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## “Vulnerable Workers” and Third Way Governance: Shifting Subjects of Regulation in Ontario’s Employment Standard Enforcement Regime

*Abstract:* This article traces the definition and treatment of “vulnerable workers” within the province of Ontario’s regulation of employment standards over a fourteen-year period. An examination of the government’s discourse and its enforcement and legislative history reveals significant shifts and inconsistencies between the government’s claims and its enforcement practices. These shifts and inconsistencies are understood within a political economic analysis of “Third Way” employment policies, competing liberal ideologies, shifting political-economic conditions and institutional legacies. The analysis contributes to a cross-national literature exploring the inadequacies of employment standards enforcement in liberal market economies while at the same time identifying opportunities for change within the different “varieties of liberalism” exhibited within Third Way regimes.

*Keywords:* Employment standards, enforcement, vulnerable workers, Third Way

### I. Introduction

In the face of growing criticism of globalization and neoliberalism, many western political parties, notably Labour in Britain, the Democrats in the US, and Social Democrats in Europe and Australia, responded in the 1990s and early 2000s by moving to what they called a “Third Way” (Blair 1998; Giddens 2000). In Canada, one of the more notable examples of this development was the late 2003 election of a Liberal provincial government in the Province of Ontario. Presented as a case study, this paper seeks to document and explain the government’s claims and efforts to use employment standards (ES) law to protect “vulnerable workers.”

While varying with government and jurisdiction, Third Way (TW) advocates tend to share the claim of a return to more regulation and government intervention, arguing that strict adherence to neoliberal

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free market principles undermines social equality and integration, as well as long-term economic growth and competition, by polarizing incomes and labor markets, disrupting competition, and undermining productivity (Etzioni 2000). However, studies of TW reforms and administrations frequently document limited gains in poverty reduction relative to the promises (Albo 2018; Hale 2011; Smith 2018; Peters 2018). For some analysts, the limited impacts on poverty reflect policy priorities that continue to sustain neoliberal economies and the core conditions underlying poverty (Callinicos 2001; Coulter 2009; Fairclough 2000). As such, the equality rhetoric is understood as being aimed principally at preserving electability while neoliberalism is in fact “deepened.”

Others argue that TW policies often include substantive efforts to reduce poverty grounded in ideologies distinct from neoliberalism (Deacon 2003; Graefe and Hudson 2018). Keman (2010), for example, argues that TW policies are derived from an “inclusive liberalism” (IL) which sees high levels of inequality as limiting economic and productivity growth. While the incorporation of neoliberal principles such as trade liberalization, market flexibility, and individual responsibility within IL is acknowledged, the governments’ efforts around poverty and low-income employment are understood as substantive efforts to spur economic growth and productivity gains through more government services, support and protections targeted at the poor. Under this interpretation, the limits of TW government efforts on poverty or inequality stem from the failure of IL policy to reconcile the contradictory demands of labor and financial market flexibility (Keman 2010). However, other researchers have suggested that different “varieties of liberalism” continue to shape TW social policy including “social liberalism” or Keynesian liberalism, challenging both IL and neoliberal assumptions and offering more progressive possibilities for policy innovations (Graefe 2006; Graefe and Hudson 2018; Mahon 2008; Myles 1998).

Rather than focusing on ideology, analysts have also argued that whatever the intention, the framing of TW policies as more progressive has generated their own political pressures within and on these governments to deliver on some of their promises (Graefe and Hudson 2018; Huo 2009). The limited outcomes of many of these governments are seen as reflecting the relative political influence of the groups advocating for or against stronger poverty policies. In making these arguments, periods of radical neoliberalism such as the Thatcher regime are often cited as empowering business and corporate interests while disempowering workers and organized labor, making progressive change less likely (Peters 2018; Ross 2018). Others counter that those same policies and their impacts have mobilized workers and worker advocates into significant anti-poverty forces, including alliances with some in the business community (Graefe and Hudson 2018; Mahon and MacDonald 2010).

Some researchers have gone further to argue that any reforms coming out of TW governments are entirely a consequence of politics and immediate political-economic circumstances rather than a reflection of any particular ideology (Beland, Vergniolle de Chantal, and Waddan 2002; Hale 2011; Keman 2010). For example, looking at the case of Britain, Brewer, Clark, and Wakefield (2002, 499) suggest that the policies of New Labour “were formulated in some cases and selected in others post hoc to justify a body of policy that was not an ideological adherence to neoliberalism [or any particular liberalism], but a pragmatic response to perceived changes in circumstances, motivated above all by the necessity of retaining electoral support across a broad base of the British public.” Several researchers have also added institutional legacies and bureaucratic interests to the list of constraints preventing or altering the implementation of TW policy (Clark 2004; Hudson, Hwang, and Kuhner 2008; Wiggan 2007).

In this article, we contribute to these debates through an examination of the enforcement of the Employment Standards Act<sup>1</sup> over a 14-year period (2004-2018) of Liberal party rule in the Canadian province of Ontario. We focus specifically on the government’s claim that it was seeking to address poverty and inequality in employment by enhancing protections for “vulnerable workers.” After documenting three distinct trajectories in the government’s enforcement discourse and actions, we present a political-economic analysis of this enforcement history. We argue from a power resources perspective (Refslund and Arnholtz 2022) that the government’s TW approach to poverty grounded in ideologies other than neoliberalism offered opportunities for a politics of advocacy and change which, in this case, eventually led to substantive ES reforms favorable to workers. We also show that the extent to which any reforms were realized at any point during the government’s mandate depended substantially on the power resources of those advocating for and against those reforms. As a final argument, we link shifts in the power resources of different political actors to various changes in political-economic conditions.

### *A. Methodology*

This inquiry is informed by a discourse analysis which starts from the assumption that policymaking is a productive process that shapes the problems it acts on in particular ways, while also creating its own challenges (Bacchi 1999). As applied here, such an approach helps to illuminate the omissions and silences in official discourses on “vulnerable workers,” the term that the Ontario government and the Ontario Ministry of Labour (OMOL) used to identify its low wage policy targets.<sup>2</sup> The Ontario government’s “ways of talking” about vulnerable workers are analyzed through an examination of all government and OMOL Employment Standards (ES) news releases, backgrounders, speeches, and other publicly available documents in English between 2003 and 2015<sup>3</sup> regarding the employment standards’ legislative, program, and enforcement activities. The total number of OMOL ES documents analyzed was 51, identified through key term searches (“vulnerable workers,” “precarious or contingent employment,” “enforcement,” or “deterrence”) of the official OMOL website classified as backgrounders, new releases, statements, or speeches.<sup>4</sup> The Hansard, the official record of the Ontario Legislature,<sup>5</sup> was also examined, along with the documents that were produced for the Changing Workplace Review, which took place from 2015–17 (OMOL 2017a; 2017b). Analysis focused on the meaning of vulnerable workers, looking for potential conceptual shifts over time. A content analysis was used to count the number of times that vulnerability and precarious employment (or contingent) were addressed in relation to power, labor market location, and knowledge or other personal characteristics such as immigrant status, language, gender, or age on a year-to-year basis.

Interview data were also collected and employed to show how frontline staff understood and responded to the government’s enforcement policies. Fifty-two employment standard officers (ESOs) were interviewed as the staff responsible for inspections, claims investigation, and decisions regarding orders and penalties. Local office managers (n=15) and regional coordinators (n=6) in eight

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<sup>1</sup> Ontario, Employment Standards Act (2000) SO 2000, c 41/, <https://www.ontario.ca/laws/statute/00e41>.

<sup>2</sup> The Ministry of Labour (now officially known as the Ministry of Labour, Immigration, Training, and Skill Development) is responsible for administering and enforcing the Employment Standards Act.

<sup>3</sup> The original content analysis of OMOL communications was from 2004–2015. Although we had monitored and collected the documents coming from the Changing Workplace Review, many of the OMOL news releases and other communications were deleted from the OMOL websites and archives after a OPCP government was elected, making it impossible to retrieve and add post-2015 to the broader analysis.

<sup>4</sup> <https://www.labour.gov.on.ca/news>.

<sup>5</sup> <http://hansardindex.ontla.on.ca/>.

enforcement offices across the province were also interviewed with reference to their understanding of the history of enforcement changes, as well as their accounts of efforts to manage and support the work of the ESOs (see Hall, Hall, and Bernhardt 2022 for more details on interviews, coding, and analysis).

## II. The Case of Ontario

### A. Radical Neoliberalism to Third Way Liberalism: Protecting “*Vulnerable Workers*”

Between 1995 and 2003, Ontario was governed by the Ontario Progressive Conservative Party (OPCP) under Premier Mike Harris, an avid admirer of Margaret Thatcher’s radical brand of neoliberalism, who came to power promising to enhance global competitiveness through substantial deregulation, privatization, and public sector efficiencies (Albo 2018; Keil 2002). Premier Harris’ government enacted significant labor reforms. They froze the minimum wage for the full two terms (1995–2003); lowered employment standards, especially around working hours; and significantly reduced labour union rights (Smith 2018). The government also cut welfare assistance payments by 21.6% and introduced workfare and other program changes aimed at forcing people off welfare, while introducing a range of government cuts and privatization projects (Mahon 2008).

After eight years of substantive restraint and deregulation, Ontario elected a Liberal government under Premier Dalton McGuinty which pledged a progressive alternative to the OPCP’s radical neoliberalism, with more government intervention aimed at ensuring reduced poverty and inequality (Albo 2018). Consistent with other TW regimes, the new government also emphasized its commitment to enhance fiscal responsibility, market flexibility, and competitiveness (Coulter 2009; Peters 2018; CCPA 2004).

