieving improved management of hazards associated with ERGM and (2) more focus on advice and guidance and the use of cascading messages to better connect with the "hard-to-reach" duty holders such as those

in small firms, microfirms, and foreign firms and work subcontractors, many of which are involved with one form or another of mobility and are hard to reach because of this. Inspection responses and enforcement activities could also, where appropriate, extend inspection/surveillance of supply chains upstream, including by monitoring temporary agency firms, multiemployer work sites, and bogus self-employment situations closer (especially in sectors such as construction and ride-hail and delivery services in the gig economy) and implementing targeted inspections in which ERGM hazards are given special attention.

Changes could also be made in the ways in which labour inspection authorities provide support for their inspectors to help them deal with the consequences of ERGM across the spectrum, from mobility as work to international migrant work. For example, authorities could address its consequences in basic and ongoing training provision for labour inspectors and could develop international and interjurisdictional collaborations related to inspecting such new and emergent risks as those related to cross-border problems of migrating firms and workers. They could develop partnerships with agencies representing mobile workers, including IMWs and gig workers, and support research and better data collection on hazards, injuries, and illnesses associated with ERGM through cooperation with other agencies.

Within Canada, it appears that when the same inspectorate is responsible for both OSH and workers' compensation, as is the case in British Columbia and Québec, they are in a better position to gather and share information, and the same is true when OSH and labour standards are governed under one roof, as is the case in Ontario. Since January 2016, Québec's Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST) has jurisdiction over all three. Since 2018, Québec's Act Respecting Labour Standards requires licensing of temporary worker agencies and recruitment agencies for temporary foreign workers (TFWs).¹⁰ The legislation also states that employers who hire a TFW must provide information about the date of arrival and departure of the worker if the departure date does not coincide with the end of the contract, as well as the reasons for the departure.¹¹ Employers are also prohibited from entrusting custody of personal documents and from charging

TFWs for costs related to their recruitment, other than fees authorized under a Canadian government program.¹²

In 2021, Ontario adopted the Working for Workers Act,¹³ which, as of January 2024, requires “recruiters and temporary help agencies to have a licence to operate in the province to help protect vulnerable employees from being exploited” (Labour, Training and Skills Development 2021). The decision to enact stronger regulations follows inspections in Ontario that showed over \$4 million was owed to employees in sectors where placement agencies are prevalent (*CBC News* 2023).¹⁴ When applying, temporary agencies will have to provide a security in the amount of \$25,000.¹⁵

In 2017, ESDC declared it had increased its inspection practices, with the aim of inspecting 25 percent of all employers hiring IMWs. A spokeswoman for the program is quoted as saying, “The cornerstone of the compliance regime of the TFW Program is employer inspections which serve to protect TFWs from abuse and exploitation, and to protect the integrity of the Canadian labour market by encouraging employers to comply with Program conditions” (Thom 2017). In Québec, the minister of labour also announced in 2023 that he would like to better protect the growing number of IMWs, who have been made permanent, and his mandate will also be expanded to reach workers in a wider range of economic sectors and regions in the province. The minister announced that ten new prevention officers would be added to the team (made up of a dozen prevention officers). In addition, 291 health and safety inspectors and 141 labour standards inspectors are to be added to the field (Radio-Canada 2023b). When labour standards, OSH, and workers’ compensation are part of the same agency, it may be easier to coordinate inspections and interventions to address the complex challenges associated with mobile labour forces.

Final Thoughts

With its overarching focus on OSH regulatory effectiveness, this book has shown that a broad range of mobile workers and the complex ways work, mobility, and life intersect are often invisible to researchers and to the research informing policy, as well as to regulators and, to some

extent, to unions. It has also shown that steps need to be taken to put an end to the invisibility of ERGM as a determinant of OSH and to promote inclusion of mobile workers across the spectrum by identifying and responding to their specific needs in the design of regulations, policies, and programs. This would include incorporating work-related mobility in the definition of employers' general duties, in collective agreements, and in the implementation of health and safety management practices. Researchers, regulators, employers, and unions need to pay attention to mobility in all its complexity, including in the design of OSH and workers' compensation policy and health and safety systems. The inclusion of ERGM—in all its dimensions and informed by its intersection with multiple determinants—as an integral part of process regulation and risk assessment processes would induce workplaces and regulators to determine the sectors and jobs in which mobility is prevalent. In those jobs and sectors, systematic assessment of the hazards associated with mobility and the search for solutions to reduce those hazards should be mandatory. In addition, compensation policies need to be designed so that they more effectively anticipate and mitigate the challenges mobility can create for access to compensation, treatment, and support and for RTW, particularly in a federal state like Canada, with its growing reliance on IMWs.

One overarching issue that needs to be considered is the protection of workers from the imposition of involuntary mobility: To what extent can management prerogative with regard to work organization justify the imposition of mobility? We have not developed this issue in this book, taking as given that the workforce studied was the mobile workforce. However, workers' objections to imposed mobility are becoming more and more visible. For example, on March 2, 2018, part-time health care workers in Québec denounced the employer's requirement that they agree to be on call within a two-hundred-kilometre radius of their home, explaining that this new measure would increase the likelihood of exhaustion and burnout (Duchaine 2018).

There is also a need for much more gender-informed research on ERGM as an OSH determinant across the spectrum, as much of the research cited here is gender blind. Similarly, research is needed on Indigenous ERGM and occupational health and on more diverse types

of IMWs across more sectors and contexts. In addition, the book has not engaged with the growing literature on undocumented workers and OSH in Canada and elsewhere (see, e.g., Foster and Luciano 2020) or with the literature highlighting previously unrecognized internal (within Canada) mobility among IMWs and ways this might influence OSH and access to compensation (see, e.g., Perry 2021; Knott and Marschke 2021). Finally, the organization of the book, which leads inevitably to the separate discussion of issues related to work-related mobility and OSH for differently mobile groups precludes an examination of ways overarching corporate mobility regimes (Cresswell, Dorow, and Roseman 2016; see also Foster and Barnettson 2015, 2017) produce clusters of these groups in particular workplaces or contexts with potential implications for differences in hazard exposures and regulatory effectiveness. This kind of mobility regime approach, used by Sara Dorow in her Alberta oil sands research, has the potential to encourage analyses of drivers and consequences of the evolution of labour forces, working and mobility conditions, and regulatory effectiveness over time. There is much to be done, and we can only hope we have done enough to inspire future work.

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Appendix

Sections Governing Territorial Scope and Mobility in Workers' Compensation Acts

Province	Laws/regulations	Sections
Alberta	Workers' Compensation Act, RSA 2000, c W-15 ^a	s 14 Application of Act s 16 Persons deemed workers s 21 Compensation in place of action s 24 Eligibility for compensation s 28 Out-of-province accidents s 29 Agreements with other provinces or territories s 30 Cost sharing agreements s 53 Compensation to dependents residing outside Canada
	Workers' Compensation Regulation, Alta Reg 325/2002 ^b	s Exempted industries Schedule A Exempted industries
	Agricultural Operation Practices Act, RSA 2000, c A-7 ^c	s 1.2 Choice of coverage

(continued)

Province	Laws/regulations	Sections
Newfoundland and Labrador	Workplace Health, Safety and Compensation Act, 2022, SNL 2022, c W-11.1 ^d	s 45 Application of Act s 47 Coverage for particular workers s 50 Compensable payable s 52 Compensation instead of action s 53 No compensation s 54 Where action allowed s 57 Compensation to non-residents s 58 Relocation s 59 Injury outside province s 131 Arrangements with other provinces
Ontario	Workplace Safety and Insurance Act, 1997, SO 1997, c 16, Sch A ^e	s 11 Insured workers s 18 Employment outside Ontario s 19 Accident outside Ontario s 159 Board continued s 160 Agreement re duplication of premiums
Québec	Act respecting industrial accidents and occupational diseases, CQLR c A-3.001 ^f	s 7 General scope s 17 Persons deemed workers s 452 Redress under other plans
	Regulation respecting medical aid, CQLR c A-3.001, r 1 ^g	s 1, 4, 5.
	Regulation respecting travel and living expenses, CQLR c A-3.001, r 8 ^h	s 3

a. <https://canlii.ca/t/56ncb>.

b. <https://canlii.ca/t/56lot>.

c. <https://canlii.ca/t/56jlt>.

d. <https://canlii.ca/t/56l81>.

e. <https://canlii.ca/t/56mw5>.

f. <https://canlii.ca/t/56l51>.

g. <https://canlii.ca/t/56h68>; this regulation was repealed in 2025 and replaced by the *Regulation respecting health services, adapted equipment and other costs*, CQLR c A-3.001, r 14.2. See section 10, “Border region and outside of Québec.”

h. <https://canlii.ca/t/56h6d>.

Notes

Introduction

- 1 We use occupational safety and health (OSH) instead of occupational health and safety (OHS) in this book because our assessment of the relationship between ERGM and worker health requires going beyond the issues and concerns that are typically the focus of OHS research and regulation. It encompasses physical and mental health hazards, including those related to work-family conflict.

Chapter 1: Canada's Mobile Labour Force

- 1 See, for example, the UK study by Christie and Ward (2019, 115), who open their paper on health and safety in the gig economy by noting, "In Great Britain it is estimated that a third of fatalities on the road occur where someone has been driving as part of work. . . . Factors related to the elevated collision risk for driving for work include higher mileages . . . fatigue . . . being more likely to talk on a mobile phone, feeling time pressured . . . and driving at higher speeds. . . . People who drive for work are also more likely to be considered at fault for the collisions they are involved in" [original references omitted].
- 2 Bill S-221 amended the *Canadian Criminal Code* to create a new aggravating factor for the purpose of sentencing offenders convicted of assault-related offences against a public transit operator who was on duty at the time of the assault. See *Criminal Code*, RSC 1985, c C-46, s 269.01.
- 3 *Dandurand et Communauté Urbaine de Montréal*, 2002 CanLII 64568 (QC CLP).
- 4 *De Montréal Métropolitain et Lafrance*, 2003 CanLII 80862 (QC CLP).

- 5 *Canadian Union of Postal Workers v Foodora Inc. d.b.a. Foodora*, 2020
CanLII 16750 (ON LRB).
- 6 A few studies have examined the OSH hazards to which these workers are
exposed (see Fitzpatrick and Neis 2015; Bohle et al. 2009). Some studies
report that hazards of home care work are exacerbated when that work is
done by the precariously employed working for temporary employment
agencies (see Quinlan, Bohle, and Rawlings-Way 2015). These studies
include hazards associated with travel in their analysis, but this is not
always the case. See, for example, an American study that did not inquire
about travel between homes, which found that hazards of home care
workers were similar to those to which aides in institutional health care
settings were exposed, although they faced the additional hazards of
working in private homes, often alone (Quinn et al. 2014).
- 7 For an overview of hazards to which professional home care service
workers are exposed, see David, Cloutier, and Ledoux (2011).
- 8 Knowledge necessary to respond to a health and safety concern and
familiarity with work tasks and work methods are two variables retained
by Peter Smith et al. (2015) in their measure of OSH vulnerability.
Although they have not directly addressed issues of mobility in their
scales, these measures speak to some of the challenges faced by many in
the mobile workforce (see Lay et al. 2017).
- 9 Similarly, Nielsen, Hansen, et al.'s (2019) study of risk of injury and short
time between shifts among Danish hospital workers found a higher
risk of occupational, commuting, and leisure time injuries compared
to injury risk among those with a standard fifteen to seventeen hours
between two shifts.
- 10 Workers were stranded for some time in northern Alberta with no support
to return to their home provinces when a subcontractor went bankrupt
and reneged on contractual guarantees to pay for travel to and from the
remote work site and home (CTV News 2015).
- 11 Twelve Turkish crew members of the *Phoenix Sun* were stranded in
Sorel-Tracy, Québec, for five months with little food and no income
because the ship was not seaworthy and the owner ceased to make
payments to the mariners or to the municipality in which the port was
situated. The ship was flying a Panamanian flag, a flag of convenience. The
Ontario-based spokesperson for the ship's owner, Menpas Shipping, was
evasive when contacted by reporters (Hacker-B. 2014). After five months
stranded in the port, they were able to return home thanks to donations
from local residents in Sorel and donated airfare provided by Air Transat

- (Radio-Canada 2014). The ship was subsequently sold and eventually left the port of Sorel-Tracy eight months after the crew was repatriated. The literature confirms that this is not a rare occurrence (Kahveci 2006).
- 12 The ILO keeps records of ship abandonments in a database, and none have been reported in Canada since 2014 (ILO, n.d.-a).
 - 13 *Roy c. Transport Norvinic inc.*, 2015 QCCQ 13690.
 - 14 Vulnerability of migrant workers in the European Union has also been identified as a challenge for policymakers (see, e.g., Guldenmund, Cleal, and Mearns 2013). A greater proportion of migrants than domestic workers were found to have been exposed to higher risks of OSH issues in Korea (Cha and Cho 2014). For studies in Australia, see Underhill and Rimmer (2015) and Bamford (2015).
 - 15 For a particularly egregious case involving two TFWs who were preyed upon by their employer in Ontario, see *O.P.T. v. Presteve Foods Ltd.*, 2015 HRTO 675. For an equally egregious case in British Columbia, see *PN v. FR and another (No. 2)*, 2015 BCHRT 60, a case involving a live-in caregiver repeatedly sexually assaulted by her employer.
 - 16 This is an issue for both immigrant workers and migrant workers (for immigrant workers in Canada, see Gravel et al. 2013; Premji, Messing, and Lippel 2008; in the US, see Rathod 2010; for migrant workers, see Malhotra et al. 2013; Sargeant and Tucker 2009; McLaughlin, Hennebry, and Haines 2014; Preibisch and Otero 2014, 190–91; in Québec, see Gravel et al. 2014, a study that discusses a variety of employer strategies to overcome language barriers in the interest of more effective OSH compliance). In the UK, the Health and Safety Executive responded to the need for increasing OSH awareness in migrant workers by a twelve-month outreach campaign using documentation in Polish, Gujarati, and Romanian for construction workers; however, funding cuts have limited the possibilities that such programs continue (Pai 2010; see also Reid-Musson, Buckley, and Anderson 2015).

