

Domestic Workers and Caregivers' Rights

The Impact of Changes to B.C.'s Employment Standards Regulation

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Cet article retrace la vie des émigrantes canadiennes sous le programme « Live-in Caregiver » qui veulent travailler comme soignantes et domestiques. C'est en Colombie-Britannique que l'auteure a choisi d'illustrer les nombreuses difficultés que ces travailleuses ont rencontrées liées aux conditions de travail et aux lois et règlements qui font très peu pour les protéger.

Virgie holds a work authorization under the Live-in Caregiver Program (LCP), a Canadian immigration program that brings mainly women of colour from developing countries—largely the Philippines (APF Canada)—to work in Canada as live-in caregivers. She lives in her employer's home, as this is a requirement of the LCP (CIC 2002a). When Virgie asks her employer to go over her employment contract she is told to pack her things and leave. As she packs her things she thinks of ways to tell her children that she won't be able to send them money this month. She leaves her employer's home in the middle of the night and in the middle of winter. She has nowhere to go. Virgie has only been in Canada for two months.

The LCP requires participants to complete at least two years of employment as live-in caregivers within a three-year period before they can apply for permanent residence in Canada (CIC 2002a). When a

caregiver is dismissed, she must find a new employer, have their offer of employment validated, and obtain a new federal work permit. This may take a month, during which she may not work, as this is illegal. Periods of unemployment can delay the date on which she can apply for permanent residence and could also cause her to exceed the three years within which she must complete two years of work (CIC 2002a).

Although Virgie has paid for Employment Insurance she has to prove that she lost her job through no fault of her own and have the required number of insurable hours (which she doesn't) to qualify for benefits (HRSD).

Like Virgie, many women from the Philippines bear the burden of supporting their families. Globalization, frequent work lay-offs and limited decent job opportunities have forced women to seek employment as domestic workers and entertainers in other countries. They endure low wages, family separation, terrible, and often dangerous, working conditions. Believing that Canada would provide better working conditions and economic opportunities, they opt to migrate to Canada.

Yet, despite the fact that these women are now in Canada, their circumstances have not changed. They send money to their families and extended family members in the

Philippines to pay for basic needs like food, shelter, clothing, and medical and school costs. Women are also burdened with paying back the costs of immigrating to Canada. Many still owe their relatives, agencies, and loan sharks for money spent on recruitment agency fees, document processing fees, medical examinations, and travel expenses. Maintaining a good long-distance relationship with their families comes with great financial cost—phone bills can range from \$100 to \$300 a month.

There are also costs tied to working in Canada. Work authorizations under the LCP have to be renewed every year and every time there is a change of employers. The rate for renewal, paid to the Canadian government is currently \$150 (CIC 2002b).

Domestic workers/caregivers are also required to pay their employers for their room and board. Section 14 of the *British Columbia Employment Standards Regulation* states that an employer must not charge a domestic more than \$325 per month for room and board. But, many women end up buying their own food since they don't eat the same food their employers do. On their days off many feel obligated or are expected to work if they remain in their employer's home. Therefore, they often have to spend money for food and accommodation on their days off, usually

sharing a one-bedroom apartment with at least ten other domestic workers/caregivers since affordable housing is hard to find.

The live-in requirement of the LCP subjects domestic workers/caregivers to abuse, including unpaid and excessive working hours, violations of privacy and safety, sexual harassment, and sexual assault. It creates an atmosphere of isolation especially if the employer's home is in a remote area or inaccessible by transit routes. It becomes difficult to take sick leave and many are forced to work even when sick. The LCP makes it hard for domestic workers/caregivers to assert their rights, placing them in extremely vulnerable situations.

The exorbitant fees and costs related to applying for the Right of Permanent Residence, sponsoring families, medical examinations, securing police clearance from their country of origin and all other countries they may have worked in, including Canada, airfare and travel expenses are just some of the financial burdens faced by domestic workers and caregivers. On average, applying for permanent residence and sponsoring one's family may range from \$2,000 to \$10,000. For someone who earns minimum wage and sends money regularly to her family to meet their basic needs, this is prohibitive.

Laws, policies, and regulations of the federal government shape the status and conditions of living and working in Canada as a live-in domestic worker/caregiver. Recent changes by the B.C. government to provincial laws and regulations, specifically the Employment Standards, Human Rights and Workers Compensation systems, aggravates the already abusive and exploitive working conditions of domestic workers/caregivers.

In a report by the Vancouver Committee for Domestic Workers and Caregivers Rights (CDWCR) on the effects of these recent changes on domestic workers and caregivers in B.C. to Status of Women Canada, it was found that the B.C. government,

through its cutbacks of services and protections, is failing in its obligations and commitments to women—and especially to domestic workers and caregivers.