Among the earliest announcements of the new government were a series of small annual increases to the minimum wage and new ES reforms reversing some of the regressive OPCP measures on working hours. In announcing these and other measures, the Labour Ministry began using the term “vulnerable workers,” introducing them as an important policy priority linked to its broader commitment to poverty reduction.<sup>6</sup> As Labour Minister Chris Bentley stated when announcing the government’s first minimum wage increase in 2004:

Today, we are extending a helping hand to one of the groups of people in Ontario that need it most . . . This raise in minimum wage rates is nine years overdue and will help keep Ontario’s most *vulnerable employees* from falling further behind the rest of Ontario employees. (OMOL 2004a)

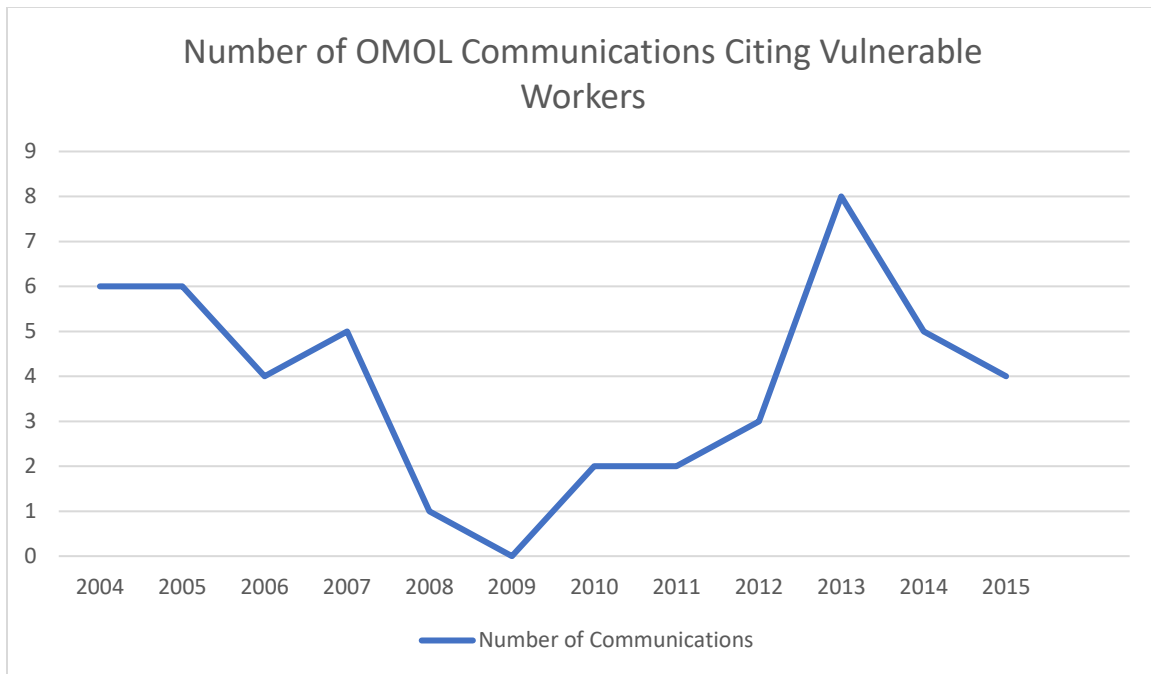
Along with being used to substantiate the need for ES reform (see Figure 1), vulnerable workers were associated with the need for more enforcement. When introducing the hours of work ES reforms, an OMOL news release quoted the Minister as saying: “Backing this [ES legislation] up will be *tougher enforcement* against those who refuse to operate responsibly, preying on workers and undermining competitors . . . Starting today, enforcement is back in style” (OMOL 2004b). As the Minister also

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<sup>6</sup> See OMOL (2004d); see also Hansard, Ontario Legislature, March 1, 2004, 38th Parliament, 1st Session, <https://www.ola.org/en/legislative-business/house-documents/parliament-38/session-1/>; Hansard, Ontario Legislature, June 4, 2004, 38th Parliament, 1st Session, <https://www.ola.org/en/legislative-business/house-documents/parliament-38/session-1/>.

explained in the legislature, without enforcement “vulnerable workers do not have the power to choose [their hours] in the workplace.”<sup>7</sup> As Figure 1 indicates, several OMOL communications in 2004–2005 made reference to the importance of protecting vulnerable workers.

**Figure 1. Total Number of OMOL Communications Citing Vulnerable Workers\***



\*Multiple documents citing the same incident, event, or action were not double-counted.

As Table 1 shows, there were also several OMOL documents about vulnerable workers during the same period which repeated the Minister’s recognition of power disadvantages as the rationale for increased proactive inspections and deterrence.

<sup>7</sup> Hansard, Ontario Legislature, Dec. 8, 2004. 8th Parliament, 1st Session, <https://www.ola.org/en/legislative-business/house-documents/parliament-38/session-1/>. See also Hansard, Ontario Legislature, March 1, 2004. 38th Parliament, 1st Session, <https://www.ola.org/en/legislative-business/house-documents/parliament-38/session-1/>; Hansard, Ontario Legislature, June 4, 2004. 38th Parliament, 1st Session, <https://www.ola.org/en/legislative-business/house-documents/parliament-38/session-1/>.

Table 1. Characterization of Vulnerable Workers in OMOL Communications

Year	Vulnerability as Power Relation	Vulnerability Tied to Workplace	Vulnerability to Tied to Personal Resources	Inspections as Response to Vulnerability
2004	4*	4	4	0
2005	2	5	1	0
2006	0	3	2	1
2007	0	4	0	0
2008	1	1	1	0
2009	0	0	0	0
2010	0	1	0	0
2011	0	2	0	1
2012	0	2	1	2
2013	0	5	5	3
2014	0	4	2	3
2015	2	6	2	0

\*Numbers refer to number of documents that articulate vulnerability in this way. If a document refers to vulnerability in multiple ways, it will appear in more than one column. Vulnerability as Power Relation refers to acknowledgement that employers have the power to persuade or coerce workers to accept employer violations of their rights. Tied to Personal Resources refers to lack of education and understanding of the law and language difficulties. Inspections as Response to Vulnerability refers to inspections explicitly identified as being aimed at vulnerable workers.

### B. *Tough Enforcement Talk, Not Much Action: 2004–2006*<sup>8</sup>

Before looking more closely at this call for tougher enforcement, it should be noted that well before and during the OPCP term in government (1995–2003), enforcement of employment standards in Ontario was grounded in reactive investigations of individual worker complaints, with OMOL ESOs seeking resolutions through compliance orders or voluntary employer compliance agreements. Routine inspections had been a part of the enforcement system since the 1980s, but the frequency of inspections had dropped sharply through the 1980s and 1990s (Thomas 2009, 102). Although ESOs had been previously granted the capacity to impose minor fines through Notices of Contravention

<sup>8</sup> The analysis considers three distinct periods of time: the early period (2004–06), the middle period (2006–2012), and the later period (2013–2018).

(NOCs) or to seek much stronger fines and even imprisonment through prosecution (Part III charges), the normative practice of ESOs was to rely on persuasion and education to gain future employer compliance, with no penalties assessed and little follow-up with respect to compliance orders (AGO 2004; Thomas 2009; Vosko et al. 2020).

Given this history, the Minister’s use of the concept of power to explain the need for stronger legislation and enforcement for low-wage vulnerable workers was a significant break from past government discourses, including earlier iterations of liberal and social democratic (NDP) governments in the 1980s and early 1990s (Thomas 2009). However, the Minister’s early talk of tough enforcement was also paired with calls for an expanded effort to educate employers and workers on their responsibilities and rights. While promising tougher enforcement, Minister Bentley also stated in the same legislature speech that “we will be increasing awareness of the rights and responsibilities for both employers and employees.”<sup>9</sup> The point formed the basis of a wider discourse on education and self-service supported by the delivery of several new education and claims-making tools, including the 2004–05 creation of a web “gateway” or information portal along with a new series of brochures and posters produced in multiple languages (OMOL 2004d; see also OMOL 2006b; 2009a). This emphasis was further reinforced in 2005–06 when the OMOL introduced an online ES claims filing system along with a further redesign of its website and a new information portal on workers’ rights and employer obligations. These changes were then followed in 2007 with a new computer software system within the Ministry to “automate and standardize the claims processing based on best practices” (OMOL 2007), with the expectation that this would allow more efficient processing of claims.

Although the focus on education was by no means a new development within the OMOL (Thomas 2009), a more innovative program was introduced partnering with community groups to improve the education of new immigrants. As stated in a Ministry news release, “The Ontario government is reaching out to vulnerable workers through various community and cultural organizations to provide information about employment standards in Ontario. A commitment to Ontario’s diversity is a tremendous source of strength and enables Ontario to do business with the world” (OMOL 2006a). As the quote suggests, these “public/private partnerships” were defined as efforts to improve communication and education, while at the same time helping to enhance global competitiveness (OMOL 2006b).<sup>10</sup> As commonly found in other studies of TW governance discourses (Coulter 2009; Fairclough 2000), this linking of ES compliance and enforcement measures to competitiveness was a frequent feature of OMOL communications.

While partnering and many other program measures were cast in terms of education, the Minister’s statement about vulnerable workers and their lack of power to choose suggested a significant shift in discourse, in that it acknowledged that education and individual claims-making were insufficient when dealing with vulnerable workers. In an apparent effort to reinforce this enforcement message, the government also moved in 2004 to add Part I fines or “tickets” of \$360.00 per violation to its existing system of penalties (Notices of Contravention/NOCs and Part III Prosecutions) (OMOL 2004b; O.