Chapter 2: OSH and Workers' Compensation Regulatory Overview

- 1 Universal Declaration of Human Rights, UNGA, 3rd sess, UN Doc A/810 (1948) GA Res 217A (III).
- 2 International Covenant on Economic, Social and Cultural Rights, December 16, 1966, GA Res 2200A (XXI) (entered into force January 3, 1976, in accordance with art 27).

- 3 The portrait of Canada looks only at federal legislation, which is of a
limited value for our purposes, but it is a worthwhile source for countries
that are not federations.
- 4 See section 1, “Part XIII of the Treaty of Peace of Versailles” (International
Labour Office 1923).
- 5 International Labour Office (1923), 332, sec. 1.
- 6 *C001—Hours of Work (Industry) Convention*, 1919 (No 1) (entered into
force June 13, 1921). This Convention was ratified by Canada in 1935.
- 7 See, in particular, *C155—Occupational Safety and Health Convention*, 1981
(No 155); *C187—Promotional Framework for Occupational Safety and
Health Convention*, 2006 (No 187).
- 8 *C155—Occupational Safety and Health Convention*.
- 9 *C187—Promotional Framework for Occupational Safety and
Health Convention*.
- 10 *C187—Promotional Framework for Occupational Safety and Health
Convention*, s 1, art 1(d).
- 11 These include *C081—Labour Inspection Convention*, 1947 (No 81); *C129—
Labour Inspection (Agriculture) Convention*, 1969 (No 129);
C155—Occupational Safety and Health Convention, 1981 (No 155);
C161—Occupational Health Services Convention, 1985; and *C187—
Promotional Framework for Occupational Safety and Health Convention*,
2006 (No 187).
- 12 *P155—Protocol of 2002 to the Occupational Safety and Health Convention*,
1981.
- 13 *C190—Violence and Harassment Convention*, 2019 (No 190).
- 14 *C097—Migration for Employment Convention (Revised)*, 1949 (No
97); *C143—Migrant Workers (Supplementary Provisions) Convention*,
1975 (No 143); *Maritime Labour Convention*, 2006; *C032—Protection
against Accidents (Dockers) Convention (Revised)*, 1932 (No 32);
C152—Occupational Safety and Health (Dock Work) Convention, 1979
(No 152); *C176—Safety and Health in Mines Convention*, 1995; *C181—
Private Employment Agencies Convention*, 1997 (No 181); *C184—Safety and
Health in Agriculture Convention*, 2001; *C188—Work in Fishing Convention*,
2007 (No 188); *C189—Domestic Workers Convention*, 2011 (No 189).
- 15 As we will see, Canada has a relatively broad set of maritime OSH
regulations. Section 29 of the Canada Shipping Act provides that
“schedule 1 lists the international conventions, protocols and resolutions
that Canada has signed that relate to matters that are within the scope
of this Act and that the Minister of Transport has determined should be

brought into force, in whole or in part, in Canada by regulation” (*Canada Shipping Act, 2001*, SC 2001, c 26). The Maritime Labour Convention has been listed in schedule 1 since 2007. See Shan (2022a) and Shan and Lippel (2019); see also Braën and Katsivela (2019).

- 16 *Constitution Act, 1867*, 30 & 31 Vict, c 3, s 91 and s 92.
- 17 *Canada Labour Code*, RSC 1985, c L-2, art 122.1.
- 18 *Occupational Health and Safety Act*, SA 2020, c O-2.2 [*Alberta OHSA*]; *Occupational Health and Safety Act*, RSNL 1990, c O-3 [*NL OHSA*]; *Occupational Health and Safety Act*, RSO 1990, c O.1 [*Ontario OHSA*]; *Act Respecting Occupational Health and Safety*, CQLR c S-2.1 [*Québec AOHS*].
- 19 See in Alberta, for example, where such obligations also belong to suppliers, temporary staffing agencies, service providers, etc.; see *Alberta OHSA*, ss 13, 14, 16.
- 20 *Canada Labour Code*, s 128(3)(5).
- 21 In Alberta, the Minister of Jobs, Economy and Trade; in NL, the Minister of Digital Government and Service NL; in Ontario, the Minister of Labour, Immigration, Training and Skills Development; in Québec, the Minister of Employment; and at the federal level, Minister of Labour.
- 22 *Alberta OHSA*, s 28.
- 23 *NL OHSA*, s 21; *Ontario OHSA*, s 54; *Québec AOHS*, s 177.
- 24 *Canada Labour Code*, s 122.21(1).
- 25 *Alberta OHSA*, s 38–40; *NL OHSA*, s 27–30; *Québec AOHS*, s 186; *Ontario OHSA*, s 57(6).
- 26 *Canada Labour Code*, s 141(5).
- 27 However, seafarers are subject to federal regulations when returning to work following a work injury (see Shan et al. 2025).
- 28 *Government Employees Compensation Act*, RSC 1985, c G-5; *Martin v. Alberta (Workers’ Compensation Board)*, 2014 SCC 25, [2014] 1 SCR 546.
- 29 *Merchant Seamen Compensation Act*, RSC 1985, c M-6. The definition of “seaman” excludes pilots, apprenticed pilots, and fishers. Seafarers who can claim compensation under a provincial plan or under federal government workers’ compensation legislation are excluded from the application of the law (see Braën and Katsivela 2019).
- 30 Canadian provinces other than Québec use “out of *and* in the course of employment,” while Québec’s AIAOD defines a work injury to include injury and disease incurred “out of *or* in the course of employment” (emphasis added).
- 31 In many jurisdictions, firefighters can benefit from presumptions when they develop certain types of cancer. See in Ontario, *Firefighters*, O Reg

253/07; in Québec, *Regulation Respecting Occupational Diseases*, CQLR c A-3.001, r 8.1; in Alberta, *Firefighters' Primary Site Cancer Regulation*, Alta Reg 102/2003; and in NL, *Workplace Health, Safety and Compensation Act*, 2022, SNL 2022, c W-11.1, s 108 [WHSCA].

- 32 *Béliveau St-Jacques v. Fédération des employées et employés de services publics inc.*, 1996 CanLII 208 (CSC), [1996] 2 RCS 345; *Genest v. Commission des droits de la personne et des droits de la jeunesse*, 2001 CanLII 11888 (QC CA) (permission to appeal denied: SCC, No. 28436, September 20, 2001). The immunity also applies to accidents incurred by seafarers: *Marine Services International Ltd. v. Ryan Estate*, 2013 SCC 44 (CanLII), [2013] 3 SCR 53.
- 33 In Ontario, section 21 of the WSIA provides that “an employer shall notify the Board within three days after learning of an accident to a worker employed by him, her or it if the accident necessitates health care or results in the worker not being able to earn full wages.” In Québec, section 62 of the AOHS provides that an employer must inform the commission of an incident within twenty-four hours only if the incident has caused the “death of a worker, the loss of a limb or of part of a limb, the total or partial loss of the use of a limb or a significant physical trauma to a worker such serious injuries to two or more workers as probably to prevent them from performing their work for one working day; or material damage valued at \$150,000 or more.” In Alberta, section 33 of the OHS Act provides that an employer shall report the time, place, and nature of certain types of injury or illnesses (in particular, when an injury, illness, or incident results in the death of a worker or incident in which there is reason to believe the worker has been or will be admitted to a hospital beyond treatment in an emergency room or urgent care facility). In NL, section 65 of the WHSCA provides that an “employer shall give the commission written notice of any, or the possibility of any, work-related injury to a worker that comes to the attention of the employer within 3 days of receiving the information.”
- 34 *Workers' Compensation Act*, RSA 2000, c W-15, s 10 [Alberta WCA].
- 35 *Alberta WCA*, s 13.2 (6)b.
- 36 *WHSCA*, s 40.1.
- 37 *Workplace Safety and Insurance Act*, 1997, SO 1997, c 16, Sch A, s 126 [WSIA]; there is, however, an exception about matters enumerated in section 31 of the WSIA, such as whether the right to commence an action is taken away.
- 38 *Thibault et Shawinigan Lavallin Inc.* [1987] CALP 703, SOQUIJ AZ-87156247 (Banque CALP AZ-4000002200).

- 39 See, however, a recent decision made by the Québec WCB that stated otherwise: *Taillon et Paprima Industries inc.*, 2024 QCCNESST 23. No appeal or judicial review has been lodged against this decision.
- 40 *Rousseau International Corporation 1996 et Laplante*, 2002 CanLII 65984 (QC CLP).
- 41 *Escudero v Diversified Transportation Ltd./Pacific Western Group of Companies*, 2015 CanLII 50878 (ON LRB).
- 42 Recently, NL OSH officials were involved in an investigation with the police when an accident happened between a fuel truck and a bus carrying refinery workers (see Cooke 2024).
- 43 *Government Employees Compensation Act*, RSC 1985, c G-5, s 4 [GECA]: “The employee or the dependants . . . are, notwithstanding the nature or class of the employment, entitled to receive compensation at the same rate and under the same conditions as are provided under the law of the province where the employee is usually employed.”
- 44 GECA, s 6; however, see *Rochon et ACDI*, 2008 QCCLP 5273, where a worker who was hired and trained in Québec by a federal organization contracted a disease overseas and was found to be compensable under Québec law; see also *Vaillancourt et Agence Canadienne de Développement International*, 2001 CanLII 45157 (QC CLP), where the tribunal concluded that regular international travel did not equate with being usually employed outside of Canada.
- 45 *Act Respecting Industrial Accidents and Occupational Diseases*, CQLR c A-3.001, art. 7 [AIAOD].
- 46 *Establishment* means “all installations and equipment grouped on the same site and organized under the authority of the same person or related persons, for the production or distribution of goods or services, with the exception of a construction site; this word includes in particular a school, a construction company as well as the premises made available by the employer to the worker for the purposes of accommodation, food or leisure, with the exception, however, of private premises used for habitation” (*Québec AOHS*, s 1).
- 47 *Fauteux et Commission de la santé et de la sécurité du travail*, 2015 QCCLP 1587; see also *Richer et Elk Property Management*, 2018 QCTAT 1992, where the appeals tribunal concluded that an Ontario enterprise, whose head office was in Ontario, had establishments in Québec, since it was operating residential buildings and housing in Québec. In *Dib et Varite (Canada) inc.*, 2021 QCTAT 4499, the employer, whose headquarters was located in California, used an office within the premises of a car rental

company in Québec. Since this office was reserved for the worker and contained the necessary equipment for the performance of his work, the employer was deemed to have an establishment in Québec.

48 See note 37.

49 The Commission des lésions professionnelles (CLP) heard the final appeals on workers' compensation in Québec until January 1, 2016. It was replaced by the Tribunal administratif du travail (TAT) on that date: *Loi instituant le Tribunal administratif du travail*, RLRQ c T-15.1.

50 *Mougeot et R.W. Tomlinson ltée*, 2015 QCCLP 3271 (*Cadieux-Mougeot et R.W. Tomlinson Ltd.*, 2016 QCTAT 1887, ruling on an application for review or revocation dismissed). The worker's benefits were reinstated because the procedural requirements that would have legitimated the reconsideration of the initial decision of the CSST accepting the claim were not in place.

51 *AIAOD*, art 8; note the current formulation of this provision dates back to 1996: *Rénovations Ancestrales Inc. et Lahaie*, 1999 CanLII 22192 (QC CLP). This provision seems to apply without difficulty to accidents occurring outside the province. See, for example, *A.C.F. Transportaide Enr. et Fortin*, 2003 CanLII 78075 (QC CLP). The same principles apply, with necessary adaptations, to occupational disease claims made by workers working for an employer with an establishment in Québec at the time they contracted their illness. When a company such as Air Canada has establishments in many provinces, it suffices that they have an establishment in Québec, even if the worker was assigned to flights flying out of Toronto: *Air Canada et Dallaire*, 2008 QCCLP 2080.

52 *Elyoumni (Re)*, 2006 CanLII 69285 (QC CLP).

53 *Jalbert et Construction Gely inc.*, 2016 QCTAT 6813; *Laflamme et Swenson Canada Inc.*, 1997 CanLII 19497 (QC CALP); *Romaguer et Excel Human Resources*, 2009 QCCLP 3012 [*Romaguer*]. In *Romaguer*, the claimant, a specialist in environmental biology, filed a claim alleging that the tendinitis in his right forearm and the carpal tunnel syndrome, which was more significant on the right than on the left, were attributable to his work with the keyboard and mouse of a computer carried out for the Canadian International Development Agency (CIDA). The CSST rejected his claim on the grounds that he was not a worker subject to the act. The review body confirmed this decision. The claimant linked his injury to work done for CIDA. When he applied to the CSST, he was told that because he was hired by an employment agency in Ontario, even though his residence was in Québec and his injury occurred in Québec, he should apply to the WSIB, which he did. The WSIB found that he was not covered by

Ontario law because he was hired to work in Québec and was not a resident of Ontario, and his work was not performed in Ontario. When the applicant went back to the CSST, he was told that he was not covered by the AIAOD because the employment agency had its official address in Ontario. He then returned to the WSIB, where he was again told that he had to make his claim in Québec. Subsequently, his CSST claim was rejected on the basis that his employer did not have a place of business in Québec. The appeals tribunal in Québec finally accepted his claim, concluding the employer was CIDA and not the agency, which was only an intermediary, having an administrative duty in the situation.

