



Vancouver Committee for Domestic Workers and Caregivers Rights (CDWCR)
PO Box 37033 Vancouver, BC V5P 3X0 ♦ Fax/Tel. 604-874-0649 ♦ www.cdwcr.org

Submission to BC Labour Relations Code Review Advisors
March 19, 2018

Overview:

Established in 1992, the Vancouver Committee for Domestic Workers and Caregivers Rights is a community-based, non-profit organization that provides assistance to foreign domestic workers and caregivers in seeking improvements to their employment conditions and immigration status.

CDWCR's mission is shaped by the belief that foreign domestic workers and caregivers provide valuable service to Canadian families and contribute to the economic, social, cultural and political fibre of the Canadian society. CDWCR aims to foster justice and equality and collectively empowers caregivers and domestic workers. CDWCR values the importance of inclusiveness and diversity in promoting human rights.

CDWCR, through its Caregivers Network (Care-Net) Project holds series of workshops for caregivers and domestic workers on various topics such as Immigration, Employment Standards, financial basics, and self care. The goals of these workshops are to educate caregivers particularly those newly arrived caregivers under the Temporary Foreign Worker Program (TFWP), and proactively assist them while they are settling and adjusting in Canada.

CDWCR membership includes caregivers, former caregivers and domestic workers, and community supporters. The organization's board of directors is composed mainly of caregivers and domestic workers.

Caregivers as defined in the British Columbia Employment Standards Act (ESA Section 1) fall under the "Domestic". As per the definition in the ESA, "domestic" means a person who (a) is employed at an employer's private residence to provide cooking, cleaning, child care or other prescribed services, and (b) resides at the employer's private residence – although most newly arrived foreign caregivers no longer live in their employer's homes.

Under s. 14 of the Act, an employer of a domestic is required to provide an employment contract setting out the conditions of employment, including the duties to be performed.

A domestic must also be registered in accordance to s.15 of the Act and s.13 of the Employment Standards Regulation.

Caregivers prior to November 2014 (from 1992) were coming to Canada through the Canadian Immigration Live-In Caregiver Program (LCP). Caregivers who arrived in this program were required to complete two years employment before they became qualified to apply for permanent residence. Caregivers were required to live in their employer's home.

In November 2014, the Conservative Federal government replaced LCP with a new Caregiver Program, 5-year pilot project, with two pathways available for foreign caregivers to apply for permanent residency. The first one is the Caring for Children Pathway - a pathway to permanent residence for caregivers who have provided child care in a home. The other pathway is the Caring for People with High Medical Needs Pathway - a pathway to permanent residence for caregivers who have provided care for the elderly or those with disabilities or chronic disease in a health facility or in a home. Under this new Caregiver Program, in-home caregivers arrive in Canada through the Temporary Foreign Worker Program (TFWP). They are no longer required to live in their employer's home. In order to qualify to apply for permanent residency under the new Caregiver Program, they are required to complete twenty-four months of either in-home childcare or in-home/facility care for people with high medical needs, and meet certain level of education and language proficiency.

For over 45 years, foreign caregivers continue to arrive in Canada as temporary foreign workers with temporary immigration status. Their temporary immigration status make them vulnerable to abuses - abuses that are mainly related to labour issues, like working long hours, not receiving overtime pay and not receiving proper wages; and some are mental and physical abuse. Although, caregivers (domestics) are protected under the Employment Standards Act, many caregivers who faced abuse, are not filing any complaints for fear of losing their employment and their immigration status.

Currently, under B.C. labour legislation, a bargaining unit consists of one employer and their employees. But in the case of in-home caregiver and domestic worker, a bargaining unit would consist of one employer and one worker, a worker who works in isolation from other workers of the same kind of work. The current BC Labour Code's definition of a bargaining unit makes it almost impossible for in-home caregivers and domestic workers to organize as a union. Their isolation and dispersion make it very difficult for unions and advocacy groups to make contact with them and service their needs.