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<sup>9</sup> Hansard, Ontario Legislature, Dec. 8, 2004. 8th Parliament, 1st Session, <https://www.ola.org/en/legislative-business/house-documents/parliament-38/session-1/>.

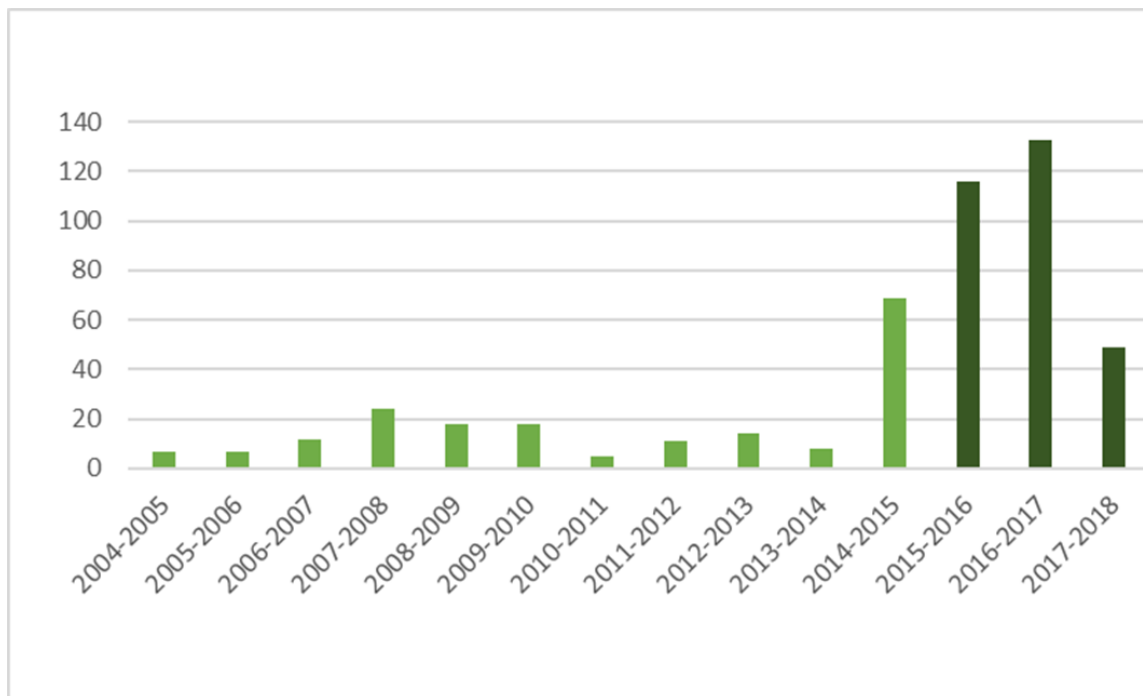
<sup>10</sup> This pairing of “fairness” for employees and “competitiveness” for employers was a common feature of the Ministry’s discourse on its ES activities and illustrates the TW government tendency to claim a capacity to balance both objectives (Coulter 2009).



Reg. 161/00). The government explicitly indicated that the tickets were being introduced as a new “deterrent” enforcement tool targeted at helping “vulnerable workers” (OMOL 2005). As the Minister put it in a Ministry news release: “We must ensure the fair treatment of vulnerable employees, and ticketing will help us accomplish that goal” (OMOL 2004c). Government communications also indicated that the OMOL would begin publishing the names of the individuals and employers convicted of ES violations as a further deterrence measure (Ayres and Braithwaite 1992). The government announced as well that there would be an increased focus on proactive inspections and follow-up visits in targeted sectors with high rates of non-compliance (OMOL 2004b).

However, although the government claimed a focus on tougher proactive enforcement, the government and the ministers’ discourse said very little about pursuing the more serious prosecutions under Part III of the ES Act,<sup>11</sup> emphasizing instead the use of tickets as a deterrence tool. Moreover, as enforcement statistics for 2004–2006 indicate, there were no significant increases in tickets, NOCs, or Part III prosecutions during this early period (see Figures 2 and 3).

**Figure 2. Part III Prosecutions Initiated by OMOL**



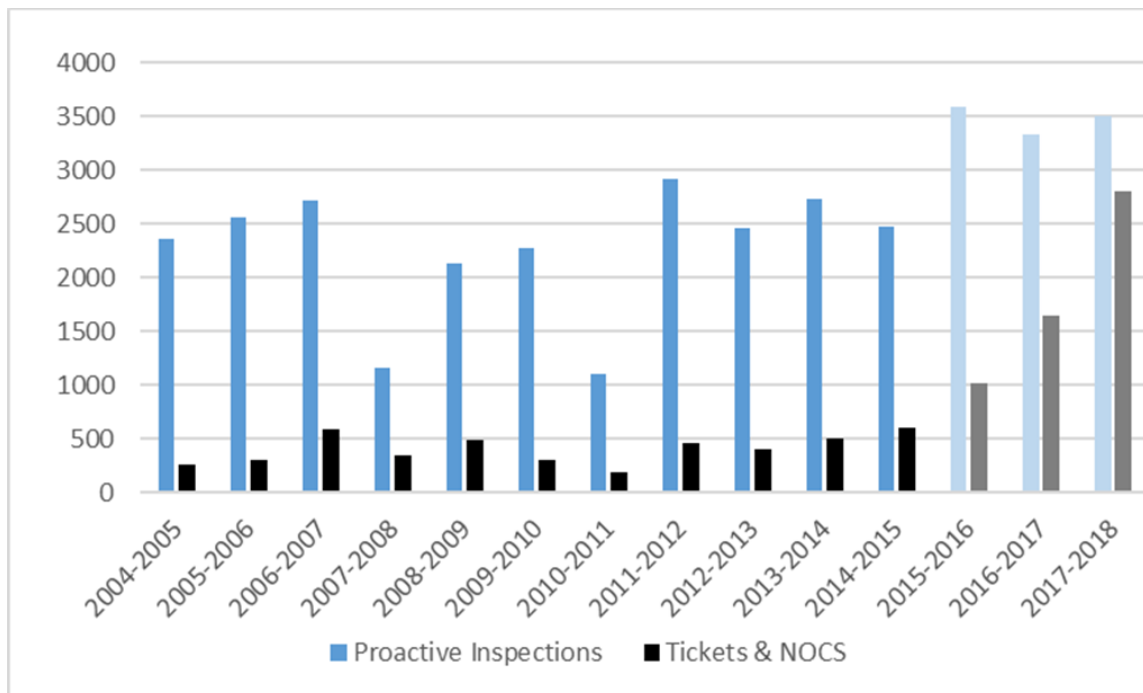
Source: OMOL administrative data provided to the research team, 2004–2018.

Our interviews with ESOs and managers also found that other than establishing the ticketing system, the OMOL had done little administratively at this time to ensure that ESOs were using the tickets. The government had also claimed that proactive inspections were a major part of their new enforcement push, but other than expanding the dedicated inspection teams, there were no major

<sup>11</sup> Ontario Employment Standards Act, 2000 S.O. 2000, c.41. <https://www.ontario.ca/laws/statute/00e41>.

efforts to increase penalties levied by ESOs. Inspection data also shows that the Ministry inspectors continued to rely almost exclusively on compliance orders (i.e., orders to pay money that employers already owed employees without punitive penalties), which were often not paid (Vosko et al. 2020, 106). Finally, despite all the lofty claims about proactive inspections, the increase in inspections over the two-year period (2004–2006) was very modest (see Figure 3).

**Figure 3. Proactive Inspections and Tickets and NOCS, 2004–05 to 2017–18**



Source: OMOL administrative data provided to the research team, 2004–2018.

### C. Declining Enforcement Talk and Action: 2007–11

The major gap between the government’s early enforcement discourse and its actions on the ground seems to bolster the TW critique that the government’s initial regulative efforts around the minimum wage, ES reforms, and other areas of labor law were not serious efforts to correct or reverse the effects of nine years of minimum wage freezes and deregulation (Albo 2018; Coulter 2009; Smith 2018). Enforcement data for 2007–2011 reinforces this interpretation (see Figures 2 and 3), inasmuch as any limited signs of improvement during the 2004–06 period in lower-level fines and proactive inspections were largely reversed in the middle time frame. As the data shows, there were generally declining numbers of tickets and NOC fines as well as lower levels of proactive inspections after 2006–07 (Figure 3). Although there was a limited increase in the use of Part III prosecutions (Figure 2) in 2007–08, the increase was neither widespread nor sustained. Prosecutions declined to very low levels from 2010 right through to 2013–14. Proactive inspections also dropped quite substantially from 2006–07 to 2007–08. While regaining some of those losses in 2008 and 2009, inspections then dropped in 2010–11 to their lowest levels since the government was first elected.

What was also notable about this middle period in the Liberal government’s life span (2007–2012) was that the reversals in enforcement were reflected by a shift away from the government and OMOL’s earlier public discourse on vulnerability and enforcement. First, as shown in Figure 1, the term “vulnerable workers” itself became increasingly rare in government and OMOL communications, especially from 2009–2011. Second, to the extent that vulnerable workers were discussed or addressed at all, there was no longer any acknowledgement of employer power imbalances or coercion as underlying worker vulnerability (Table 1). Instead, vulnerability was defined almost entirely by the lack of worker knowledge or understanding of employment standards among specific employee groups such as new immigrants, non-English speakers, and young workers (OMOL 2009a). The program delivery discourse on government actions accordingly shifted to emphasize education, self-service, and claims processing with little or no mention of enforcement.