- 54 Thus, an Ontario resident working for a Québec-based trucking company, injured in North Carolina, was found to not have coverage under Québec's Workers' Compensation Act because the criteria set in section 8 of the AIAOD were not met. The domicile requirement was contested under the *Canadian Charter of Rights and Freedoms* (s 6 and s 15), and the Québec Court of Appeal found it to be constitutionally valid: *Soucy c. Québec (Procureur général)*, 2007 QCCA 1482. The Supreme Court of Canada refused permission to appeal: *Richard Soucy c. Procureur général du Québec, Commission des lésions professionnelles, Commission de la santé et de la sécurité du travail et Martrans Express (122085 Canada Inc.)*, 2008 CanLII 18938 (CSC). The worker could not successfully claim in Ontario because he did not meet the compensation criteria. This is a clear example of a regulatory vacuum leading to the absence of coverage for a worker who would normally be covered in both Québec and Ontario if his residence and his employer's place of business were in the same province. The court of appeal confirms he maintains his common law rights to sue the employer given that he does not fall within the purview of workers' compensation legislation.
- 55 *Bertrand et Transport Taurus*, 2021 QCTAT 4245. The tribunal notes, "Although the employer argues that it paid contributions in Québec and that these contributions should provide a 'certain' level of protection to the worker, there are very few grounds in the present case that would allow the Tribunal to grant the requested protection. This is one of those situations where the good faith and good intentions of all parties are not sufficient to resolve the dispute favourably" (our translation).
- 56 *Kamano et Cavalia inc.* 2019 QCTAT 1893; *Zhang et Lock-Danseurs inc.*, 2013 QCCLP 2157; *Deng et Lock-Danseurs inc.*, 2013 QCCLP 6269; *Compagnie Marie Chouinard et Myeong*, 2010 QCCLP 7620. For claims relating to truck drivers found to be domiciled in Québec and therefore

- covered by the AIAOD, see *Laul et Transport Trans Xline inc.*, 2009 QCCLP 7497; *Singh (Succession de) et 6709052 Canada inc.*, 2010 QCCLP 5667; an international sales representative with residences in Québec and India, who died accidentally in India, was found to be domiciled in Québec: *Mahoon (Succession de) et Boutique Le Rock*, 2008 QCCLP 3544.
- 57 However, Policy 06-01 (Part II) states some exclusions that fall outside of the scope of the WCA. For instance, “Trucking conducted by an employer based outside Canada if the employer does not have an ordinary place of business in Alberta or does not employ workers resident in Alberta; persons who ordinarily reside outside Canada and are employed by employers who are based outside Canada and carry on business in Alberta on a temporary basis” (WCB-Alberta 2023e, sec. 19; see also Cherry et al. 2016).
- 58 *Alberta WCA*, s 1(1) (j) (1).
- 59 *Workers’ Compensation Regulation*, Alta Reg 325/2002.
- 60 *Alberta WCA*, s 1, s 28(1); s 28(2) allows the board some flexibility in the application of this provision.
- 61 *WSIA*, s 18(1).
- 62 *Decision No 1407/03*, 2005 ONWSIAT 1377.
- 63 *WHSCA*.
- 64 *WHSCA*, s 59.
- 65 *WHSCA*, s 59.
- 66 *WHSCA*, s 57.
- 67 See, for example, *Cousineau c. Forage M. Lafrenière inc.*, 2010 QCCA 1581 [*Cousineau*].
- 68 *Cousineau*. For similar situations, see *R.V. et Compagnie A*, 2010 QCCLP 2948, where the appeals tribunal noted that the worker, after having received some benefits from the WSIB, requested that the file be transferred to the CSST, a request to which there was no response for two years. The appeals tribunal acknowledged the validity of the choice of the worker and returned the file to the CSST for adjudication, five years after the initial accident.
- 69 For a similar example, see *Milot et DL Instrumentation 1996 inc.*, 2010 QCCLP 8651, where the claim was initially accepted by the WCB-Alberta when his physician prescribed physiotherapy without the worker having actually filed a claim or received benefits in Alberta. The Commission des lésions professionnelles accepted a claim for a recurrence that manifested itself a few months after the initial injury, concluding that the worker can elect to be compensated for a recurrence under section 452 because he never initially elected to be compensated in Alberta. The same reasoning

was applied in *Mignault et Scotiablast Ltd.*, 2020 QCTAT 146, where the fact that a worker received benefits from WorkplaceNL did not, according to the tribunal, constitute a waiver of his right to exercise the option when the delays of section 452 are met.

- 70 *Thomson v. Watson*, 2020 ONSC 4409; in this case, an Ontario resident was injured while driving his employer's truck in BC. The employer was based in Alberta. The plaintiff elected to receive Alberta workers' compensation benefits. In 2014, he brought an action against the defendant (the employer), also an Ontario resident, for damages for improper maintenance of the truck. Also in Alberta, see *Pe Ben Oilfield Services (2006) Ltd v Arlint*, 2019 ABCA 400, where the Court of King's Bench of Alberta concluded in 2017 "that workers' compensation legislation may not have extra-provincial effect if it creates a conflict of laws or compromises the rights of a non-resident outside of Alberta. The issue remains, however, whether the Alberta WCA can compromise the rights of an Alberta resident outside of Alberta. The existing case law suggests that it cannot."
- 71 See appendix A of the IJA for complete limits on the extent of participation by the signatory boards (AWCBC 2017).
- 72 *AIAOD*, s 8.
- 73 *Racicot et Gérard Chabot (F)*, 2013 QCCLP 5947; this case relates to facts prior to the withdrawal from the agreement, and since only 5 percent of the exposure occurred in Québec, the tribunal asked the CSST to transfer the claim to the Ontario Board.

Chapter 3: Regulatory Challenges for Hazard Navigation

- 1 The authors note that weather conditions are a preoccupation of mobile health care workers (see Fitzpatrick 2021).
- 2 For example, ten Peruvian migrant farmworkers were killed in an accident near London, Ontario, in 2012 (CBC News 2012c). On October 30, 2022, eight migrant workers were injured—four with serious injuries—in a car crash in the early morning on their way to work (Shreve 2022).
- 3 See the report of WorkSafe BC (2007) on an accident leading to the death of three farm workers in a fifteen-passenger van rollover.
- 4 See, however, *Boucher et CLSC Joliette*, 2001 CanLII 46432 (QC CLP), where the right to refuse work because of bad weather exercised by home care workers was rejected.
- 5 The term *workplace* is used in health and safety legislation and in Ontario, for example, "means any land, premises, location or thing at, upon, in or

near which a worker works” (*Occupational Health and Safety Act*, RSO 1990, c O.1, s 1).

- 6 *Occupational Health and Safety Code*, Alta Reg 191/2021 [OHSC].
- 7 OHSC, s 7.
- 8 Section 256(3) provides that he must “report to the employer any conditions affecting the safe operation of the equipment, operate the equipment safely, use the seat belts and other safety equipment in the powered mobile equipment, ensure that passengers in the powered mobile equipment use the seat belts and other safety equipment in the powered mobile equipment.”
- 9 According to section 275(3), he must ensure that equipment or material is positioned or secured to prevent injury to the operator and passengers, if any. He must also “ensure that sufficient protection against inclement weather is provided for workers travelling in a vehicle or unit of powered mobile equipment.”
- 10 OHSC, s 525.
- 11 OHSC.
- 12 *Passenger Transport Vehicles*, O Reg 418/21, filed June 7, 2021, under *Highway Traffic Act*, RSO 1990, c H.8.
- 13 *Mines and Mining Plants*, RRO 1990, Reg 854 [Mines].
- 14 *Mines*, s 110.
- 15 *Industrial Establishments*, RRO 1990, Reg 851.
- 16 *Industrial Establishments*, s 119.
- 17 *Occupational Health and Safety Regulation*, 2012, NLR 5/12. [NL OHSR]
- 18 NL OHSR, s 280.
- 19 NL OHSR, s 281.
- 20 NL OHSR, s 286.
- 21 NL OHSR, s 284.
- 22 *Weir’s Construction Limited v Warford (Estate)*, 2018 NLCA 5.
- 23 *Regulation Respecting Occupational Health and Safety*, CQLR c S-2.1, r 13 [RROHS].
- 24 RROHS, s 358.
- 25 RROHS, s 360.
- 26 RROHS, s 361.
- 27 RROHS, s 362.
- 28 *Occupational Health and Safety Regulation*, BC Reg 296/97, 17: “Transportation of Workers.”
- 29 See also the report of the Offshore Helicopter Safety Inquiry (Canada–Newfoundland and Labrador Offshore Petroleum Board 2010).

See also this CBC News (2006) report of a geologist who was struck by the rotor blades of a helicopter.

- 30 In NL, the fatigue of ambulance professionals has been found to be an important challenge for the OSH regulator, as discussed by the Department of Health and Community Services (2013).
- 31 The hazard of long hours and associated fatigue has been identified in every study we found. Yet employers have been shown to deny responsibility for accidents resulting from fatigue. Despite the employer's argument, the Québec appeals tribunal concluded that somnolence in a truck driver whose regular shift required twelve hours a night, five days a week was an inherent hazard of his job, and as such the employer was not entitled to cost relief, which would have allowed them to avoid experience rating for the cost of his injuries resulting from a motor vehicle accident (*Transport TFI 5, s.e.c. et Commission de la santé et de la sécurité du travail*, 2014 QCCLP 4154).
- 32 For an illustration of the complexity underpinning hours of work requirements in trucking, see Durdle (n.d.). This presentation discussed new regulations that came into force on January 1, 2007, so the information is not up to date, but it provides evidence of the complexity of the interjurisdictional challenges.
- 33 Federal regulations, which apply to interjurisdictional trucking, limit the daily driving time to thirteen hours a day, unless the driver takes at least eight consecutive hours of off-duty time before driving again (s 13); they also impose a maximum of fourteen hours of on-duty time, after which the driver must not be required to drive (s 12); finally, they specify that “no motor carrier shall request, require or allow a driver to drive and no driver shall drive after 16 hours of time have elapsed between the conclusion of the most recent period of 8 or more consecutive hours of off-duty time and the beginning of the next period of 9 or more consecutive hours of off-duty time” (s 13). However, section 10 of the regulation specifies that time spent in a commercial vehicle as a passenger heading to the destination at which the driver will begin driving may be considered off-duty time under certain conditions (*Commercial Vehicle Drivers Hours of Service Regulations*, SOR/2005–313 [*Commercial Vehicle*]).
- 34 *Commercial Vehicle*.
- 35 See *An Act to Amend the Automobile Insurance Act, the Highway Safety Code and Other Provisions*, SQ 2022, c 13.
- 36 For a complete overview of how family, mobility, and work intersect, see Neis, Spinks, and Murray (2022).

- 37 See the exchange between North American truckers on this issue on the *TruckersReport* discussion forum (Firestone 2015).
- 38 *Ménard et Cascades Transport inc.*, 2021 QCTAT 5334.
- 39 Although those provinces where work organization is explicitly addressed in the general duty clause (such as in Québec) may be in a better position to raise these issues with employers.
- 40 In Di Milia and Bowden's (2007) article, the authors discuss that despite the fact that twelve-hour shifts are associated with increased fatigue, they remain popular among employees. In fact, several studies report their popularity is "based primarily on the access to sufficient quantities of leisure time" (103).
- 41 Australian guidelines for workers and managers refer to the hazards associated with fatigue in FIFO workers (Comcare 2013).
- 42 *Regulation Respecting Labour Standards*, CQLR c N-1.1, r 3, s 12. This section provides that "the standard workweek for an employee working in a remote area is 55 hours." Section 1 defines a "remote area" as "an area that is inaccessible by a passable road and where no regular transport system connects it to the Québec road network"; the same regulation provides for longer work weeks (between forty-seven and fifty-five hours) for workers working in sawmills in James Bay or in the forestry industry.
- 43 A regulation taken under Ontario's *Employment Standards Act*, 2000 provides for exceptional work weeks in these industries, limiting the negotiated schedules to be no longer than twenty-eight days in a row: *Terms and Conditions of Employment in Defined Industries—Mineral Exploration and Mining*, O Reg 159/05.
- 44 In Québec, see *Act Respecting Labour Standards*, CQLR c N-1.1, s 78 [ARLS] (thirty-two hours per week). See more generally Gesualdi-Fecteau and Nakache (2017, 26–36).
- 45 *Employment Standards Act*, RSBC 1996, c 113, s 39.
- 46 *Motor Vehicle Operators Hours of Work Regulations*, CRC, c 990.
- 47 Various regulations address hours of work and Maritime transport, including a regulation applicable on the west coast, *West Coast Shipping Employees Hours of Work Regulations*, CRC, c 992, and another, with different rules, applicable to the east coast: *East Coast and Great Lakes Shipping Employees Hours of Work Regulations*, 1985, CRC, c 987.
- 48 *Railway Running-Trades Employees Hours of Work Regulations*, CRC, c 991.
- 49 See ARLS, s 78 (thirty-two hours per week). See more generally Gesualdi-Fecteau and Nakache (2017).