Rationale of the Central Registry:

In 1993, CDWCR submitted a proposal to Employment Standards Act Review Committee to include the protection of domestic workers in the Employment Standards Act and to include the formation of the Central Registry for in-home caregivers and domestic workers – both of which were included by the then BC New Democratic Party government. Soon after, the BC Liberal Party government cut the provincial budget

including that of the Employment Standards Branch, leaving ESA as just an Act, without budget for implementation and enforcement. Its Central Registry is inadequate and not utilized in the current system.

In-home caregivers and domestic workers are extremely vulnerable to employer exploitation and abuse unless they are provided with information and advocacy to enforce their rights as workers. A complete Central Registry of workers and their employers is important for the Employment Standards Branch to have so education, information dissemination and employment standards' enforcement can be accomplished. The Central Registry is an immediate and efficient way to ensure precarious workers have the same protections as that of other workers. It would facilitate the long-term goal of self-organizing and a meaningful right to collective bargaining.

But the Central Registry is only the first step. The next step, and the most important one, is the establishment of sectoral certification and sectoral bargaining. A province-wide mandatory broader-based bargaining is a necessary requirement if workers employed in precarious, non-standard jobs are to benefit from collective bargaining. A complete Central Registry, adding sectoral bargaining into the Labour Code, and the establishment of a Tri-partite Standards Committee for in-home caregivers and domestic workers would make union organizing a reality for these workers. The Tri-partite Standards Committee would be able to negotiate, set, and enforce employment standards for this sector of workers.

1. In-home Caregiver and Domestic Sector

There would be one province-wide domestic service sector -- which would address the specific needs and conditions of both live-in and live-out caregivers and domestic workers in B.C. This sector would comprise of all households and employment agencies who employ or contract with domestic workers.

2. Standards to be Regulated

The standards to be regulated would include wages and terms and conditions of employment such as hours of work and overtime, living conditions, paid statutory holidays and vacations. The Tri-partite Standards Committee would be empowered to establish benefits such as pensions and health and welfare plans coverage. It could also be empowered to oversee the Workers' Compensation Act as they apply to in-home caregivers and domestic workers.

3. How Standards Would be Set

a) Tri-partite Standards Committee

A Tri-partite Standards Committee would be established and charged with the

responsibility for setting labour standards. It would also be responsible for enforcing and maintaining standards, assisting in administering the Employment Standards Act and regulations, dealing with complaints, administering a Central Registry, hiring inspectors, initiating prosecutions under the Act, and administering any benefit plans.

The committee would have equal employer and employee representation and would be chaired by a neutral third party, to be appointed by the Employment Standards Branch.

b) Setting up the Tr-partite Committee

Employee Representation

Advocacy groups should play a prominent role on the committee. Once a union is organized, it would also be represented on the committee. Legislation should simply specify the total number of employee representatives and leave the composition of that representation and the nomination process open.

Employer Representation

In order to ensure that a system of sectoral regulation works, that it enjoys legitimacy among employers, and that it can be said that the standards negotiated are representative, it is important to have some kind of organized mechanism and organizational base from which to nominate employer representatives. A legislative "push" would be required to promote the formation of such an organization. The fact that a serious attempt is to be made to regulate and enforce standards on a sectoral scale might impel employers to see it as being in their interests to get organized. However, this process is unlikely to occur spontaneously without some kind of push.

The government should require employers to form appropriate organizations within a specified time frame and offer assistance to facilitate this process.

The associations would be responsible for nominating representatives to negotiate on behalf of all employers, the schedules of wages and employment standards.

c) Negotiation and Enforcement of Standard

Negotiating Standards

Within one month after the Tri-partite Standards Committee is set up it would be responsible for entering into a process of negotiation around a schedule of labour standards. Deadlines would be set for the different stages of the process to ensure matters proceed expeditiously.

A binding dispute resolution process would be provided. In order to ensure a link

between labour standards and collective bargaining, negotiators must be directed to take account of wages and conditions achieved for unionized workplaces in the sector (if there are any).

Enactment of Standards in Law

Since the product of all this will be statutory standards governing the entire sector, the government must give final approval to the schedules and enact them as regulations. Timelines should be set on this approval process in order to avoid a situation where the schedules are outdated by the time they're approved. Proposed schedules should not be altered without consultation with the committee.