On the legislative front, the government did make some additional minimum wage increases in 2008 and introduced two other ES reforms targeted at two precarious employee groups, temporary workers, *Employment Standards Amendment Act—Temporary Help Agencies*,<sup>12</sup> and migrant live-in caregivers, *Employment Protection for Foreign Nationals Act, Live-in Caregivers and Others*.<sup>13</sup> While suggesting a continued government effort to address the issues of vulnerable workers, most labor scholars dismissed these changes as too weak to meaningfully alter worker power or conditions (Gellatly et al. 2011; Smith 2018). However, much more explicit signs of a move to more neoliberal thinking came in ES reforms contained within an omnibus Bill 68 introduced in 2010 called the *Open for Business Act* (OBA).<sup>14</sup> Contradicting the government’s earlier acknowledgment that vulnerable workers were reluctant to approach their employer with complaints or information requests for fear of employer reprisal (Doorey 2010; Gellatly et al. 2011), the reforms required that complainants attempt to resolve their complaints directly with their employer *before* filing a complaint with the Ministry. Workers were also required to provide more information to inspectors before claims would be investigated, information that was often only available from the employer. In addition, frontline ESOs were given the power to negotiate “facilitated” settlements between employers and workers when investigating claims, potentially pushing workers to accept less money than they were actually owed (Vosko et al. 2020, 110–116). Although the government claimed that workers fearing retaliation would be exempt, it was unclear how these exemptions could be implemented in a fair and consistent manner (Gellatly et al. 2011).

Thus, the enforcement record demonstrates that the government did not pursue tougher enforcement or target enforcement for vulnerable workers from 2007–2012. Inasmuch as the government and OMOL also moved discursively and programmatically to reinforce the emphasis on education, claims making, and self-service accessibility, the OMOL’s discourse and practice appeared to be progressively more neoliberal in tone and form during this period. The OBA ES reform cemented this impression

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<sup>12</sup> Bill 139, An Act to Amend the Employment Standards Act, 2000 in Relation to Temporary Help Agencies and Certain Other Matters, 1st sess., 39th Leg., Ontario, 2009. <https://www.ola.org/sites/default/files/node-files/bill/document/pdf/2009/2009-05/bill---text-39-1-en-b139ra.pdf>.

<sup>13</sup> Bill 210, An Act to Protect Foreign Nationals Employed as Live-in Caregivers and in Other Prescribed Employment and to Amend the Employment Standards Act, 2000, 1st sess., 39th Leg., Ontario, 2009. <https://www.ola.org/sites/default/files/node-files/bill/document/pdf/2009/2009-12/bill---text-39-1-en-b210ra.pdf>.

<sup>14</sup> Bill 68, An Act to Promote Ontario as Open for Business by Amending or Repealing Certain Acts, 2nd sess., 39th Leg., Ontario, 2010. <https://www.ola.org/sites/default/files/node-files/bill/document/pdf/2010/2010-10/bill---text-39-2-en-b068ra.pdf>.

by overtly “responsibilizing” workers for policing their own rights and highlighting administrative efficiency over proactive external enforcement (Vosko, Grundy, and Thomas 2016).

#### D. *Rewriting Vulnerable Workers into the Enforcement Script: 2012–2018*

Within a year of being re-elected in 2011, government references to vulnerable workers began to reappear (see Figure 1). In terms of action, the 2009–11 drop in inspections was also the first thing to be reversed with a doubling of inspections in 2011–12 (see Figure 3). The Labour Minister of the day also announced the reinstatement of a provincially coordinated program of inspection blitzes<sup>15</sup> systematically targeting specific industries such as retail, construction, building services, and certain groups of workers such as young workers, with the first inspection blitz focusing on temporary agency workers (OMOL 2012a; 2012c; 2013a; 2014a).

The OMOL also began talking again about worker vulnerability with reference to its inspection efforts (see Figure 1). However, the communications on vulnerable workers from 2012–14 still made no explicit mention of power imbalances or deterrence and continued to emphasize educational and compliance efforts (Table 1; see also OMOL 2012c; 2013a; 2013b; 2013c; 2013d; 2013e; 2013g). In a 2014 strategy report, the OMOL’s definition of vulnerable workers made no reference to employer power to intimidate workers nor to the precarious nature of their employment, focusing entirely on the individual characteristics of workers that led them to concentrate in high-risk sectors (OMOL 2014a; 2014c; 2014d; 2014e). Having defined the goal of inspection blitzes strictly in terms of traditional compliance and education goals, it was perhaps less than surprising that the return to inspections and blitzes in 2011 did not produce any initial improvement in tickets, NOCs, or Part III prosecutions (see Figures 2 and 3).

While an ES reform called the *Stronger Workplaces for a Stronger Economy Act*<sup>16</sup> (Ontario 2014) made some significant ES improvements (see also OMOL 2013f), it was not until 2015 in a major review of the *Employment Standards and Labour Relations Acts* that the OMOL began to again acknowledge that labor market changes had altered employment relations making workers more vulnerable to employer reprisals (OMOL 2015a; 2015c; 2016; 2017a). The Review’s 2017 Final Report clearly defined vulnerability in terms of power imbalances and for the first time in the ES area, used the term “precarious employment” (OMOL 2017a). As stated in the Final Report:

The imbalance in the power relationship between employers and employees leads many employees to be reluctant to pursue their rights. This lack of power, together with the lack of knowledge by employees of their rights, makes already vulnerable workers even more vulnerable. Ignorance of legal requirements and the complexity and obscurity of the law require that priority be given to the widespread communication of rights and responsibilities, the education of all concerned, and the simplification of the law. To this must be added robust enforcement strategies and penalties for non-compliance, which will give workers confidence that society takes their rights seriously and lets employers know there will be serious consequences if they fail to comply. (OMOL 2017a, 10).

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<sup>15</sup> Blitzes target a large number of employers within a given industry and geographic area.

<sup>16</sup> Bill 18, An Act to Amend Various Statutes with Respect to Employment and Labour, 1st sess., 41st Leg., Ontario, 2014. <https://www.ola.org/sites/default/files/node-files/bill/document/pdf/2014/2014-11/bill---text-41-1-en-b018ra.pdf>.

Immediately following the review, the government passed the *Fair Workplace Better Job Act* (2017),<sup>17</sup> which even the strongest critics of the government agree was the most progressive piece of labor legislation passed by the Liberal government during its 14 years in power (Albo 2018; Peters 2018; WAC 2017). The Act made several important changes including more substantial minimum wage increases than in the past, new work scheduling requirements, new vacation and leave allowances, new penalty options for enforcement, and more funding for the inspectorate (see OMOL 2017b).

Perhaps most significantly for our focus on enforcement, Part III enforcements rose substantially in 2014 and then further in 2015 and 2016-17 (see Figure 2), while tickets and NOCs increased continuously from 2015–2018 (see Figure 3). Granted, the rate and size of the penalties allocated to violators and the lack of consistency in the application of graduated enforcement principles were not at levels sufficient to generate the deterrence effects as prescribed by many enforcement scholars (Bernhardt 2012; Weil 2010). Nevertheless, the shift in enforcement practices and the enactment of the *Fair Workplace Better Job Act* placed significant new constraints on low-wage employer flexibility and power, suggesting notable departures from neoliberal thinking.

It is also worth noting that the OMOL had moved to toughen enforcement before it acknowledged publicly that it was doing so. Our interviews with ESOs and their managers found that the government and the MOL started to move in this direction as early as 2013. Interviews with ESOs in 2014–15 found that several of our subjects were recent hires in their first or second years who reported being recruited because of their policing or related enforcement experience. Both ESOs and managers reported that the OMOL administration had made specific changes between 2013–15 in hiring criteria, implemented new training programs on prosecution procedures, delivered new management supports for prosecutions, and perhaps most importantly, made major changes to the inspector performance system allocating more time and evaluation points for prosecutions and tickets. The new training also included instruction on applying a graduated enforcement system which involved identifying repeat offenders and moving systematically from warnings to tickets to Part III prosecutions (Ayes and Braithwaite 1992). The managers were unanimous that contrary to past instructions, there were clear internal communications “from the top” that they were to push and support ESO use of deterrence measures.

Managers contended that these administrative and organizational changes were critical in moving the OMOL enforcement culture from a compliance model to a much stronger deterrence orientation. As one stated:

Having been here since 1992 . . . the culture definitely was don't rock the boat—the general direction from higher up—and influenced by the political side, was that . . . we're not going to be too heavy-handed in our approach . . . That's the culture that's taken root . . . Two years ago, most of my employees would have been 45, 50 and up, with the majority approaching 60—I only have right now . . . three people who have more than two years in the Program. . . . So there's a huge change in attitude, a huge change in approach . . . it's much easier to get people who were recently . . . hired to take a more enforcement approach to things.

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<sup>17</sup> Bill 148, An Act to Amend the Employment Standards Act, 2000, the Labour Relations Act, 1995 and the Occupational Health and Safety Act and to Make Related Amendments to other Acts, 2nd sess., 41st Leg., Ontario, 2017. [https://www.ola.org/sites/default/files/node-files/bill/document/pdf/2017/2017-11/bill---text-41-2-en-b148ra\\_e.pdf](https://www.ola.org/sites/default/files/node-files/bill/document/pdf/2017/2017-11/bill---text-41-2-en-b148ra_e.pdf).

At the same time, managers often noted that even in 2015–16, there was continuing resistance to using enforcement penalties from some veteran ESOs, partly reflecting deficits in the skills and orientations necessary to take a more aggressive enforcement approach. As another manager put it:

You have to have the right people who can do this . . . some people [ESOs] who are caught who don’t know how to interpret legislation, aren’t comfortable with enforcement, they’ve been around for awhile and they are caught in the middle . . . they don’t have the enforcement mind.