- 50 *Hunt et 9185–9280 Québec inc.*, 2015 QCCLP 1714, cited in Lippel and Walters (2019, 325).
- 51 *Regulation Respecting Occupational Health and Safety*, CQLR c S-2.1, r 13, annex 1, art 16.
- 52 *Industrial Establishments*, RRO 1990, Reg 851, s 135.
- 53 *OHSC*, s 177.
- 54 *Occupational Health and Safety Regulation*, BC Reg 296/97, as amended by *Occupational Health and Safety Regulation*, BC Reg 132/2023.
- 55 *Occupational Health and Safety First Aid Regulations*, CNLR 1148/96 [OHSFR].
- 56 *Regulation first-aid minimum standards*, CQLR c A-3.001, r 10, s 20 [RFMS].
- 57 *RFMS*, s 5.
- 58 *OHSC*, s 180; *OHSFR*, s 11.
- 59 *Canada–Newfoundland and Labrador Offshore Area Occupational Health and Safety Regulations*, SOR/2021–247.
- 60 *Oil and Gas—Offshore*, RRO 1990, Reg 855, s 6.
- 61 *RFMS*, s 20.
- 62 *Regulation Respecting Health and Safety in Forest Development Work*, CQLR c S-2.1, r 12.1.
- 63 *ArcelorMittal Infrastructure Canada, s.e.n.c. et Archambault*, 2015 QCCLP 1043.
- 64 *Archambault c. Commission des lésions professionnelles*, 2016 QCCS 4469.
- 65 A study in France showed how immigration rules were designed to facilitate control of migrant farm workers by limiting their mobility and that they also favoured the employers who made an income from the rent paid by the workers, deducted from their earnings (see Décosse 2016).
- 66 The freedom of movement guaranteed in section 6 of The Canadian Charter of Rights and Freedoms (*Constitution Act*, 1982) does not apply to noncitizens. However, similar limitations are not specified in Québec's *Charter of Human Rights and Freedoms*, CQLR c C-12, which does apply to migrant workers according to the Québec Human Rights Commission (Carpentier and Fiset 2011).
- 67 More specifically, Jones (2014, 86) remarked that respondents “talked about the temptation to jump in a truck and leave the site when work became too stressful. If that is the case, vehicle access could increase turnover. Without access to a vehicle, this would be impossible and workers would be stuck at the site until their rotation ended.”
- 68 For example, a nurse practitioner working in a northern BC community was exposed to mould in both the residence provided by the employer and

the workstation provided. Her claim for disease related to that exposure was upheld: *WCAT-2005-01431 (Re)*, 2005 CanLII 87417 (BC WCAT).

- 69 In Québec, the *Regulation Respecting Sanitary Conditions in Industrial or Other Camps*, CQLR c S-2.1, r 5.1 [*Sanitary Conditions*] is a regulation adopted under the *Environment Quality Act*, CQLR c Q-2.
- 70 In Alberta, *Work Camps Regulation*, Alta Reg 218/2002, was adopted under the *Public Health Act*, RSA 2000, c P-37, which addresses buildings, beds, furnishings, laundry service, privies, hand-washing facilities, garbage, and sewage disposal and requires compliance by the owner of the work camp. In Ontario, some regulatory provisions governing camps can be found in *Camps in Unorganized Territory*, O Reg 502/17 [*Camps*], taken under the *Health Protection and Promotion Act*, RSO 1990, c H.7 [*HPPA*].
- 71 *Health, Safety and Reclamation Code for Mines in British Columbia*, adopted under section 34 of the *Mines Act*, RSBC 1996, c 293.
- 72 *Sanitary Conditions*, s 17.
- 73 See section 3.01: Building Trades of Alberta and Construction Labour Relations—an Alberta Association (2010). *Construction Camp Rules and Regulations for Construction Camp Accommodations: 2010–2018*, <https://ualocal179.ca/pdfs/agreements/CampAgreement2010-2018.pdf>. The rules include descriptions of conditions to be met relating to hot water, size of room, standards of construction and furnishing, windows, bedding, washrooms, gender segregation, and so on. There are also quite detailed provisions on the quality of the food to be provided, including the requirement that clam chowder be available on Fridays. The agreement also specifies mechanisms for dispute resolution.
- 74 See, for example, the following collective agreement: Construction Labour Relations—an Alberta Association Labourers (Provincial) Trade Division and the Construction and General Workers' Union Local 92 (2023). Labourers General Construction Collective Agreement: January 29, 2023, to April 30, 2025, <https://clra.org/wp-content/uploads/2023/01/LB-C-2023-2025-Collective-Agreement-Final-searchable-PDF.pdf>.
- 75 *HPPA; Camps*.
- 76 Information about practices that employers should put in place in order to prevent contamination also came from public health authorities (see Groupe de travail SAT-COVID-19 2020).
- 77 *FTQ Construction et Hydro-Québec (Gestion Acc. Trav)*, 2010 QCCLP 8337.
- 78 *Tremblay et Transport Clément Bégin inc.*, 2013 QCCLP 5924; in this case, the fact that the private home was made available to the workers on a

temporary basis, as an accommodation to give workers from Montréal a chance to see if they could get used to the Abitibi-Témiscamingue region, seemed to weigh in for the decision-maker. In his complaint, the worker claims that the place where he lived should be a nonsmoking environment; the appeals tribunal ruled that the worker's request did not constitute the exercise of a right provided for in the AOHS because the place where the worker lived was not part of the employer's establishment and could not be assimilated to his workplace.

- 79 Schedule 1 of the *Regulation Respecting Prevention Programmes*, CQLR c S-2.1 r 10 [*Prevention Programmes*], determined the three priority sectors to which the prevention program provisions apply. As of this writing, we are in the transitory phase of an important reform of both the AOHS and the AIAOD in Québec that eliminates the priority sectors, but the real potency of the reform is still unknown.
- 80 *Sanitary Conditions*; the requirement to integrate this regulation into the prevention program is found in section 5 of *Prevention Programmes* (this was not modified by the recent reform that took place in Québec).
- 81 *Sanitary Conditions*, s 1(a); our translation.
- 82 See, however, *Sanitary Conditions*, s 14, para. i, a Québec provision requiring special consideration for a woman worker accompanied by at least one child. The employer must “supply for the women who will reside in each camp a room with a window and completely separate from the kitchen; in the case of women having 1 child or more, they are required to erect and furnish, according to plans and specifications supplied or accepted by the Minister, a dwelling separate from the dormitories and the kitchen” (s 14). It is unclear if this regulation is ever applied since we found only two decisions applying it, including one in 1986, *Reboisement Lavoie Enr. et Commission de la santé et de la sécurité du travail*, 1986 CanLII 4195 (QC CALP), and one in 1996, *Commission de la santé et de la sécurité du travail et Aménagement Forestier Lepro Inc.*, 1996 CanLII 12789 (QC CALP). In these two cases, a CSST inspector issued orders to close logging camps operated by the employer in remote locations, on the grounds that they did not comply with the requirements of different laws and regulations, including *Sanitary Conditions*.
- 83 Some provisions address the need for work camps to have laundering facilities that protect the natural environment or require that laundry facilities be made available to workers but don't address the protection of the workers' health needs in relation to the requirements governing laundry facilities. See, for instance, *Camps in Unorganized*

Territory, RRO 1990, Reg 554, s 17, taken under the HPPA (section 17 refers to *Building Code*, O Reg 332/12, which provides that a camp for housing of workers shall include at least one washing machine or laundry tub for every fifteen beds); in Québec: *Sanitary Conditions*, s 14(c); in Alberta: *Work Camps Regulation*, s 7. For instance, in Alberta, it is required that workers access laundry facilities at least once a week, which does not provide a solution for workers who need to change contaminated clothes daily.

- 84 The same coping mechanism was also found in Dorow and Mandizadza's (2018, 1249) study, where workers were "opting out of connecting with family."
- 85 *Amendments of 2022 to the Maritime Labour Convention, 2006, as Amended (MLC, 2006)* (110th Conference Session, Geneva, June 6, 2022).
- 86 "He crashed and died; that is all I know. . . . I don't think I should be in Jamaica sitting down here struggling to find out what really happened": Georgina Graham, widow of Omar Graham, who was killed in Paris, Ontario, in August 2011 (quoted in Davidson 2012).
- 87 In Preibisch and Otero's (2014) study, they found evidence that employers intentionally played groups of workers, some TFWs, others recent immigrants to Canada, against each other by threatening to prefer one group over the other when next renewing contracts. For similar findings where competition between Mexican and Guatemalan agricultural workers is described, see Gesualdi-Fecteau (2014).
- 88 For an illustration of local resistance to FIFO work organization, see Thurton (2018). Similar resistance has been expressed by unions representing local workers in Labrador City who do not want to see FIFO workers introduced in the Iron Ore Company of Canada's operations in that city (CBC News 2012a). For a detailed analysis of the impact of work camps on small communities, see Fionda and Jones (2018).
- 89 *Balikama obo others v. Khaira Enterprises and others*, 2014 BCHRT 107.
- 90 ERGM can pose challenges for people with disabilities including disabilities related to work. The relationship between return-to-work and mobility will be discussed in chapter 4.
- 91 *Act Respecting Occupational Health and Safety*, CQLR c S-2.1, art 40. For more detail, see Lippel (1998).
- 92 *Labeaume et Société en Commandite Scierie Opticiwan*, 2000 CanLII 33119 (QC CLP). The worker also raised the possibility that living conditions in the work camp were a hazard because of her pregnancy, but the tribunal concluded that she had not provided evidence that living in the forestry camp represented a hazard.

- 93 *Canadelle Société en commandite (Re)*, 2006 CanLII 69460 (QC CLP).
 94 *Morissette et Mosaic Solutions de vente*, 2015 QCCLP 1761.

Chapter 4: Access to Workers' Compensation Regimes for Mobile Workers

- 1 *Workers' Compensation Act*, RSBC 2019, c 1.
- 2 *Occupational Health and Safety Act*, RSPEI, c O-1.01, s 1 and s 4 provide that the WCB administers the *Occupational Health and Safety Act*.
- 3 *Act Respecting Occupational Health and Safety*, CQLR c S-2.1, s 137; *Act Respecting Industrial Accidents and Occupational Diseases*, CQLR c A-3.001, s 349 [AIAOD].
- 4 The minister designated under section 16 of the *Government Organization Act*, RSA 2000, c G-10, is the minister responsible for the *Occupational Health and Safety Act*, SA 2020, c O-2.2, s 1 (aa).
- 5 *Occupational Health and Safety Act*, RSO, 1990, c O.1, s 4.1.
- 6 Minister of Labour and Advanced Education has jurisdiction for implementation of the *Occupational Health and Safety Act*, SNS 1996, c 7, s 3 (k) and s 6.
- 7 Workplace Health, Safety and Compensation Commission of Newfoundland and Labrador (WorkplaceNL) has jurisdiction over compensation: *Workplace Health, Safety and Compensation Act*, 2022, SNL 2022, c W-11.1, s 20 [WHSCA].
- 8 The Occupational Health and Safety Division of the Department of Employment and Labour Relations has jurisdiction over the administration of the Occupational Health and Safety Act and regulations (WHSCA, s 20).
- 9 Unless there is a reasonable cause for failing to file a claim within the time limit set out in the law; see, for example, *Succession de Chabot et Hôpital Sainte-Justine*, 2020 QCTAT 728.
- 10 See *Cole (Succession de) et Commission de la santé et de la sécurité du travail—Soutien à l'imputation*, 2008 QCCLP 789, where the alleged exposure occurred in Ontario between 1956 and 1959 when the deceased worked for a Québec company and was domiciled in Québec. The claim of the estate was accepted.
- 11 *Racicot et Gérard Chabot (F)*, 2013 QCCLP 5947. The appeals tribunal invokes section 7 of the Interjurisdictional Agreement on Workers' Compensation (IJA) in referring the case to Ontario in order for it to deal with the worker's claim, since 95 percent of the total contributory exposure occurred in Ontario (more than the 30 percent stipulated in the

IJA for it to have jurisdiction to deal with his occupational disease file). However, Québec withdrew from that provision of the agreement in 2005. The worker's exposure preceded that withdrawal, but one can imagine the worker might encounter technical difficulties in establishing their claim. See also *Gypetch Acoustique inc. et Intérieurs Protouch inc.*, 2010 QCCLP 4543, revised in *Gypetch Acoustique inc. et Doyon*, 2011 QCCLP 3646, where a claim for carpal tunnel syndrome was filed by a construction worker who had worked in Québec after having worked for several years in Ontario. Québec's WCB accepted the claim, but the appeals tribunal overthrew the decision because it deemed exposure in Québec to be insufficient when compared to exposure in Ontario. In the end, the worker was granted compensation, but the final decision came four years after the worker's initial claim. However, in another case, the fact that the worker was exposed to excessive noise for many years while practicing his profession in another Canadian province was considered irrelevant, since the tribunal considered the period of exposure to noise in Québec from 1971 to 1978 sufficient to develop an occupational disease: *Baril et Oslo Construction inc.*, 2022 QCTAT 2407.