4. Definitions

As per the definition in the ESA, “domestic” means a person who (a) is employed at an employer’s private residence to provide cooking , cleaning, child care or other prescribed services, and (b) resides at the employer’s private residence. However, considering the changes in the Caregiver Program, caregivers are no longer required to live in the employer’s private residence. The definition should remove the requirement that the worker must be residing at the employer’s private residence; instead “In-home Caregiver” should be considered and be included in the “Domestic Sector”.

5. Employment Standards Benefits which Depend on Continuity of Service

In order to ensure in-home caregivers and domestic workers are not deprived of employment standards benefits because they do not work long enough for a single employer, a worker should be deemed to have been continuously employed for the purposes of Employment Standards Act benefits as long as she had worked in the sector. This would apply as long as her employment had not been interrupted for more than a specified period of time, eg. one year. The number of hours worked for various employers should be combined for purposes of overtime. Employers would pay a pro-rated levy into an employment standards benefit fund covering overtime premiums, severance benefits, etc. Costs would be pro-rated to employers on the basis of number of hours worked. This would be coordinated by the Central Registry.

6. Registration of Workers

Improvement of the Central Registry

Registration of all in-home caregivers and domestic workers would be mandatory. Employers of in-home caregivers and domestic workers would be under a legal obligation to register with the Central Registry and to provide the names and addresses of the workers employed by them. To ensure completeness, workers would be permitted to register. The legal standards which prevail should be sent to each worker in the registry - in the language they request. The registry would be under the supervision of the Tri-partite Standards Committee and the Ministry of Labour. It

should be accountable to in-home caregivers and domestic workers and function as an agent for these workers in enforcing terms and conditions of employment. As a first step, in-home caregivers and domestic workers should be legally entitled, though not compelled, to rely on the registry as an agent in dealing with any employment-related disputes with their employer. If a worker chooses to be represented by the registry, her employer would then be under a legal obligation to deal with the registry, rather than directly with the worker, to resolve a dispute.

The Central Registry could provide, in multi-languages, information on employment rights, counselling and advice, information and referrals to social and community services, and operate a drop-in centre. It could also establish and administer group benefit plans and pension plans. Employers would remit pro-rated amounts for each employee depending on how many hours they worked. The registry could also be a place where employers could informally advertise for workers, for example with a job board that people could consult.

7. Registration of Employers

The names and addresses of all employers, householders and employment agencies, must be provided to a central agency operated by the Tri-partite Standards Committee. This would help to keep track of problem employers and identify patterns of abuse. This would improve the quality of monitoring and enforcement.

8. Enforcement

The Tri-partite Standards Committee would have a primary responsibility to investigate and prosecute standards and registry violations. Inspectors who have a knowledge of this particular sector should be appointed by the committee and they should have the powers available to Employment Standards Branch officers under the Employment Standards Act. Small employer payroll contributions could be levied to provide sufficient funding to ensure aggressive inspection and investigation. In addition, all fines and penalties collected should be used to finance the Tri-partite Standards Committee. Moreover, these fines should be substantial enough to deter avoidance.

Unions and/or advocacy groups should be given access to the registry to further ensure that minimum standards are adhered to. Unions and advocacy groups should be entitled to investigate and file complaints of minimum standards violations in order to preserve the anonymity of in-home caregivers and domestic workers.

SUMMARY/CONCLUSION

The current Central Registry of domestic workers and caregivers should be improved and enforced which would:

- require employers to register, to obtain a permit, to register the in-home

- caregiver and domestic worker they employ -- such permits could be suspended or terminated as a deterrent to abuse and especially repeated abuse;
- provide information to domestic workers on their rights and protections;
 - provide an integrated approach to collective bargaining and minimum standards benefit coverage: medical, dental, extended health, pension, and long term disability;
 - act as advocate for domestic workers in dispute with their Employer; provide intervention; and
 - standardize wages, benefits and working conditions across B.C.