Our interviews with ESOs in 2014–15 confirmed that there were still some who were not following the new enforcement directives at that time. As one ESO, member of the Dedicated Inspection Team (DET), acknowledged, his view was “that ticketing does not work . . . they may be aiming for us to do more but I feel my focus is education, not punishment . . . It’s a mindset they [OMOL] are pushing but I’m not trying to develop it . . . I don’t issue tickets.”

Interviews with OMOL managers and ESOs also suggest that the lag between the beginning of the administrative moves (2013–14) and the actual changes in enforcement practices (2014–15) reflected the time it took to implement the new hiring criteria, hire and train new (and current) staff, and make the other organizational changes, in the face of some considerable staff resistance. The resistance by ESOs may also help to explain why the OMOL was not entirely successful in implementing the graduated enforcement program (Vosko et al. 2020, 166). Regardless, this shift was a substantive institutional accomplishment that broke quite significantly from historical OMOL practice *and* neoliberal principles, suggesting further that although institutional legacies and interests can present significant challenges to implementing policy changes, regimes can overcome those legacies with the right mix of administrative strategies (see also Vosko et al. 2020, 260–278 for David Weil’s account of the American case during Obama).

Thus, the government exhibited three distinct trajectories of enforcement discourse and action. First, from 2004–06 it claimed an intention to toughen ES enforcement grounded in an acknowledgement of employer power over vulnerable workers but took limited action to do so. Then, from 2007–2013, it moved away from any claim of tougher enforcement while also reducing its use of penalties and proactive inspections. Finally, it returned to the tougher enforcement discourse in its final years (2014–2018) but coupled this time with stronger ES legislation and increased enforcement action and penalties. In the next section, we seek to explain these three trajectories using a variant of power resources theory, which recognizes institutions, ideas, and coalitions as critical sources of influence and power. Rather than reducing these developments to a single explanation grounded in the hidden neoliberal agenda of TW governance, we suggest that each trajectory was shaped by distinct political, economic, and ideological conditions operative at those points in time.

### III. Explaining the History: Not Just Neoliberalism

Power resources theory, as outlined by Erik Olin Wright (2000) and others, has traditionally placed emphasis on labor unions (“associational resources”) and worker versus employer control over the production process (“structural resources”). Refslund and Arnholtz (2022, 1963–66) have recently suggested that in a global context, where labor unions and union density have become much weaker and employment precarity more common, it is important to broaden our conceptualization of power to include institutional resources (such as labor and employment law, political parties, administrative agencies, courts), ideational resources (i.e., “the capacity of actors to influence other actors’ normative

and cognitive beliefs through the use of ideational elements” (Carstensen and Schmidt, 2016, 320)), and coalitional power resources (i.e., “the ability to form coalitions with other groups or collective actors” (Refslund and Arnholtz 2022, 1965)). As we try to show below, we can use these concepts of institutional, ideational, and coalitional power resources to better understand how changes are achieved over time when the subjects of regulation are vulnerable workers in precarious employment who have no unions and very little control over their work and employment.

### *A. Explaining the Early Discourse and Limited Action*

To explain why vulnerable workers and ES enforcement were identified as issues early in the Government of Ontario’s mandate, we begin by distinguishing the poverty policy discourses of TW governments, including Ontario’s, from the common neoliberal discourse on poverty (Graefe and Hudson 2018; Piercy et al. 2017). Consistent with neoliberalism, TW policymakers tend to argue that poverty reduction should be principally achieved through strategies that get people, especially poor parents, off social assistance and into wage employment (Beland, Vergniolle de Chantal, and Waddan 2002). However, TW advocates, including those in elected office in Ontario, place more emphasis on the intergenerational effects of poverty and recognize the limitations of pushing or coercing people through social assistance cuts into precarious low-wage employment without some level of protection and motivation (Deacon 2003; Graefe and Hudson 2018, 320; see also Gill 2021).

The neoliberal strategy of pushing people into wage employment through major social assistance cuts and eligibility restrictions was in full view under the previous Ontario conservative government, with its 21% cut in welfare allowances, workfare programs, draconian eligibility rules, and constant “fraud” monitoring. In TW policy frameworks, however, there tends to be a greater appreciation that poverty-level wages, extreme precarity, and exploitive working conditions make it impossible for parents, and by association their children, to achieve independence from the state (for example Matthews 2004). In effect, there is an acknowledgment that an unregulated labor market undermines the power of the poor to take responsibility for themselves and their children, thus perpetuating poverty and dependency. As happened in the UK’s New Labour (Deacon 2003) and in Ontario (Graefe 2006), these understandings translated into an early policy focus on childhood poverty that included links to employment assistance programs, targeted family supports, and employment law reforms.

This latter point helps to partly explain why employment standards and minimum wages were an early feature of the Liberal government’s discourse on poverty. As limited as many of the Liberal government’s reforms were in the early to middle years, their focus on improved minimum wage, reductions in allowable work hours, and employment assistance programs suggested policy ideas and objectives more consistent with inclusive liberalism than neoliberalism (Graefe and Hudson 2018). When the government acknowledged that education and individual claims were insufficient to protect vulnerable workers because of power differences, it moved even further from a neoliberal framing of poverty and employment opportunity.

In power resources theory terms, the failure to act more forcefully on these ideas early in the government’s mandate is understood as reflecting differences in the relative power resources of corporate and labor interests aligned for or against these ideas. However, as Refslund and Arnholtz (2022) argue, ideas are significant power resources in themselves (ideational resources) which are used by political actors within and outside the government to define, mobilize, and enhance political interests and actions over time. Thus, regardless of the government’s “true” intentions early in its

mandate, its explicit acknowledgement of employer dominance and the need for more state enforcement signaled that these ideas had a certain legitimacy and level of influence or resonance at the time within the different labor, poverty, and business communities, the party policymakers, and/or the OMOL itself. From this perspective, the fact that the government moved away from 2007–2013 from publicly acknowledging these ideas about tougher enforcement does not demonstrate that the government never intended to move in this direction, but rather that the power resources aligned around those ideas were insufficient to sustain their public framing within the government at this time.

In our view, then, it is significant that the same early ideas and discourse about the power disadvantages of vulnerable workers re-emerged publicly when the government moved to explain its more progressive changes to the ES Act and its enforcement in 2015–17. As we outline later in the paper, there were also several indications that these ideas were still held by some within the OMOL well before 2014–15. Furthermore, although the government and OMOL avoided any public reference to power from 2007–2013, researchers, groups, and coalitions advocating for vulnerable workers continued to press on this particular issue of employer power as the core rationale for tougher enforcement demands (Law Commission of Ontario 2012; Thomas 2009; WAC 2007; 2011a). The fact that the OMOL made significant administrative changes towards tougher enforcement close to two years before the government publicly stated that it was doing so based on the same rationale of employer power is notable. Our interviews with managers and ESOs also revealed that many were quite pleased to see these moves, suggesting that they had believed for some time that tougher enforcement was needed but were unable to get any support for action from the central administration until recently. From our perspective, then, this combined evidence suggests although the political support for these ideas was initially insufficient to form the basis of substantive reforms, the ideas didn't disappear when the government stopped expressing them. They continued to shape policy thinking, communications, and discussions within the government, and between the government and different community interests.

On the other hand, the neoliberal elements of IL thought and policy also played complex roles in shaping the government's discourse and limiting its actions on enforcement. Like TW governments elsewhere, the Liberal government had signaled its commitment to core fiscal principles, especially the need to maintain global competitiveness through low taxes, balanced budgets, and, ultimately, fiscal austerity. As Coulter (2009, 195) observed in her analysis of the government's early policy and budget communications, "concepts such as 'prudent management', 'fiscal responsibility', 'accountability' and 'individual achievement' were central to their approach to provincial budgeting but also to their handling of public services." As such, while employment law and programming were seen as preferable approaches to poverty over social assistance, in part because of the higher costs of social assistance reform, the approach to labor and employment law reform was also informed by these fiscal constraints. There is little doubt as well that the government's overarching emphasis on global competition and the associated commitment to flexibility in labor markets were very significant ideological constraints in shaping how far and how quickly the government was willing to move on law reform.

However, unlike neoliberalism, TW discourse tends to emphasize "smarter" regulation over deregulation as a basis for achieving improved working conditions and employer competitiveness (Gunningham and Grabosky 1998). These notions of smarter regulation were key to the development of the government's approach to enforcement. Since austerity principles meant a focus on "doing more with less," this translated into ministry funding cuts and the expansion of managerialist approaches seeking more efficient forms of administration by trying to replicate for-profit professional



management models (Clark 2004). The cuts and freezes in ministry budgets may at least partially explain why the OMOL was not ready to implement a tougher enforcement policy in the government's early stages, since this would have required significant investments in hiring and training inspectors, which the government was apparently unwilling to do at this juncture. However, perhaps just as important, the managerialist orientation to program delivery management encouraged ministries across the government to create or seek more efficient models of governance and regulation.

As Vosko, Grundy, and Thomas (2016) have documented, this trend was expressed in Ontario's OMOL, as well as similar agencies in other TW governments, by the adoption of what Vosko et al. call "regulatory new governance" (RNG). While acknowledging that RNG practices can take various forms, they argue that RNG advocates share a critique of command-and-control forms of regulation as being too bureaucratic and deregulation as being too harmful, proposing instead a combination of self and external regulations, with the latter targeted at what are seen as high-risk offenders and victims (Lobel 2012). The size and complexity of flexible globalized labor markets served as the rationale for the differential and targeted use of public and private resources. Accordingly, TW governments stress a more strategic use of public enforcement resources, with enforcement evaluated by what had both the greatest impact and low costs.