- 12 *Caux et Commission de la santé et de la sécurité du travail*, 2001 CanLII 47309 (QC CLP); see also *Bélanger et Agacie Transport (F)*, 2019 QCTAT 718; *Roy et Cyr Drilling International Ltd.*, 2012 QCCLP 7423.
- 13 See, for example, *Gordon Hicks et Canada (Ressources humaines et Développement des compétences)*, 2013 QCCLP 5925, where a federal employee filed a claim in Québec, where he was currently employed by the federal government. The claim was denied because the exposure to noise that could explain his diagnosis of work-related hearing loss occurred when he was working for the federal government in Nova Scotia. According to the tribunal, the claim should be filed in Nova Scotia, since the disability was the result of exposure to excessive noise that occurred in that province while the worker was living there.
- 14 For example, the Québec appeals tribunal accepted a claim for a recurrence from an injury compensated by the Québec WCB, a recurrence that occurred while the worker was on holiday in France: *Cloutier et René-Paul Lambert & Fils*, 2003 CanLII 81410 (QC CLP). In Ontario, the WSIAT accepted a claim for a recurrence that occurred after the worker left the province and moved back to their native province of Newfoundland and Labrador: *Decision No 441/89*, 1991 CanLII 4918 (ON WSIAT); this also appears to be the case in Alberta: *Decision No 2005-1037*, 2005 CanLII 76376 (AB WCAC); and in NL: *Decision No 15115*, 2015-07-07

(WCIRB); *Decision No 16008*, January 1, 2016 (WCIRB). See now *WHSCA*, s 95. It is worth mentioning that the IJA discussed in chapter 2 foresees two scenarios when a recurrence occurs: one where a recurrence or worsening results from subsequent employment and one where it is not derived from subsequent employment. In the first scenario, “where a worker who has been, or is, in receipt of benefits from one jurisdiction, and who has taken up employment in another jurisdiction, claims that his or her condition has recurred, worsened, or been aggravated as a result of his or her employment in that jurisdiction, the Board in that jurisdiction shall adjudicate the new claim and award additional benefits to which the worker is entitled and pay the full cost of such benefits and related services as are provided for by its Statutory Authority or policy, and shall advise the other Board upon request” (AWCBC 2017, sec. 8.1). Hence the WCB of the province in which the worker is working when the recurrence occurs will be in charge. In the other scenario, “the Board in that jurisdiction shall refer all pertinent information to the original adjudicating Board for adjudication and the provisions of this Agreement shall apply in respect of administrative co-operation” (sec. 8.1).

- 15 *Nahimana et Groupe Datamark System inc.*, 2010 QCCLP 8028; see, however, *K. Khan et Canadien Pacifique Ltée Bureau E-209*, 1992 CanLII 11120 (QC CALP).
- 16 In the Northwest Territories and in Nunavut, coverage has been extended in 2023 to different diagnoses including acute stress disorder, post-traumatic stress disorder, and anxiety or depressive disorder (see WSCC 2023).
- 17 *Workers’ Compensation Act*, RSA 2000, c W-15, s 24.2 [*Alberta WCA*]; *Workplace Safety and Insurance Act*, 1997, SO 1997, c 16, Sch A, s 14 [*WSIA*]. In New Brunswick, emergency response workers are covered by a presumptive legislation when the emergency response worker is diagnosed with post-traumatic stress disorder by a qualifying psychologist or psychiatrist (WorkSafeNB 2021).
- 18 *Regulation Respecting Occupational Diseases*, CQLR c A-3.001, r 8.1. In Yukon, a post-traumatic stress disorder presumption applies to all workers who have been exposed to a traumatic event in the course of their employment (WSCB Yukon n.d.). A presumption also exists in Saskatchewan and Manitoba when a worker is exposed to a traumatic event that arose out of and in the course of employment (Saskatchewan WCB 2017; WCB Manitoba 2022).
- 19 *WHSCA*, s 112; for the definition of a “traumatic event” and diagnostic requirements, see WorkplaceNL (2023b).

- 20 See, for example, in *Ontario Decision No. 3528/18*, 2019 ONWSIAT 987: “The Panel acknowledges that there has been some variation in Tribunal decisions in the application of Board policy regarding what constitutes ‘in the course of employment’ or conversely, the kinds of activities that cause a worker to be excluded from coverage and entitlement because an activity is not reasonably incidental to his/her employment.”
- 21 *Instech Télécommunication inc. et Charbonneau*, 2015 QCCLP 3153; *Plomberie & Chauffage Plombec Inc. et Deslongchamps*, 1995 CanLII 14384 (QC CALP); *Commission Scolaire Catholique Sherbrooke et Binette*, 1998 CanLII 20128 (QC CLP); *Autobus Bourassa ltée et Barthell*, 2022 QCTAT 1848 [*Autobus Bourassa*], a school bus driver who, between two work periods, fell in the parking lot of her home after getting off the bus that she was authorized to keep at home during the school year and was injured in the course of employment.
- 22 The WCB uses the “but for” test (WCB-Alberta 2023b): “The ‘but for’ test is a finding of fact—the work exposures were necessary for the accident and injury to occur. In other words, if not for the work exposures, the injury or disease would not have happened. In some cases, there may be several causes that meet the ‘but for’ test that work in combination to cause an injury. Work does not have to be the only factor, or even the primary one, for the injury to be compensable. It must, however, be a necessary factor; if the injury or disability would have happened anyway, regardless of the work factor, it is not compensable” (WCB-Alberta 2018b, ques. 5).
- 23 When assessing a claim, “the WSIB will consider entitlement in claims where a worker is injured when going to or from work in transport under the control and supervision of, or chartered by, the employer; obtaining pay or depositing tools, etc., on the employer’s premises after actual work hours; participating in a work-related sports activity, for example, school teachers and camp counselors, when the employer condones these activities by making the premises available and/or exercising a form of supervision and control; attending compulsory evening courses; travelling on company business, by the most direct and uninterrupted route, under the supervision and control of the employer; travelling to or from a convention and/or participating in convention activities; and on a lunch, break, or other non-work period (period of leisure) by ordinary hazards of the employer’s premises” (WSIB Ontario 2004c).
- 24 *Decision No 398/14*, 2014 ONWSIAT 514.
- 25 *Workmen’s Compensation Board v. C.P.R.*, 1952 CanLII 44 (SCC), [1952] 2 SCR 359.

- 26 *Decision No 2256/15*, 2015 ONWSIAT 2420; the same reasoning was applied for a worker who was staying in overnight accommodation for the purpose of a business trip: *Decision No 1038/16*, 2016 ONWSIAT 2101.
- 27 *Guemeni et Montréal (Ville de)*, 2013 QCCLP 6229.
- 28 *Sergerie et Groupecho Canada inc.*, 2007 QCCLP 4977.
- 29 *Pommes Ma-gic inc.*, 2014 QCCLP 3309, in which the worker's return to France was governed by the Québec-France agreement and treated as a resignation. The CSST managed the claim at a distance, and the employer lost his appeal when he tried to claim the costs of compensation were unjustly attributed to his account.
- 30 WSIB Ontario's (2023) "Health Care Outside Ontario" policy concerns nonresident workers covered by the WSIB but who reside outside Ontario at the time of the accident or who move out of Ontario after the accident. In these cases, "as long as non-residents maintain an employment connection to Ontario (e.g., they are employed by an Ontario company) they can choose to seek elective treatment in Ontario or in the community in which they reside. If there is no longer an employment connection with Ontario, (e.g., a worker retires or takes a new job outside the province), the WSIB does not continue to pay for treatment in Ontario, unless otherwise authorized. In such cases, workers must seek elective treatment in their own community. . . . The WSIB determines entitlement to elective treatment in locations outside Ontario and beyond the worker's own community, based on the clinical status of the worker and the availability and clinical appropriateness of the treatment required" (WSIB Ontario 2023).
- 31 *Decision No 2010-117*, 2010 CanLII 5952 (AB WCAC); *Decision No 16189*, September 29, 2016 (WCIRB); *Decision No 673/16*, 2016 ONWSIAT 943: "On that basis, we find treatment was interrupted between January 25th and March 29th. We further find that interruption arose from the worker's absence from Canada. We find this to be an intervening event which precludes full LOE [loss of earnings] entitlement. Accordingly, we find that while the worker continued to be unable to work, LOE benefits should be reduced during that period." It is worth noting that this decision followed the refusal by the WCB to compensate the worker for treatment outside of Ontario. See also *Decision No 654/21*, 2021 ONWSIAT 1113, where a worker was allowed to receive treatment in Winnipeg rather than Toronto, since repeated extensive travel might pose significant health challenges for the worker; WCB-Alberta 2018c, ques. 3; see *Decision No 2019-0275*, 2019 CanLII 48028 (AB WCAC).

- 32 *Decision No 2021-0267*, 2021 CanLII 56962 (AB WCAC), paras. 89–90.
- 33 *Act Respecting Industrial Accidents and Occupational Diseases*, CQLR c A-3.001, s 2, s 210 [AIAOD]; there are similar dispositions in the *Alberta WCA*, s 39, and the Ontario *WSIA*, s 36.
- 34 *Fermes Sunchef inc. et Morena Quintanilla*, 2012 QCCLP 1195: The facts in that case showed that the worker had a work permit that was not renewed after her injury. The employer had tried to assign her light duties but could not do so as she did not have a valid work permit; see also *Usitech 2000 inc. et Fonseca Cabrera*, 2018 QCTAT 6172; *Socadis inc. et Mahamad*, 2022 QCTAT 1809.
- 35 In Québec, the term *consolidation* is used and refers to “the healing or stabilization of an employment injury following which no improvement of the state of health of the injured worker is foreseeable” (*AIAOD*, s 2).
- 36 *WSIA*, s 40; *AIAOD*, s 145, 146; *Alberta WCA*, s 89; *WHSCA*, s 100.
- 37 *AIAOD*, s 179.
- 38 *AIAOD*, s 145.2.
- 39 *AIAOD*, ss 170–71.
- 40 *Decision No 2012-301*, 2012 CanLII 16749 (AB WCAC): “Given the requirement for the worker’s active participation in the physiotherapy and the RTWS [return to work services] program as described above and the travel time and distance between his place of employment and his place of treatment, it would not have been practical or reasonable to expect the worker to commute back and forth to perform modified work during those limited days or hours of the week when he was not otherwise committed to his active treatment and rehabilitation. That is, the remoteness and inaccessibility of the worker’s place of employment relative to the place where he was directed to attend for treatment effectively ruled out the possibility of his concurrent participation in a return to modified work.”
- 41 *Construction Énergie renouvelable, s.e.n.c. et Tessier*, 2013 QCCLP 2479 [*Construction Énergie*].
- 42 The appeals tribunal considered the travel requirements, which it found to be acceptable, given that travel was on main roads and not bumpy roads: *Ringuette et Les Entreprises Afl 2000 Inc.*, 2001 CanLII 45651 (QC CLP).
- 43 *Bilodeau et Transport Doucet & Fils*, 2013 QCCLP 5005 [*Bilodeau*]; *Laliberté & Associés inc et Roy*, 2005 CanLII 80118 (QC CLP).
- 44 *Bilodeau*.
- 45 *Construction Énergie*.
- 46 *SGT 2000 inc. (Re)*, 2005 CanLII 73570 (QC CLP).

- 47 *Centre de santé et de services sociaux Alphonse-Desjardins et Fortier*, 2014 QCCLP 6104.
- 48 *MC Forêt inc. et Commission des normes, de l'équité, de la santé et de la sécurité du travail*, 2016 QCTAT 3315.
- 49 See *Commission scolaire des Premières Seigneuries*, 2015 QCCLP 2629. However, the employer succeeded in his petition for the costs of benefits to be transferred from his account under section 326 of the AIAOD.
- 50 *Hydro-Québec et Charest*, 1996 CanLII 14642 (QC CALP).
- 51 *Decision No 1083/22*, 2022 ONWSIAT 1439. See also *Decision No 1773/21*, 2022 ONWSIAT 1323, paras. 34–5.
- 52 *Decision No 1672/18*, 2018 ONWSIAT 1947.
- 53 *Decision No 2005-863*, 2005 CanLII 76499 (AB WCAC), para. 40.5.
- 54 *Decision No 2010-391*, 2010 CanLII 25589 (AB WCAC).
- 55 After an accident, the employer, the worker, and the Ontario WCB will work together to enable the worker's RTW. Depending on circumstances, the WSIB may develop an RTW plan "that outlines the assistance and services the worker requires to enable their return to work with the injury employer or in the labour market. The WSIB conducts the RTW assessment and develops the RTW plan in collaboration with the workplace parties/authorized representatives and, where necessary, the worker's treating health professional" (WSIB Ontario 2020).
- 56 *Decision No 2713/08*, 2010 ONWSIAT 241.
- 57 AIAOD, s 142(d)(e).
- 58 *Cochonnailles Champenoises et Petit Renaud*, 2012 QCCLP 5865.
- 59 *2016-0686 (Re)*, 2016 CanLII 79642 (AB WCAC); see WCB-Alberta (2021a, ques. 10).
- 60 It is worth mentioning that, in Alberta, the election over a short period of time of different political parties with different allegiances led to consecutive modifications of the compensation regime. Hence in the Alberta WCA, one can find dispositions that apply only to workers whose date of accident is from September 1, 2018, to March 31, 2021. See WCB-Alberta (2021c, ques. 6). There is also a particular regime for workers' claims with dates of accident from September 1, 2018, to March 31, 2021, inclusive, whose employers have an obligation under the Alberta WCA to accommodate and reinstate workers injured on the job.
- 61 However, a worker with a reduced earning capacity may no longer wish to travel for work, and this "may prove to be a problem as refusal of alternative employment may also affect their benefits. The difficulties associated with 'personal' travel to and from work are not always

considered when evaluating the worker's ability to return to work after injury and those workers who decline opportunities offered may see their claims closed" (Lippel and Walters 2019, 337).

