

CONSTITUTIONAL LABOUR RIGHTS IN THE GIG ECONOMY: DIGITAL PLATFORM WORKERS AND SECTION 2(D) OF THE CHARTER

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TOPIC AND IMPORTANCE

The number of people working in “gig” positions for digital platforms—such as ride-hailing and courier apps—has grown significantly in recent years. Due to their uncertain status as “employees,” these digital platform workers are unlikely to be able to benefit from Canadian laws that protect the ability of workers to bargain collectively, which prevents them from being able to effectively negotiate things like wages and other conditions of employment.

This article examines strengths and weaknesses of available options to secure collective bargaining rights for certain categories of digital platform workers, including litigation, regulatory reform, and informal organizing. While there are cases in Canada and elsewhere where these options have had some success, this article focuses on how the extension of constitutional protections under the *Canadian Charter of Rights and Freedoms* could provide more durable collective bargaining protections to Canadian gig workers. This topic is important because many of these kinds of workers are particularly vulnerable in their relationships with digital platforms, especially when the law and power imbalance is heavily weighted in favour of the platforms.

MAIN ARGUMENTS

Section 2(d) of the *Charter*, which protects the freedom of individuals to associate with others, has recently been applied by courts to require governments to extend meaningful collective bargaining rights to non-gig workers in standard employment relationships who are vulnerable to power imbalances. While the courts have not yet specifically dealt with digital platform workers’ collective bargaining rights, this article argues that these recent court decisions and Canada’s international treaty obligations—like its ratification of *ILO Convention No. 87, Freedom of Association and Protection of the Right to Organise Convention*—require constitutional protections to be extended to digital platform workers in vulnerable relationships with the platforms that employ them.

CONCLUSION AND ADDITIONAL CONSIDERATIONS

By extending section 2(d) protections to the vulnerable groups of digital platform workers, governments would be compelled to act in ways favourable (or at least, not unfavourable) to the collective voice and interest of these workers, as they have been compelled to do for similar employee groups. However, these legal protections will come with significant practical challenges as governments tackle the task of creating meaningful collective bargaining regimes that take into account digital platform workers' unique working conditions and relationships, and the challenges they create.