Vosko, Grundy, and Thomas (2016) point to scholars such as Ayres and Braithwaite (1992) as being particularly influential in framing RNG through their "responsive regulation" model, where regulators are encouraged to use a variety of enforcement strategies depending on the past behavior of the offenders. A "lighter" touch of persuasion and education is recommended for first-time and minor offenders, with escalating penalties for non-compliant operators until the most severe penalties are applied. Other key scholars such as Gunningham and Grabosky (1998) are recognized for their so-called "smart regulation," where a wider range of actors (i.e., industry and professional associations and civil society groups) and enforcement measures (public naming and shaming, voluntary codes of conduct, performance measures and auditing) are recommended. Many of the OMOL innovations outlined above—the employer self-auditing, the enhanced training and education programs, the online claims processes, the public shaming, and the collaborations with community groups—were all elements of an RNG model. The government's early focus on targeting vulnerable workers in high-risk industries was also an indication of RNG thinking based on the idea that limited inspection resources should be concentrated on the main sources of violations.

Thus, the discursive focus on vulnerable workers and tougher enforcement was part of a larger sophisticated effort to reconcile the challenges of meeting TW objectives and principles through the adoption of a RNG model, which included specific prescriptions and rationales around the need for tougher and targeted enforcement. When the Minister and Ministry began talking about the need for more education *and* enforcement, they were expressing certain RNG ideas and rationales as they moved to implement that model. Whether the government never intended to act on their claims of tougher enforcement is impossible to demonstrate with our data but, from a power resources perspective, the Minister's acknowledgment of the power issues underlying worker vulnerability suggests that he was opening a political door for possible tougher action on enforcement, again with follow through being dependent on the politics and power resources fighting for or against immediate action.

On the other hand, it is also clear that from the outset the Minister and Ministry were being selective about what the elements of RND that they included in their stated plans. As noted, nothing was said in the Minister and Ministry discourse about "escalating punishments" against repeat offenders during

the early governing period, and, more specifically, there was little mention of increasing the ESOs' use of more serious Part III prosecutions at this stage. Rather, the government emphasized claims about using its new ticketing system to deter violations. It is unlikely that these omissions of graduated enforcement and Part III prosecutions were entirely accidental, suggesting the government was not convinced that tougher measures would work or were necessary to deter violations. As well, it is quite likely that they understood that including them would entail political risks or costs that they were hesitant to take at the time.

We suggest that with respect to the risks, there were three main concerns limiting what the government was willing to do at this point. First, there was the concern that aggressive enforcement action, like a rapid increase in the minimum wage, would provoke a business backlash, similar to what happened to the NDP-led government in the early 1990s (Graefe and Hudson 2018; McBride 2005). Politically, this was not an insignificant risk for the government, inasmuch as the OPCP had garnered considerable business support for their more radical neoliberal policies over their two terms in office (Peters 2018). Of course, a fear of a conservative backlash is in no way unique to any particular liberal or social democratic government, regardless of their ideological orientation and agenda. However, inasmuch as TW governments are usually trying to tread a middle ground to draw electoral support from both the left- and right-of-center electorate (Brewer, Clark, and Wakefield 2002), this too may have made them reluctant to move quickly without being more certain about the political reaction.

Another concrete government concern with respect to moving more quickly and substantially on the minimum wage and ES reforms was the perceived potential to increase unemployment in Ontario (Graefe and Hudson 2018, 320; Gunderson 2007; 2014). Unemployment is problematic from a neoliberal perspective, of course, because it adds to social assistance costs,<sup>18</sup> but again, politically speaking, no government, whether neoliberal, socially liberal, or socially democratic, is intent on increasing the number of people on social assistance, especially early in its mandate when it is promising to do the opposite. While the research evidence was certainly spotty, the standard conservative discourse behind the OPCP minimum wage freeze had relied quite heavily on the claim that any increase in the minimum undermines employment (Gunderson 2007, 2014).

The concern about increasing unemployment had some grounding in Ontario's economic dependency on the low-wage sectors, a consequence of earlier neoliberal policies. Although Ontario was and still is the most industrialized province in Canada, several decades of Canadian and provincial free trade policies had hollowed out much of the province's manufacturing and primary resource sectors by 2004, and the low-wage sectors were accordingly critical to absorbing labor supply (Peters 2018). Some of the free trade effects in Ontario in the 1990s had been initially deflected by the low value of the Canadian dollar, but the dollar's increasing value at the beginning of the McGuinty mandate further narrowed what the government saw as its options at this time (Graefe and Hudson 2018). As well, Ontario's dependency on the low-wage sector helped to empower those employers most likely to resist minimum wage and enforcement improvements.

A third concern revolved around the institutional challenges of getting the ES inspectorate to implement a graduated enforcement model that involved a greater use of prosecutions (Snider, 2009). As a new government, it is possible that they didn't fully understand the challenges, but the relative

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<sup>18</sup> This was especially the case since federal government changes in unemployment insurance during the 1990s had made it increasingly difficult to qualify, pushing more of the unemployed into provincially funded social assistance (Mahon 2008).

speed with which they moved in 2013–14 to make those administrative changes suggests that there was some appreciation within the government and/or OMOL from the outset that the full implementation of the RNG model would entail significant costs in hiring, training, morale, and organizational conflict. From the perspective of a new TW government such as the Liberals’, it was much safer politically and fiscally to cherry-pick those elements of RNG that were more consistent with OMOL culture and less costly to introduce, such as educational, auditing, and other self-service programs (Vosko et al. 2020, 150).

Certainly, the ES focus on education and self-regulation was more consistent with neoliberal notions of individual responsibility, but again, this does not mean that their intent or even their effect was to “deepen” neoliberalism (Coulter 2009). Indeed, in terms of effects, we suggest there were important countervailing effects—in particular, that the early acknowledgment of employer power in vulnerable worker employment conditions was significant in setting the stage for a poverty politics that eventually resulted in the major changes that occurred in 2014–2018. To support this argument, we need to consider the political demands and pressures coming from poverty and employment advocates and the relative power that they exercised at different points in time.

Nine years of radical neoliberalism under the previous conservative government had greatly increased poverty and its visibility in Ontario (Oliphant and Slosser 2003). Major changes to unemployment insurance eligibility requirements by the federal government and the provincial downloading of social assistance to the municipalities by the previous OPCP government had also shifted the political dynamics of social assistance in significant ways (Graefe and Hudson 2018). Along with making poverty an election issue, these conditions helped to mobilize a substantial coalition of anti-poverty and social policy advocates leading up to and after the 2003 election, especially in the capital city of Toronto (for example, Toronto City Summit Alliance 2006). Critically, this also included some powerful reformist elements within the business and banking communities who had come to recognize that the extreme polarization and poverty were undermining social integration, productivity, consumption patterns, and competitiveness (for example, Toronto City Summit Alliance 2003).

Although less connected to the Liberals, several activist groups also emerged in the late 1990s and 2000s with a strong focus on the working poor, most notably the Contingent Workers Project (which morphed into the Toronto Workers Action Centre (WAC) and the Ontario Coalition Against Poverty (OCAP) (Gill 2021; Hewitt-White 2000; Shantz 2002)). These groups also brought poverty to public light through rallies and the publication of evidence on the failure of Employment Standards (Cranford, Vosko, and Zukewich 2003; WAC 2000; Gill 2021; Shantz 2002; Vosko 2006; 2010). These critiques of enforcement gained critical legitimacy early in the government’s mandate, when a 2004 Auditor General Report came out strongly criticizing the OMOL for failing to enforce ES law and calling explicitly for more proactive inspections (AGO 2004). Inasmuch as Auditor General reports tend to be heavily publicized in Ontario and generate considerable attention from opposition parties, this report was an important institutional power resource for advocates pushing the government to acknowledge the limits of individual claims making and the need for stronger enforcement.

In terms of conventional “associational power resources,” it is worth noting that Ontario has the lowest union coverage rates in the country, with declining union density especially in the private sector. However, as Walchuk (2010) shows, a potential political influence on the Liberal government was the Working Families Coalition (WFC), a group of unions that split from the traditional organized Labour support for the social democratic NDP. The WFC devoted considerable financial resources during both the 2003 and 2007 elections effectively in support of the Liberals. However, in what seemed like

a quid pro quo (Walchuk 2010), the government invested millions in new funding in public education (for the teachers’ unions) and the auto industry (for the Canadian Autoworkers Union), and passed labor reforms which were especially significant for the three construction unions involved (i.e., restored a card-based union certification system in construction only). Inasmuch as these moves seemed to cement the WFC’s support for the Liberals in the 2007 election, there is little evidence to suggest that significant pressure was coming from this coalition for immediate early action on poverty. As the formation of the WFC also implies, the labor movement as a whole in Ontario was quite divided, further weakening its capacity to influence the government on poverty policy (Ross 2018). In short, the advocacy pressures for ES reform coming from organized labor were not significant in the early stages of the government.

While there were different liberal and social democratic perspectives on poverty operating within the various advocacy groups, many, especially from the business community, were expressing demands consistent with IL focused on getting people off social assistance by reducing employment barriers (Fernando and Benjamin 2011; Hudson and Graefe 2012). According to Graefe and Hudson (2018), interviews with community and business advocates revealed that many in these communities had “significant access to the [new Liberal] Premier’s office and shaped the thinking and outlook of the McGuinty government” on working poor policy through the first four years of the government (319).

Graefe and Hudson (2018) also contend that while the groups involved in these coalitions often had different ideologies and demands, they amplified their unity and power by coalescing around multiple demands and future-oriented objectives (322). These strategies may have enhanced the coalitions’ powers to gain government attention, but they also created some political space for the government to delay moving quickly on social assistance and employment. As such, while the government was under early pressure to acknowledge the need for action in employment regulation, the pressure to deliver immediate dramatic results was not as great early in its mandate as it was later (see below for more on this).