- 62 *Côté et Fujitsu Conseil (canada) Inc.*, 2004 CanLII 80254 (QC CLP) [*Côté*];
Saletti et Distribution Couche-Tard inc., 2012 QCCLP 7948.
- 63 *Côté*, para. 21.
- 64 *Cloutier et ATS Sécurité inc.*, 2011 QCCLP 1127 [*Cloutier*]; see, however,
Synergie Hunt International inc. et François, 2021 QCTAT 3570, where the
appeals tribunal considered that some work-life balance issues, which
had motivated the occupational choices prior to the injury, must still be
considered when assessing the appropriateness of suitable employment.
Hence in this case, even though the suitable employment proposed was
within the limits usually considered by the WCB, the appeals tribunal
considered it not suitable, as it did not allow the worker to reconcile his
work and family obligations.
- 65 *Pelletier et Forages Chibougamau ltée*, 2016 QCTAT 131. For similar
reasoning, see also *Veilleux et Ateliers d'usinage V & V inc.*, 2014 QCCLP
5889; *Riel et Transelec / Common inc.*, 2023 QCTAT 1295. A position
as a warehouseman was available with the employer, but the tribunal
concluded it was not a suitable employment for the worker. Even though
the worker had previously always held jobs outside his home region, the
247-kilometre commute required in this case was deemed to constitute
too great a hardship.
- 66 *A.C. et Compagnie A*, 2017 QCTAT 125; in this case the worker suffered
from an intellectual disability and was under guardianship.
- 67 *Casavant et Korhani Manufacture inc.*, 2015 QCCLP 949, para. 86;
Cloutier; Lafrance et Waterloo (Ville de), 2010 QCCLP 7709.
- 68 *2016-0596 (Re)*, 2016 CanLII 67031 (AB WCAC).
- 69 *2014-0807 (Re)*, 2015 CanLII 1286 (AB WCAC).
- 70 *Decision No 1610/14*, 2014 ONWSIAT 1969; see also *Decision No 452/22*,
2022 ONWSIAT 1425, and *Decision No 1517/17*, 2017 ONWSIAT 2413,
where the appeals tribunal considered the meaning of the term *available*
in determining the appropriate suitable employment for an injured worker
who lived fifty kilometres outside of Windsor and did not drive. The fact
that the worker was a nondriver was considered a relevant factor in the
assessment.
- 71 *Decision No 2020081*, June 11, 2020 (WCIRB).
- 72 "Relocation is a return-to-work option that is not usually considered until
all other reasonable options within the community have been exhausted"

(WCB-Alberta 2021b, ques. 1); “A vocational rehabilitation program may include . . . the payment of any cost incurred to explore an employment market or to move near a new place of employment” (*AIAOD*, s 167[7]); “Relocation Assistance is a financial benefit available to assist an injured worker in permanently relocating to an area where suitable employment has been secured as part of the labour market re-entry (LMR) program or permanent accommodation review process with the pre-injury employer” (WorkplaceNL 2020, sec. 50.02).

- 73 *Decision No 2006-545*, 2006 CanLII 78831 (AB WCAC).
- 74 In Québec, the WCB policy states that the gross annual income of suitable employment will be established according to the Québec labour market, whether the employment is determined in Québec or outside Québec (CNESST 2022b); see *Gmyzun et Cirque du Soleil inc.*, 2015 QCCLP 1312; *Pépinière 55 inc. et Torres-Angel*, 2018 QCTAT 2538 [*Pépinière*]. The WCB will estimate earning capacity as though the worker had continued to work in suitable employment in Alberta (WCB-Alberta 2025, ques. 10); see *2017-0434 (Re)*, 2017 CanLII 53401 (AB WCAC). “WorkplaceNL shall rely on provincial wage rate information which establishes average entry and average wages” (WorkplaceNL 2005, para. 3; see also Allen 2018).
- 75 See *Pépinière*.
- 76 *Decision No 1428/09*, 2012 ONWSIAT 521, with, however, a few exceptions. See, for example, the case of a worker who lived remotely where there were no job opportunities and was employed seasonally in Ontario while maintaining his domicile in Newfoundland: *Decision No 1355/07*, 2007 ONWSIAT 2373.
- 77 *Decision No 1172/20*, 2023 ONWSIAT 1420; *Decision No 1736/21*, 2023 ONWSIAT 1422; *Decision No 1171/20*, 2023 ONWSIAT 1421; *Decision No 1169/20*, 2023 ONWSIAT 1423.
- 78 *Decision No 1617/12*, 2013 ONWSIAT 905; however, in another case, the appeals tribunal took the average of the two median rates of the salaries in NL and Ontario and concluded that the worker’s deemed earnings in the suitable employment should be \$16.75 per hour: *Decision No 1720/12*, 2015 ONWSIAT 846.
- 79 *2017-0434 (Re)*, 2017 CanLII 53401 (AB WCAC).
- 80 It is worth mentioning that during a reform of the OSH regime in Alberta in 2018, the ceiling for the maximum insurable earnings was abolished but was then rapidly reinstated in 2019.
- 81 Even though the definition of “suitable employment” refers to the worker’s locale, the policy seems to be applied within the limits of the province (see

WCB-Alberta 2021d). In a decision, the tribunal concluded, however, that job opportunities should not be restricted to Fort McMurray, the location of the accident, as the worker could no longer perform his preinjury job. Indeed, the court considered suitable employment income in the Edmonton area: *Decision No 2009-1159*, 2009 CanLII 73200 (AB WCAC), paras. 23–24.

- 82 The European Agency for Safety and Health at Work (2013) tracks commuting accidents in those European countries that provide coverage for these accidents. It notes that women are more often implicated in commuting accidents than men, possibly because their modes of commuting are different, women being less likely to use an automobile, and their commuting trajectories differ as well, because women may more often take children to school on their way to work (20). None of these issues is on the radar screen of Canadian regulators, and commuting accidents—those accidents occurring while the worker travels from home to work to home—are noncompensable in all Canadian jurisdictions.
- 83 In Québec, the legislative definition requires that the accident arise “out of or in the course of employment” (*ALAOD*, s 30[1]), unlike the term used in the other provinces, but the interpretation is analogous.
- 84 However, if an automobile accident is work related, the claim will have to be made under workers’ compensation law; *Automobile Insurance Act*, CQLR c A-25, s 83.63.
- 85 *Canada–Newfoundland and Labrador Offshore Area Occupational Health and Safety Regulations*, SOR/2021–247, s 50 and following.
- 86 ILO Convention 190: *Violence and Harassment Convention* (108th Conference Session, Geneva, June 10, 2019) [art. 3].
- 87 *Decision No 2020-0048*, 2020 CanLII 13212 (AB WCAC); reconsideration application was denied, *Decision No 2020-0544*, 2020 CanLII 98316 (AB WCAC).
- 88 *Decision No 377/18*, 2018 ONWSIAT 526.
- 89 *Decision No 2297/14*, 2015 ONWSIAT 62; application to reconsider was denied, *Decision No 2297/14R*, 2017 ONWSIAT 972.
- 90 *Commission scolaire de Montréal et Desjardins*, 2018 QCTAT 2747; see, however, *Sylvain et Polimix inc.*, 2016 QCTAT 4106.
- 91 *Desrochers et Réseau de transport de Longueuil*, 2018 QCTAT 6209; see, however, *Dufour & Frères inc. et Imbeault*, 2018 QCTAT 6234 [*Dufour*]; *Desvignes et Université du Québec à Montréal*, 2017 QCTAT 243; *Gagné et Bombardier inc. centre de finition*, 2016 QCTAT 724.

- 92 *Abitibi-Price inc. et Potvin*, 1992 CanLII 12541 (QC CALP); *Pasalic et Société en commandite Gaz Métro Plus*, 2010 QCCLP 996.
- 93 *Roy et Société Canadienne de la Croix-Rouge*, 1998 CanLII 20241 (QC CLP).
- 94 *Gaudreau et Mines Agnico-Eagle ltée (exploration)*, 2022 QCTAT 240 [Gaudreau].
- 95 *2014-0459 (Re)*, 2014 CanLII 31716 (AB WCAC); *Decision No 1966/18*, 2018 ONWSIAT 3236 (application to reconsider denied: *Decision No 1966/18R*, 2019 ONWSIAT 1345); *Sasseville et Compagnie de construction et de développement Crie ltée*, 2009 QCCLP 1964 [Sasseville].
- 96 *Decision No 2022-0063*, 2022 CanLII 27327 (AB WCAC); see, however, *2018-0358 (Re)*, 2018 CanLII 66303 (AB WCAC), where a worker, who worked on a shift rotation cycle consisting of extended days at work and extended days off work and lived out of province, had to fly to Edmonton and use his truck to drive the remaining distance to the remote work or lodging site. The tribunal found that the worker's injuries resulting from the motor vehicle accident while driving to the worker's place of employment did not arise out of or occur in the course of employment. "The panel finds that the worker's travel back to work was not under the direction or control of the employer. The purpose of the travel was for the worker's personal leave and days off and was not part of his job requirements. The worker did not provide any persuasive evidence that the employer directed him during his travel. . . . We are not influenced by the fact that the worker was carrying the employer's diesel fuel back to where he took it from on February 9, 2015 or transporting personal equipment for work" (s 23.8).
- 97 *Sasseville*.
- 98 *Decision No 1966/18*, the application to reconsider was denied: *Decision No 1966/18R*; *Decision No 941/16*, 2017 ONWSIAT 498; *Decision No 2256/15*, 2015 ONWSIAT 2420.
- 99 The plaintiff's right of action was taken away; *Decision No 1581/03*, 2004 ONWSIAT 311. Because of the isolated and remote location, the workers worked for twenty-one days, twelve hours per day, and then had seven days off. The employer paid travel expenses and four hours for travel, even though the worker's travel time was about twelve hours. See also WSIB Ontario (2004e).
- 100 Canada's hesitant response to the inclusion of commuting conditions within the purview of ongoing discussions at the ILO regarding an international convention on violence illustrates how commuting conditions are not perceived to fall within the regulatory frameworks governing working conditions (see International Labour Office 2018, 25–26).

- 101 For Québec, see *Mpi-Moulin à papier Portneuf et Sylvestre*, 2014 QCCLP 2428; for Ontario, see WSIB Ontario (2004b; the policy states that the condition of the employer's private roads must cause the accident); for Alberta, see WCB-Alberta (2023c, ques. 11; the policy even considers injuries that occur on roads that the employer has permission for the worker to use to be compensable).
- 102 *Decision No 2602/18*, 2021 ONWSIAT 1810.
- 103 *Dufour*.
- 104 *Beauvais et Personnel Alter Ego Inc.*, 2003 CanLII 75800 (QC CLP).
- 105 *Fortier et Clsc Basse-Ville-Limoilou-Vanier*, 2002 CanLII 65134 (QC CLP); *Larivière et C.L.S.C. J.-Octave Roussin*, 2000 CanLII 31394 (QC CLP); *Martel et CSSS Lucille-Teasdale*, 2010 QCCLP 7727, where a home care worker had an accident fifteen minutes before arriving at her first client's home (her claim was denied); *Géronto + inc. et Joseph*, 2015 QCCLP 2466, where a home care worker was injured before arriving at the home of her first client (her claim was denied).
- 106 *Lussier et CSSS Val-St-François (CLSC, CH, CHSLD)*, 2018 QCTAT 884.
- 107 Compensation was granted in the following cases: *Bell Canada (Re)*, 2005 CanLII 64407 (QC CLP), where a service technician was injured while exiting the company car he had parked at his home; *Québécoir Média inc. et Delgadillo*, 2011 QCCLP 4843, where a publicity salesman injured in the entranceway to his home; *Instech Télécommunication inc. et Charbonneau*, 2015 QCCLP 3153, where a communication systems installer had an accident when he lost control of the van he was driving toward the home of the first customer of the day. The vehicle was provided by the employer and was equipped with the necessary equipment to install the company's telecommunication systems, and the employer had paid for the vehicle and required the worker to use it to travel to customers' homes: "In this case, the worker's travel from his home to his first customer of the day in the vehicle provided by the employer is not only incidental to the performance of his work, but also has a clear purpose" (s 32).
- 108 *Maison St-André Abitibi-Ouest et Germain*, 2018 QCTAT 6048. See, however, *Autobus Bourassa*, where a bus driver fell in her driveway between two periods of work. The tribunal noted the worker was authorized to keep the bus at home during the school year and hence deemed she had suffered an industrial accident in the course of employment.
- 109 *Clyke et Logi+Net*, 2009 QCCLP 5634; *Roberge (Re)*, 2006 CanLII 64137 (QC CLP); *Service Travail-Maison et Bélanger*, 2010 QCCLP 3049;

Coopérative de solidarité d'aide domestique de Shawinigan et Fugère, 2010 QCCLP 3658. The same is true for other itinerant workers: *CPE Le Kangourou et Darveau*, 2009 QCCLP 671.