In combination, these competing ideologies and varying levels of institutional and coalition resources help to explain at least partially why the Minister was so quick to acknowledge the need for tougher enforcement but was also more inclined to move incrementally in terms of implementing ES reforms. Some of the constraints here were not unique to a TW government. Few governments, whatever their political and ideological orientation, would move quickly on enforcement or other reforms if they were concerned about a political or economic backlash, especially if the next election was still two years away. As such, while the government’s inaction on enforcement was tied in important ways to neoliberal economic conditions and aspects of its neoliberal policy thinking, its reluctance to act reflected several political and economic influences which were not reducible to any narrow hidden ideological position that tougher ES enforcement threatened neoliberalism.

### *B. Explaining the Disappearance of Vulnerable Workers and Tougher Enforcement*

If we continue to pursue the logic of power resources theory, the retreat from the vulnerable workers discourse from 2007 to 2011, the drop in enforcement numbers, and the expanded neoliberal orientation of the OBA ES reforms suggest that whatever combination of political pressures (and/or ideas) had motivated the initial discourse on tougher public enforcement, albeit without leading to much action, the pressures for action declined even further from 2007–2011. One could also argue, of course, that if the enforcement discourse was principally a political tactic to appease these groups,

then the decline of that discourse would suggest that the political influence of the poverty and worker advocates had weakened further, allowing the government to dispense with the pretense.

In this section, we want to show that the evidence supports the former argument rather than the latter. To begin, however, it is important to note that leading up to and after the second election of the Liberal government in 2007, the political pressures for action on poverty were actually increasing. As Graefe and Hudson (2018) document, the community, labor, and business alliances that had formed in the early 2000s were more active moving into 2006 and 2007, issuing reports and demands calling for more action on poverty. A good example of this was a 2006 report by Modernizing Income Security for Working Age Adults (MISWAA), which argued for more government measures to make work more attractive and possible for welfare recipients (see also TD Economics 2005). MISWAA was particularly interesting in that it had representatives from business, academe, unions, city of Toronto officials, and an array of poverty and employment advocacy groups. According to Graefe and Hudson, these advocates continued to cultivate and exploit important connections to government policy makers. Two Liberal losses in two by-elections to the NDP in 2005 and 2006, both in Toronto, were also important in fueling a political dynamic for change inasmuch as poverty was an important campaign issue in both ridings. Closer to the general election in 2007, there was also a joint coalition call from City of Toronto, the Ontario Federation of Labour, the Toronto Social Planning Council, and an interfaith social assistance reform coalition for a province-wide poverty reduction strategy. Thus, a key feature of poverty politics during this period was that the reform emphasis within the coalition had shifted to some extent from ES to child poverty and social assistance reform, which reduced pressure on the government to act on ES enforcement.

As such, when re-elected, the government responded to the call for a poverty reduction strategy by establishing a cabinet committee tasked with that objective (Graefe and Hudson 2018; Gill 2021). The coalition’s focus on pushing the government for a plan may have again relieved some of the pressure on the government to make more substantial changes, but the government was not entirely inactive, as the first budget after the 2007 election included increases in social assistance and educational and other support for parents. Although criticized as inadequate (Smith 2018), the government also introduced another round of minimum wage increases (to reach \$10.25 by March 2010).

Given their successes in getting the government to move, the anti-poverty coalitions proposed a broad blueprint in 2008 called “25in5,” seeking a government commitment to reduce poverty by 25% in five years (Gill 2021). Again, the emphasis was on the need for more substantial action on social assistance, but the brief also highlighted demands for higher minimum wages and better employment standards in general. However, enforcement was not mentioned. When the government’s cabinet committee released its poverty reduction strategy report in December 2008 (Ontario Cabinet Committee 2008), the government adopted the coalition’s 25% reduction target for childhood poverty, which formed the basis of Bill 152, *An Act Respecting a Long-term Strategy to Reduce Poverty in Ontario*,<sup>19</sup> passed in 2009 (Gill 2021; Graefe and Hudson 2018).

While the OMOL’s drift away from enforcement from 2006–08 may partly reflect the poverty politics during this period, given increased attention on improving the Child Benefit and enhancing other parent and child supports, ES advocacy groups continued to make their case for tougher enforcement. The WAC release of a widely publicized report on precarious employment and employment standards

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<sup>19</sup> Bill 152, *An Act Respecting a Long-term Strategy to Reduce Poverty in Ontario*, 1<sup>st</sup> sess., 39<sup>th</sup> Leg., Ontario, 2009. <https://www.ola.org/sites/default/files/node-files/bill/document/pdf/2009/2009-05/bill---text-39-1-en-b152ra.pdf>.

in 2007, *Working on the Edge*, was particularly notable (WAC 2007). Perhaps reflecting these efforts, Bill 152 allocated \$10 million to hire 12 additional ES inspectors, while the poverty reduction strategy report talked specifically about the need to enhance proactive enforcement to protect vulnerable workers. As stated in the report:

It’s also important that when people are working, they are doing so in secure environments, where employees are treated with dignity and respect. That requires strong employment standards that employers follow carefully. As in many jurisdictions, employment standards in Ontario are not always followed as closely as they should be. This can result in workers losing money owed to them, such as overtime, vacation pay and termination pay. The result can mean hardship for workers and their families, with particularly serious consequences for those Ontarians already facing challenges. . . Many Ontarians who work through temporary help agencies are vulnerable workers. They have little employment security and typically have low incomes compared to permanent workers. In addition, they may have difficulty accessing their employment standards rights. (Ontario Cabinet Committee 2008, 22)

However, mirroring the general trend in the OMOL discourse and practices during this time, the report didn’t refer to the need for more deterrence measures, but rather reported that the new inspectors would be used to improve the recovery of wages through orders and claims, reflecting the same old compliance thinking that the OMOL had used for decades (Thomas 2009).

Thus, it appears that the government was still not willing by 2008 to acknowledge or move on its earlier calls for tougher enforcement penalties, a reluctance which we suggest was shaped in part by the shift in power resources oriented to social assistance and poverty reduction planning rather than ES reforms. What still needs to be explained, however, is why, given the government’s 2008 acknowledgment of vulnerable workers in the poverty strategy and the announcement of more inspectors in Bill 152, did vulnerable workers essentially disappear in the OMOL’s discourse from 2008–09 until 2011–12 (Figure 1)? Moreover, how do we understand the extremely regressive enforcement language in the 2010 OBA?

Our answer is the 2008–09 recession, which quickly undermined the broader political momentum that had been developing around poverty policy before and after the 2007 election. As unemployment and government debt grew in the context of the economic crisis, business and government shifted their focus to stimulating employment and the economy more generally. Support for tightening the regulation and enforcement of the low-wage sectors largely evaporated along with action more generally on poverty (Graefe and Hudson 2018, 323). Interpreted in this way, the Ministry’s silence on vulnerable workers and OBA’s regressive language and measures were not a final confirmation of the “real neoliberal intentions” of the government, but rather the direct consequences of the recession-induced shift in politics and power resources.

The recession didn’t just affect poverty politics. The operations and priorities of the OMOL were also impacted quite significantly. As outlined above, the OMOL had introduced and expanded its online claims process from 2005–2007, trying to make claims-making easier, more accessible, and more efficient from the government’s perspective (Vosko et al. 2020, 70-71). However, fueled substantially by the recession layoffs and unemployment, the Ministry began to experience a major increase in formal ES complaints or claims from workers, creating a huge backlog (OMOL 2007). Although dismissals are a major source of claims on their own, workers are more likely to make other claims related to unpaid wages, etc., when they are laid off, given their reluctance to do so while still employed

(Vosko et al. 2020). With respect to ES claims, backlogs swelled to 14,000 by 2010, resulting in extremely lengthy claims processing times, sometime extending to over a year.

The OMOL responded by reassigning virtually all its dedicated inspection teams (DET's) to a task force aimed specifically at reducing the backlog, in effect undermining the OMOL capacity to conduct proactive inspections. This is precisely the point in time when we saw the most significant decline in inspections (see Figure 2) and ultimately penalties (Figure 1). As this latter argument suggests, the institutional power resources available for maintaining the government's earlier focus on vulnerable workers had largely evaporated during this period.

However, suggesting that the government was still thinking about the importance of vulnerable worker and inspections, once the backlog was eliminated by 2011, ESOs were reassigned to DET and inspections again increased to earlier levels and beyond, as noted above (see Figure 2). This quick return of inspections offers further evidence that the government's original focus on vulnerable workers had not been a simple political tactic. The move on proactive inspections also implies that, contrary to the OBA language, the government, or at least some actors within the government, believed that placing responsibility on workers to make claims was not a sufficient way to protect vulnerable workers. Our interviews also suggest that managers and ESOs did not enforce the OBA provisions during this period, nor was there a big push from senior administration to do so, suggesting that many in the OMOL understood that low-wage workers were not able to self-police their rights.

Thus, viewed from a power resources perspective, the discursive shift from external enforcement to education, along with the regressive ES provisions in the 2010 OBA, were the result of a recession-caused decline in the power resources of those pushing for more enforcement within and outside the government and Ministry. While the OBA reforms were certainly consistent with neoliberal thinking, their introduction did not mean that the government had been narrowly committed to self-regulation and responsabilization principles.