- 110 *Decision No 83/19*, 2019 ONWSIAT 1156.
- 111 See also *Decision No 188/15*, 2015 ONWSIAT 633.
- 112 *Decision No 1668/22*, 2022 ONWSIAT 1947; *Decision No 83/19*, 2019 ONWSIAT 1156; *Decision No 1501/16*, 2017 ONWSIAT 513.
- 113 *Decision No 993/21*, 2021 ONWSIAT 1616, para. 3.
- 114 *Decision No 2008-783*, 2008 CanLII 85743 (AB WCAC), para. 21.
- 115 For an interpretation of what is meant by a captive worker, see *Decision No 2019-0049*, 2019 CanLII 14230 (AB WCAC).
- 116 *2015-0493 (Re)*, 2015 CanLII 48909 (AB WCAC); see also *Decision No 2022-0397*, 2022 CanLII 86632 (AB WCAC), where a worker had a slip-and-fall accident while on the premises of the employer's work site but not on a designated work shift. The WCB accepted the claim. The employer appealed that decision, but their appeal was denied.
- 117 *2013-0703 (Re)*, 2013 CanLII 50894 (AB WCAC).
- 118 *2014-1175 (Re)*, 2015 CanLII 7371 (AB WCAC). See also *2015-0447 (Re)*, 2015 CanLII 32286 (AB WCAC); *2016-0453 (Re)*, 2016 CanLII 44231 (AB WCAC), where the tribunal applied WCB-Alberta's Policy 02-01, Part II, Application 5, about "removing oneself from the course of employment" to a captive worker: A "claim is not denied simply because the worker is under the influence of alcohol or drugs at the time of injury. Sometimes, drinking may be a permitted, required or condoned activity of the employment. . . . A claim may still be compensable if there is some factor in the employment that caused or contributed to the injury. If an injury results from intoxication alone, with no contributing factor in the employment situation and drinking is not permitted or condoned by the employer, the claim is denied because the injury is not one that arises out of and occurs in the course of employment. This may apply in a case where a worker who is intoxicated loses balance, then falls to a normal flat surface and sustains an injury" (WCB-Alberta 2018a, ques. 7).
- 119 "If the worker chooses to dine in a restaurant other than in the hotel but within a reasonable distance of it, coverage is extended during this activity. There is no entitlement if the worker is injured while visiting a movie theatre or cocktail lounge or engaging in some other personal activity" (WSIB Ontario 2004e, para. 5).
- 120 *Decision No 305/15*, 2015 ONWSIAT 438; *Decision No 2175/03*, 2003 ONWSIAT 2746; *Decision No 2219/11*, 2012 ONWSIAT 443.

- 121 *Decision No 305/15*, para. 28. See also *Decision No 765/13*, 2015 ONWSIAT 1210.
- 122 *Lapierre et Neilson Excavation Inc.*, 1998 CanLII 19666 (QC CLP);
Lapierre et Neilson Excavation Inc., 1999 CanLII 21991 (QC CLP). In that case, the obligation to stay at the logging camp was, according to the decision-maker, more a condition of work than a condition of life. The worker had to take the icy road to go to lunch and prepare his dinner. This activity was carried out as part of his duties.
- 123 *Talbot et ArcelorMittal Mines Canada inc.*, 2020 QCTAT 4546. A locomotive driver who was injured while waking up to answer the railway coordinator's telephone call did not benefit from the presumption of occupational injury; even if he slept in a camp used for the employer's activities, he was not at work since he was engaged in a personal activity; see, however, *Groupe Nokamic inc. et Dion-Lyna*, 2007 QCCLP 3979, where the CLP upheld the claim of a worker who tripped on her way to her trailer in the work camp and injured herself.
- 124 *Boudreau et Groupe Compass ltée*, 2010 QCCLP 3313; the same reasoning applied to a worker residing in a camp in a remote location. The worker was injured on his way to the cafeteria to have breakfast. *Goupil et Groupe de sécurité Garda*, 2018 QCTAT 4085; see also *Demontigny et Groupe Plombaction inc.*, 2014 QCCLP 3173, where the tribunal concluded there was no connection between the activity and the work in the situation of a worker who returned from the bathroom during the night and injured himself. The tribunal noted that the worker was not paid; the event occurred outside of working hours; the activity was not carried out under the control, at the request, or for the benefit of the employer; there was no use to the employer in relation to the performance of the work; and the purpose of the activity was totally distinct from the worker's working conditions. In *Truchon et Commission scolaire Kativik*, 2022 QCTAT 5090, the appeals tribunal concluded that a teacher had stepped out of the professional sphere and into the personal sphere when she fell and injured her shoulder while carrying jugs of water between the school and her employer-provided accommodation, which were close to each other.
- 125 *Groupe Plani-Ressources inc. (Re)*, 2006 CanLII 68523 (QC CLP); see *Martin et 9304-6696 Québec inc.*, 2023 QCTAT 925.
- 126 *Leduc et Anciens Combattants Canada*, 2022 QCTAT 4960. The worker was injured when the plane landed; her injury happened in the course of employment. See *Gaudreau*; a Québec worker suffered a recurrence of a psychological injury when he got on a plane that was taking him to Nunavut.

- 127 International humanitarian missions have led to many injuries sustained by Canadian workers that are covered under the Québec workers' compensation legislation: *Roche Ltée (groupe Conseil)*, 2004 CanLII 78037 (QC CLP); *Vaillancourt et Agence Canadienne de Développement International*, 2001 CanLII 45157 (QC CLP); *Hrynkiw (Re)*, 2006 CanLII 70292 (QC CLP).
- 128 “When the conditions of the employment require the worker to travel away from the employer’s premises, the worker is considered to be in the course of employment continuously except when a distinct departure on a personal errand is shown. The mode of travel may be by public transportation or by employer or worker vehicle if the employment requires the use of such a vehicle. However, the employment must obligate the worker to be travelling at the place and time the accident occurred” (WSIB Ontario 2004e, para. 2).
- 129 “In general, a worker is covered throughout their journey except when: the worker makes a distinctly personal deviation that removes the worker from the course of employment . . . , or the injury is due solely to a personal hazard” (WCB-Alberta 2023c, ques. 1); “Is a worker covered while on a work-related overnight trip? Yes, provided the worker is required to stay overnight during work-related travel (e.g., a worker staying in a hotel to attend a conference in another city). The worker is considered to be under the direction of the employer throughout the trip. The worker is not under the direction of the employer if: they make a distinctly personal deviation (e.g., sightseeing, going to a sporting event, using a hotel’s recreational facilities) . . . , or the injury is due solely to a personal hazard (e.g., neck strain due to sleeping in an awkward position) . . . , or they are not making reasonable and permitted use of the facilities. . . . Coverage begins when the worker starts the journey (e.g., enters a taxi to go to the airport) and ends when the journey ends (e.g., worker exits the taxi when they arrive home). Coverage extends to breaks during the journey (e.g., washroom break, or going to a restaurant to have a meal). Coverage does not extend if the worker is staying at a private residence (e.g., with family) while they are at the private residence (this is a personal deviation)” (WCB-Alberta 2023c, ques. 14).
- 130 “Coverage begins when the worker begins the employment related travel and extends continuously while the travel is taking place, unless there is personal deviation that removes the worker from the course of employment. An injury sustained during a refreshment break while traveling for the purpose of employment is covered. Any deviation from

the reasonable and most direct route for personal or non-work-related reasons constitutes removal from employment and coverage is not extended” (WorkplaceNL 2001, sec. 2[a]).

- 131 *Decision No 2019-0049*, the tribunal concluded that the worker’s situation did not meet the policy criteria for extended coverage for workers while they live in facilities operated by the employer, which by their nature give them less control than in a normal home environment. A “natural occurrence such as waves in the water are not analogous to a ‘facility operated by the employer.’ Simply put, the employer did not have control over waves in the water that by the worker’s own account led her to slip on the sandbar” (s 22.10).
- 132 *Bombardier inc. (Aéronautique Usinage) et Gammieri*, 2015 QCCLP 3353.
- 133 *Filo et Air Canada*, 2021 QCTAT 4727, the tribunal concluded that the worker stepped outside his professional sphere when he let someone into his hotel room for personal purposes.
- 134 *Martel Belmihoub et Air Canada*, 2023 QCTAT 746; see also *Bouchard et Air Canada*, 2020 QCTAT 3768.

Chapter 5: International Migrant Workers

- 1 The chapter incorporates legal developments up to 2023–24 while recognizing the ongoing volatility and evolving nature of the regulatory environment.
- 2 *Immigration and Refugee Protection Act*, SC 2001, c 27.
- 3 In 2012, ESDC and the Ministère de l’Immigration, de la Francisation et de l’Intégration (MIFI) of Québec, signed an agreement to enable employers to apply for an LMIA and to fill selected positions without having to include proof of recruitment efforts. Under the facilitated process, as with the rest of the program, the wage being offered for the position will determine if the employer should apply for an LMIA under the stream for high-wage positions or the stream for low-wage positions, each with its own requirements. The facilitated LMIA assessment process includes professions in high demand and in industry sectors experiencing labour shortages in Québec. The list of occupations, which is updated every year, contains occupations classified under the National Occupational Classification (NOC) training, education, experience, and responsibilities (TEER) 0/1/2/3. Since May 2022, NOC TEER 4 occupations have been included in the list of occupations eligible for the facilitated process as per the agreement between the governments of Canada and Québec.

- 4 Some authors point out the fact that precariousness and labour fragmentation intersect to create the axis of dynamics of hardship and abuse that dominate work experiences of migrant workers in the global labour market (see Rodriguez and Mearns 2012).
- 5 This issue is discussed in some detail in Law Commission of Ontario (2012, 70–74). It also refers to the Dean Report, Recommendations 33, 34, and 35, some of which have been implemented, providing the Office of the Worker Advisor with jurisdiction to handle reprisal complaints under section 50 of the OHSA.
- 6 The lack of training in OSH for TFWs and possible solutions to improve this problem, possibly through ESDC-imposed mandatory provisions in the TFW contract, are discussed in detail in Allen (2018, 124–25).
- 7 As case law shows, this fear is far from being theoretical: *Osmani v. Universal Structural Restorations Ltd.*, 2022 ONSC 6979; *Kenny Bernard Florent v. 2492309 Ontario Limited*, 2021 CanLII 39057 (ON LRB); *Decision No. 125/15*, 2015 ONWSIAT 1271; *2015-0574 (Re)*, 2015 CanLII 43795 (AB WCAC); *Korkomaz v 1771292 Alberta Ltd. o/a Cora Breakfast and Lunch*, 2022 AHRC 126.
- 8 It seems that in Ontario, in cases where there is doubt as to the worker's ability to access health care in the home country, the WSIB will possibly pay accommodation expenses in Ontario so that the worker may remain in Ontario during treatment.
- 9 *Muller et Cirque du Soleil inc.*, 2012 QCCLP 6320. See also Mojtehdzadeh (2016). The article notes that the worker, Robert Sulph, sought, through his complaint to the Ontario Human Rights Tribunal, public interest remedies that would include “WSIB-funded medical investigations inside and outside Ontario to ensure injured workers can access appropriate medical care; WSIB-pays upfront for all medical expenses directly to migrant workers’ health care providers, prior to services being delivered where necessary; require WSIB to pay transportation expenses so that workers [in their home countries need not pay up front]; assist migrant workers to remain in Ontario for medical care where necessary” (see also Brewster 2023).
- 10 See, for example, the case of a Russian-speaking acrobat for the Cirque du Soleil who returned home to Kazakhstan after his injury. Understanding the different steps and decisions rendered in his case took months, yet appeal deadlines are thirty days or forty-five days depending on the level of appeal. The Commission des lésions professionnelles accepted to extend the deadline in light of these difficulties, although the worker lost his case: *Gmyzun et Cirque du Soleil inc.*, 2015 QCCLP 1312.

See also *Sanon et Écolait ltée*, 2015 QCCLP 3311. In this case, in Québec, the appeals tribunal describes a situation that suggests that the worker was led astray by confusion on the part of the WCB as to the correct procedure to apply for compensation.

- 11 Case law in provinces under study confirms this: *Socadis inc. et Mahamad*, 2022 QCTAT 1809; *Decision No 1172/2013*, 2022 ONWSIAT 2077; *Decision No 1045/14*, 2014 ONWSIAT 2368; *20150043 (Re)*, 2015 CanLII 30418 (ON WSIB); *Decision No 2018-0664*, 2019 CanLII 51186 (AB WCAC); *2016-0835 (Re)*, 2017 CanLII 3142 (AB WCAC).
- 12 See *Decision No 1773/17*, 2017 ONWSIAT 2962 (*Decision No 1773/17R*, 2019 ONWSIAT 1817).
- 13 Research on other groups of seasonal workers has shown that temporal constraints experienced by seasonal workers expose them to high risks of musculoskeletal disorders (Major, Clabault, and Wild 2021; Major and Vézina 2017; Yachnin 2025).
- 14 For recommendations on improving OSH for migrant farmworkers in BC, see Otero and Preibisch (2010). See also *Lazo Bautista et Faille*, 2021 QCTAT 5854.
- 15 In the US, studies have documented the exposure of agricultural farm workers to pesticides that were found to be transferred to their living quarters (Thompson et al. 2003).
- 16 In Québec, several reports from the WCB document the circumstances that lead to such accidents (CNESST 2019, 2020a, 2022a). See also *Succession de Batzibal et Cultures Fortin inc.*, 2023 QCTAT 597; appeal for judicial review, *Succession de Lares Batzibal c. Tribunal administratif du travail*, 2024 QCCS 157; Vosko and Spring (2022); Vosko et al. (2022b).
- 17 The province of Alberta only included the agricultural sector within the purview of its OSH legislation in 2016 (Government of Alberta n.d.). For the situation prior to the adoption of this legislation, see Barnetson (2012). See also *Luis Gabriel Flores Flores v Scotlynn Sweetpac Growers Inc.*, 2020 CanLII 88341 (ON LRB).
- 18 *Agricultural Employees Protection Act*, 2002, SO 2002, c 16.
- 19 *L'Écuyer c. Côté*, 2013 QCCS 973.
- 20 *Loi modifiant le Code du travail à l'égard de certains salariés d'exploitations agricoles*, LQ 2014, c 9.
- 21 *Labour Relations Act*, RSNL 1990, c L-1.
- 22 *Labour Relations Code*, RSA 2000, c L-1.
- 23 *Farm Freedom and Safety Act*, 2019, SA 2019, c 19 [FFSA].
- 24 *Occupational Health and Safety Act*, RSO 1990, c O.1 [Ontario OHSA].