There were also other indications that the ideas about employer power and the need for tougher enforcement were present within the Ministry during this middle period, despite what was being said publicly on the ES side. For example, after four temporary migrant workers were killed in a collapse of a high-rise swing stage in Toronto in late 2009, the government ordered the OMOL OHS branch to launch a review of its occupational health and safety regulative regime. The mandate of the appointed “Expert Panel” specified a need to focus on “vulnerable workers,” and the final report (Ontario 2010) dutifully contained several recommendations associated with vulnerable workers, emphasizing both more aggressive safety inspections and more education. What was especially notable about the final report is that it explicitly defined vulnerable workers with reference to power and directly acknowledged the fear of reprisals as impeding access to the worker right to health and safety (see Ontario 2010, Recommendations 29–32). Many of the panel's recommendations were addressed in a subsequent health and safety reform (Bill 160),<sup>20</sup> which included measures to toughen enforcement and offer more reprisal protection for workers seeking to exercise their OHS rights (King and Lewchuk 2022).

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<sup>20</sup> Bill 160, An Act to Amend the Occupational Health and Safety Act and the Workplace Safety and Insurance Act, 1997 with Respect to Occupational Health and Safety and Other Matters, 2nd sess., 39th Leg., Ontario, 2011.

The expression of these ideas within the Ministry in 2009–10 highlights again the importance of looking at ideologies as ideational and institutional power resources (Refslund and Arnholtz 2022, 1964). Granted, it took four years before the ES branch of the OMOL returned to using the same definition and language of vulnerability laid out in the OHS panel report, but the fact that a power-based definition of vulnerability was being expressed by actors within the Liberal government and the Ministry at this time suggests that the original ideas underlying a call for tougher enforcement continued to carry weight within the government and the OMOL.

Moreover, while the renewed acknowledgement of power relations didn’t happen until the government announced its 2015 review of labor and employment laws, the OMOL had already moved by 2013–14 to take the administrative steps aimed at implementing a RNG graduate enforcement model. The relative secrecy surrounding these changes indicates to us that the government was still concerned about a business backlash, and certainly some managers and ESOs claimed that they were getting employer complaints filed against them. However, in interviews managers argued that unlike the earlier government calls for tougher enforcement, this time senior management was clearly backing them up rather than telling them to stand down. Thus, coupled with the substantial minimum wage increases and other ES reforms, these enforcement upgrades revealed a government more intent on fulfilling its promises of employment fairness (and improved competitiveness) through significantly improved levels of financial and employment security. Although these objectives were entirely consistent with the IR concern about improving employment conditions, very little of what the government was doing at this point in terms of the Act, the minimum wage, and ES enforcement reforms could be categorized as “neoliberal” in principle or practice.

### C. *Explaining the Return of Vulnerable Workers and Tougher Enforcement*

To explain this final shift, we again emphasize power resources and the political-economic circumstances shaping those resources. The evidence points to several factors. To begin with, premier Dalton McGuinty resigned in October 2012 in the context of a scandal over the cancellation of two power plants and a protracted struggle with public sector unions. The latter undermined the support the government had gained from the union-based Working Family Coalition and the OFL. A new leader, Kathleen Wynne, took the premiership in February 2013. Wynne’s 2014 election campaign presented her as a more progressive figure than McGuinty, reflecting and reinforcing the power of anti-poverty advocates and coalitions. From 2012–2015, there were also enhanced pressures coming from several academic studies and community reports that clearly documented the lack of progress during the McGuinty years, making it increasingly difficult to delay action further (Family Service Toronto 2012; Law Reform Commission of Ontario 2012; Lewchuk, Clark, and de Wolffe 2011; PEPSO and United Way 2013; WAC 2011; 2015). Many of these studies were focused on precarious employment and the failures of the ES regulation, while calling specifically for increased enforcement to protect workers against reprisals (Law Reform Commission 2012; PEPSO and United Way 2013; WAC 2015).

The rebirth of a vulnerable workers enforcement discourse in 2012 within the government and Ministry was also likely due in part to a reinvigorated opposition built specifically around criticisms of the OBA (Gellatly et al. 2011). Political pressure for action on the minimum wage and ES more generally also stemmed from a strong \$15.00 minimum wage campaign (Wilmott 2011), which, as Graefe and Hudson (2018) point out, was by this time outperforming the broader “anti-poverty community” which had become quite divided during Ontario’s recession. Of course, there was still



opposition to these reforms from significant elements in the business community, including a coalition called “Keep Ontario Working,” which published an “independent report” claiming the minimum wage increase could cost Ontario 185,000 jobs while negatively impacting “Ontario’s most vulnerable workers” (Ontario Chamber of Commerce 2017; see also Lammam and MacIntyre 2018).

However, as Wilson (2017) argues in his comparison of the politics of the minimum wage in several countries including Canada, the unintended effect of the neoliberal (and TW) discourse that poverty must be resolved through employment is that it shifted the public focus onto the “reality of low wage employment.” This shift fueled stronger public demands from workers for more action on minimum wage and other employment conditions, which may well have been instrumental in countering Liberal concerns about a business backlash. This point was reinforced by ES managers who told us in interviews that the senior administration was backing their efforts to protect any ESOs experiencing backlash from their tougher enforcement efforts. As well, inasmuch as Wynne had been re-elected in 2014 through an appeal to a “left of center” base of voters (Smith 2018), the Changing Workplace Review and ES changes offered a means of contradicting growing skepticism about the government’s claims of a commitment to reducing poverty (Coulter 2009; WAC 2015). These points seemed to be confirmed when the government met the minimum wage campaign demands for \$15.00 (to be achieved by 2019) even though the minimum wage was not included in the original review.

While an improving economy also gave Wynne’s government some room to maneuver fiscally,<sup>21</sup> the government’s discourse and Wynne’s first budget mirrored the McGuinty era’s neoliberal emphasis on balanced budgets with no tax increases (Smith 2018, 296). As Smith (2018) and Graefe and Hudson (2018) argue, this orientation limited what the Wynne government was willing to do, as it had with McGuinty, especially on social assistance. It didn’t help that families on social assistance had increased over the course of the recession. As such, fiscal restraint, again somewhat ironically, was likely a factor that helped to push employment standards back to the front of the agenda in poverty policy. Thus, the government’s willingness to act more substantially on the minimum wage and ES reflected the mixed effects of increased political pressures and economic circumstances and the government’s continued adherence to neoliberal budgeting objectives.

However, we again stress that the ideas underlying the original discourse on vulnerable workers and enforcement were important power resources for those advocating for change. When the government was pushed to finally move more aggressively on employment standards and enforcement, the original ideas defining the RNG model formed critical resources for how the reforms were laid out and achieved within the context of the OMOL. It is also important to recognize how different these ideas were from the ones being promoted by more conservative business and political actors. This distinction was confirmed in part when the Liberals were defeated in the 2018 election and replaced with an OCP government. Soon after taking power, virtually all the ES and the minimum wage changes introduced by the Liberals in 2017 were reversed by the OCP government, coupled with a move away from vulnerable workers and tougher enforcement (Gill 2021).

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<sup>21</sup> The government’s capacity to move on minimum wages and ES more generally may also have been a function of economic considerations, inasmuch as the value of the Canadian dollar was no longer a concern, and unemployment was on a declining trajectory from 2014–2018 (Chart 2, Stats Canada, Labour Market Report 2019).

## V. Conclusion

While the commitment to certain neoliberal ideas and conditions shaped what the government said and did around ES enforcement, we’ve argued that its policy discourses and actions were grounded in other liberal ideologies with particular reference to IR, which opened the government to alternative ideas about making employment more attractive for people on or close to being on social assistance. Politics and political pressures contingent on power resources available among the opposing positions in the community at a given point in time influenced what the government said and did, contingent as well on shifting political-economic circumstances. As such, whether the government was willing or able to act on these ideas depended on a variety of institutional and coalition power resources as well as economic conditions.

We have also argued that the government’s early introduction of vulnerable workers defined in terms of power relations was an important political act which formed the ideological basis for a politics of change in enforcement practices. As such, the critical distinction to make between TW and radical neoliberal governments is that the former are more receptive to ideas that place restraints on employer power and market flexibility. Inasmuch as more significant changes came after a change in Liberal leadership, it is possible that the greater diversity of ideas operating within TW parties offers more possibilities for variations in policy and practice than is the case in radical neoliberal governments. However, the more central argument we have tried to substantiate is that although the ideas, interests, and politics of the Ontario Liberal government offered opportunities for progressive change, the achievement of those ideas in government policy and practice depended substantially on the actions and power resources of those political actors advocating and opposing more ES regulation and enforcement.

Whatever the limitations of TW governments and their dangers, and they are considerable (Albo 2018; Gill 2021), it is important to remember that radical neoliberal governments, such as the previous and current OPCP regimes, rarely offer these kinds of openings or opportunities. Their ideas and policies may galvanize the anti-poverty coalitions, as they did in the 1990s and early 2000s and as the current OPCP government is perhaps doing now (Gill 2021), but those governments do not give voice nor legitimacy to those advocates and coalitions, as did the Liberal government. This observation is especially important when workers in precarious employment are the subjects of investigations, because ultimately the structural and associational powers resources of these workers *are* extremely limited (see Vosko et al. 2020, 177–198). Indeed, a key objective in seeking legislative and institutional change is to provide these workers with the institutional power resources that might help not only to improve their individual lives but enhance their collective capacity to develop their structural and associational powers.

Certainly, it is also important to understand why TW governments do not act on many of their promises and, indeed, why they end up sustaining and deepening neoliberalism in many ways (Coulter 2009; Gill 2021). This research and the TW literature as a whole leaves little doubt that the continued adherence to certain neoliberal ideas on the part of TW policy makers was key to understanding those limitations and disappointments. At the same time, we need to better understand how and why some substantive challenges to neoliberalism are still achieved by some of these governments. The more researchers go beyond the narrow reductionist view of TW policy regimes as concealed extensions of neoliberalism, the more we can understand the opportunities and means for achieving more meaningful change despite their limitations (Graefe and Hudson 2018).

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