- 25 *Workplace Safety and Insurance Act*, 1997, SO 1997, c 16, Sch A [WSIA].
- 26 *Act Respecting Occupational Health and Safety*, CQLR c S-2.1 [Québec AOHS].
- 27 *Act Respecting Industrial Accidents and Occupational Diseases*, CQLR c A-3.001.
- 28 *Occupational Health and Safety Act*, RSNL 1990, c O-3 [NL OHSA].
- 29 *Workplace Health, Safety and Compensation Act*, 2022, SNL 2022, c W-11.1.
- 30 *FFSA*.
- 31 *Occupational Health and Safety Act*, SA 2020, c O-2.2.
- 32 *Workers' Compensation Act*, RSA 2000, c W-15.
- 33 The authors noted that these employers also expressed concerns with regard to what were perceived as personal health issues of their workers, notably “‘heavy drinking’, ‘unprotected sex’, ‘unwanted pregnancy’, ‘unhealthy diet’, and ‘unsanitary houses’” (Narushima and Sanchez 2014, 10).
- 34 Workers are required to be provided with their own bed, a shower, and a toilet for every ten workers and a sink for every seven workers.
- 35 *C189—Domestic Workers Convention*, 2011 (No. 189); *R201—Domestic Workers Recommendation*, 2011 (No. 201).
- 36 *Ontario OHSA*.
- 37 *WSIA*.
- 38 *Loi modernisant le régime de santé et de sécurité du travail*, LQ 2021, c 27; they are now included if they meet a certain threshold, having to work at least 420 hours over a period of one year for the same individual or if they can provide proof of seven consecutive weeks of work at a rate of at least thirty hours per week during that period.
- 39 *Québec AOHS*.
- 40 *NL OHSA*.
- 41 *Workplace Health, Safety and Compensation Act*, 2022, SNL 2022, c W-11.1
- 42 Amendments to Alberta's OHSA that became effective in June 2018 included workers hired to perform domestic work within a private residence (Government of Alberta 2018).
- 43 Domestic workers who are working for homeowners providing domestic help are also excluded from the purview of the Alberta WCA (see *Workers' Compensation Regulation*, Alta Reg 325/2002).
- 44 *Peart v. Ontario (Community Safety and Correctional Services)*, 2014 HRTO 611. The media attention as a result of the accidental death of an agricultural worker on a farm in Québec also shed light on the abusive practices he had denounced (Noël 2014). In the end, the complaint was rejected.

- 45 *United Mexican States v. British Columbia (Labour Relations Board)*, 2015 BCCA 32. The underpinnings of this case are discussed in Vosko (2013). Although the Labour Relations Board was ultimately found, in 2015, to have jurisdiction over the case, the original malfeasance that led to decertification of the union occurred five years before.
- 46 *Orantes Silva et 9009-1729 Québec inc.*, 2016 QCTAT 2155, para. 145 and conclusions; *Orellana et 9009-1729 Québec inc.*, 2016 QCTAT 7086. See also *Prado Paredes et Entreprise de placement Les Progrès inc.*, 2019 QCTAT 4593. Following overwhelming evidence of their abusive working conditions, Québec's labour board ruled in their favour despite the fact that workers were undocumented.
- 47 *Still c. M.R.N. (C.A.)*, 1997 CanLII 6379 (CAF), [1998] 1 CF 549 and *Godoy Enriquez c. M.R.N.*, 2019 CCI 114. Several cases were adjudicated in Québec, and they all confirm that undocumented workers should be able to access the workers' compensation regime if they showed that they were in the midst of getting their work permit and thus were in "good faith": *N'Zi et Coopérative de services à domicile du Cap Diamant*, 2018 QCTAT 306; *Services JAH et Saint-Julien*, 2021 QCTAT 1940; *Reyes Avila et Aliments Alaska inc.*, 2013 QCCLP 3771.

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- 1 Referring to United Nations Human Rights Council (2019).
- 2 Their third recommendation is for government-funded housing and for permanent residency, open work permits, and fair grievance procedures.
- 3 *Act Respecting Occupational Health and Safety*, CQLR c S-2.1, s 32.
- 4 *Cinq-Mars et CTAQ*, 2021 QCTAT 625, petition for review or revocation denied, *Cinq-Mars et CTAQ*, 2021 QCTAT 4179; *Commission des normes, de l'équité, de la santé et de la sécurité du travail c. Tribunal administratif du travail*, 2022 QCCS 3268; *Péloquin et Coopérative des techniciens ambulanciers de la Montérégie*, 2021 QCTAT 2605.
- 5 *Dekkar et Coopérative des techniciens ambulanciers de la Montérégie (CETAM)*, 2022 QCTAT 5261; *Cantin et Services préhospitaliers Paraxion inc.*, 2023 QCTAT 2776.
- 6 *Haché et Société de transport de Laval*, 2023 QCTAT 3317; *St-Laurent et Société de transport de Laval*, 2023 QCTAT 951; *Castro-Ortiz et Société des transports de Laval*, 2023 QCTAT 1327; *Butsitsi et Société de transport de Laval*, 2023 QCTAT 1525; *Dupuis et Société de transport de Laval*, 2023

QCTAT 4548; *Vaida et Société de transport de Laval*, 2022 QCTAT 2441; *Tremblay et Société de transport de Laval*, 2022 QCTAT 2494; *Beauchamp et Société de transport de Laval*, 2022 QCTAT 2737; *Comeau et Société de transport de Laval*, 2022 QCTAT 2977; *Robillard et Société de transport de Laval*, 2022 QCTAT 3407; *Hamel et Société de transport de Laval*, 2022 QCTAT 2844; *Dion et Société de transport de Laval*, 2022 QCTAT 4953.

Conclusion

- 1 At a macroscale, corporate investment decisions, union contracts, and plant closures have been key drivers of work-related mobility over the past several decades. See, for instance, Steven High's (2015, 2019) works on deindustrialization, plant closures, and worker mobility. As we have shown throughout this book, other forms of industrial and policy restructuring also have mobility and risk dimensions including implications for OSH regulatory effectiveness. These include, for example, deinstitutionalization (as within health care), outsourcing, the expansion of precarious employment, the development of turnkey operations based on work camps and FIFO/ DIDO (as in mining), deregulation, and the internationalization of labour recruitment (see, e.g., Quinlan and Bohle 2009; Walters et al. 2011).
- 2 *Occupational Health and Safety Act*, SA 2017, c O-2.1, s 40(2)b, which is now repealed; see *Occupational Health and Safety Act*, SA 2020, c O-2.2, s 33(2)b [*Alberta OHSA*]: "An injury, illness or incident in which there is reason to believe the worker has been or will be admitted to a hospital beyond treatment in an emergency room or urgent care facility."
- 3 *Alberta OHSA*, s 33(2)b.
- 4 *Act Respecting Occupational Health and Safety*, CQLR c S-2.1, s 62 [*Québec AOHS*]: "Every employer must inform the Commission of an incident, by the most rapid means of communication, and, within 24 hours, make a written report to it, in the form and with the information prescribed by regulation, if the incident has caused (1) the death of a worker; (2) the loss of a limb or of part of a limb, the total or partial loss of the use of a limb or a significant physical trauma to a worker; (3) such serious injuries to two or more workers as probably to prevent them from performing their work for one working day; or (4) material damage valued at \$150,000 or more."
- 5 As we have seen, currently, commuting accidents are not usually covered by Canadian workers' compensation systems, although they are covered in many other countries, including France, Germany, and many Asian countries (see, e.g., Salminen 2012; Rusli Bin 2014).

- 6 Alberta revised its *Occupational Health and Safety Act* to specify that “‘health and safety’ includes physical, psychological and social well-being” when it adopted Bill 30 in December 2017 (*An Act to Protect the Health and Well-being of Working Albertans*, SA 2017, c 25, Royal Assent granted on December 15, 2017). See now *Alberta OHSA*, where they removed the definition of “health and safety,” but they have retained the purpose of the act as “the promotion and maintenance of the highest degree of physical, psychological and social well-being of workers” (s 2[a]). In 2018, section 122.1 of the Canada Labour Code was also amended to include psychological injuries and illnesses: “The purpose of this Part is to prevent accidents, occurrences of harassment and violence and physical or psychological injuries and illnesses arising out of, linked with or occurring in the course of employment to which this Part applies.” In 2021, *An Act to Modernize the Occupational Health and Safety Regime*, SQ 2021, c 27, was adopted in Québec and now formally includes psychological injuries within the purview of the law. However, prior to this modification, case law and policy interpretations confirmed that protection of workers’ mental health fell within the jurisdiction of the OSH regulator (see Lippel, Vézina, and Cox 2011).
- 7 In many Canadian jurisdictions, there are specific rules governing working alone, and these may perhaps be adapted to the health and safety needs of the mobile workforce on the road and at work, whether they work alone or not.
- 8 *Regulations Amending the Immigration and Refugee Protection Regulations*, SOR/2019-148 (Canada Gazette, Part II, May 29, 2019), <https://gazette.gc.ca/rp-pr/p2/2019/2019-05-29/html/sor-dors148-eng.html>.
- 9 They also specify a series of legislative amendments required to ensure migrant workers’ equality, although none of these explicitly target health and safety legislation.
- 10 *Act Respecting Labour Standards*, CQLR c N-1.1, s 92.5 [ARLS].
- 11 ARLS, s 92.9.
- 12 ARLS, s 92.11 and s 92.12.
- 13 *Working for Workers Act*, 2021, SO 2021, c 35.
- 14 *Working for Workers Act*, 2021, SO 2021, c 35 (modifying the *Employment Standards Act*, 2000, SO 2000, c 41, see Part XVIII.1).
- 15 *Licensing—Temporary Help Agencies and Recruiters*, O Reg 99/23, s 4.

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About the Authors

The late **Katherine Lippel**, LLL, LLM, FRSC, was a full professor of law at the Faculty of Law and Distinguished Research Chair in Occupational Health and Safety Law at the University of Ottawa. Her research focused on legal issues relating to occupational health and safety, workers' compensation, and return to work after work injury and included, in particular, an interest in health effects of compensation systems, regulatory challenges related to precarious employment and globalization, and health and safety issues related to gender. She was the project director for Policy and Practice in Return-to-Work After a Work Injury, a Social Sciences and Humanities Research Council (SSHRC) / Conseil de recherches en sciences humaines (CRSH)-funded partnership at the University of Ottawa and coinvestigator and lead for the policy component of the SSHRC-funded On the Move Partnership prior to her untimely passing in 2021. These research programs funded this book, which could not have been written without the resulting research. The book also draws on the insights Katherine gained from decades of dedicated engagement in not only documenting but also reducing threats to the occupational health of workers in Canada and globally and improving their access to compensation.

Barbara Neis, PhD, FRSC, CM, is professor emerita and John Lewis Paton Distinguished Professor in the Department of Sociology at Memorial University. Between 2012 and 2023, Professor Neis was the project director for the On the Move Partnership, a multimillion-dollar pan-Canadian

program of research funded by the Social Sciences and Humanities Research Council with contributions from multiple universities and community partners. On the Move researchers and their partners explored the dynamics of extended/complex employment-related geographical mobility, including how diverse kinds of mobility might influence workplace and family dynamics and their impact on occupational health. Work done by On the Move researchers inspired and deeply informs this book.

Maxine Visotzky-Charlebois is a lawyer and professor of labour law at the Université du Québec à Montréal. Her doctoral research focuses on the role of trade unions in the implementation of Québec's occupational health and safety framework. She is a recipient of the Vanier Canada Graduate Scholarship. Maxine Visotzky-Charlebois is also a member of the Inter-university Research Centre on Globalization and Work (CRIMT) and has collaborated on the Policy and Practice in Return-to-Work After Work Injury partnership project led by the late Professor Katherine Lippel. Her research interests centre on the effectiveness of labour legislation and issues related to access to justice.

Dalia Gesualdi-Fecteau is a full professor at the School of Industrial Relations at the Université de Montréal (Canada) and director of the Inter-university Research Centre on Globalization and Work (CRIMT). Her research documents the extent to which labour law succeeds in redressing inequalities. Dalia Gesualdi-Fecteau was part of the On the Move Partnership as a coinvestigator. She has served on the Expert Panel on Modern Federal Labour Standards (2019) and the Expert Panel on Sexual Harassment and Sexual Assault in the Workplace (2023). She has conducted extensive fieldwork, and most of her research is carried out in conjunction with world-of-work actors.