Employment Standards

The gutting of employment standards in British Columbia is a step back, and a painful one, for domestic workers/caregivers.

The *British Columbia Employment Standards Act* (ESA) is the most important provincial law protecting the employment rights of domestic workers/caregivers. It sets minimum standards for wages, hours of work, holidays, and other working conditions.

In 1995, CDWCR and other groups succeeded in getting domestic workers/caregivers the same employment protections that other workers enjoyed. Until then, live-in domestic workers/caregivers had been excluded from the most important provisions of the ESA, including maximum hours of work and overtime, and the minimum hourly wage. The B.C. liberal government's big changes to Employment Standards laws and slashing of Employment Standards staff mean that these wins have been lost or are threatened.

Strong and effective employment standards offer domestic workers/caregivers *no* protection if they are not enforced. CDWCR continues to demand that government agencies visit the homes where domestic workers/caregivers work and live, to see if the employers are meeting their legal obligations. The B.C. Liberal government is not only ignoring our calls for monitoring, they are eliminating staff who are available to help when a domestic worker/caregiver comes forward with a question or complaint. Domestic workers/caregivers need improved employment standards protection. They need greater access to information about their rights, and support to assert their rights.

Section 14 of the *B.C. Employment Standards Act* requires a written em-

ployment contract for domestic workers, but provincial employment standards officers generally have little or no understanding of the conditions imposed by the LCP that make domestic workers/caregivers particularly vulnerable to employer abuse. Unlike any other workers, migrant domestic workers/caregivers are required by federal law to live in their employer's home and their immigration status is tied to their employer. When the employer fails to follow the contract, Citizenship and Immigration Canada tells the domestic worker/caregiver: "We can't help you. Employment issues are a *provincial* responsibility." The cutbacks at the Employment Standards Branch in B.C. mean that there is no one to help domestic workers/caregivers enforce their employment contracts.

Variations and "Averaging Agreements" will allow employers to sidestep overtime rules. The new law says that any worker may "voluntarily" agree to a work arrangement that falls short of the minimum standards. But the reality is that an employer may pressure, intimidate or threaten a domestic worker/caregiver to get an "agreement."

Changes to hours of work and overtime are entirely one-sided, serving only the needs and interests of employers. They do not meet the needs of domestic workers/caregivers.

The time period for making a complaint is now only six months—under the old law you had two years. This change will be especially negative for domestic workers and caregivers. Domestic workers/caregivers may be afraid to discuss a problem with an employer or to make a complaint against them while living in their home. They often change employer or obtain permanent residence status before making a complaint.

In addition to changing the laws, and basically giving up enforcing employment standards, the staff at the Employment Standards Branch has been reduced by at least one-third. This means that hard-won

rights of domestic workers/caregivers will be entirely dependent on the good will of her employer. We know from experience that this is very bad news for domestic workers and caregivers.

CDWCR recommends that:

- The B.C. government undertake a review, including consultation with community organizations, of the effects of changes to the Employment Standards system in B.C. The review must include a gender-based and race-based analysis of the effects of the changes.

- A definition of work must be included in the ESA. CDWCR's position is that all hours when the worker is required to be present and responsible are hours of work. As long as the worker is exercising responsibility, she is at work.

- Employment Standards Officers should be given the responsibility and resources to carry out regular spot checks of domestic worker's employment conditions.

- The government provide the authority and resources to the Employment Standards Branch for outreach to domestic workers and caregivers.

- The provincial government create a *Tri-Partite Committee* to oversee compliance with Employment Standards in B.C. by employers of domestic workers and caregivers.

- The Employment Standards Branch should work with organizations that advocate for domestic workers and caregivers to improve education, support and enforcement measures.

Workers' Compensation

The Workers' Compensation Board (WCB) is an insurance system that will pay your wages if you get sick or injured on the job. Premium charges are paid entirely by employers; therefore, your employer cannot deduct money from your wages or salary to pay your premium charges. In exchange for this right to compensation, you cannot sue your employer under Part One of the *Workers Com-*

pensation Act.

Recent legislative changes and cut-backs to WCB has reduced costs to employers while reducing injured workers' benefits, reducing the number of appeals, and placing limitations on payments for mental stress. In addition to the legislative changes, staff at the WCB has been reduced by at least one-third, therefore reducing assistance for domestic workers/caregivers.

CDWCR recommends that:

- The B.C. government undertake a review, including consultation with community organizations, of the effects of changes to the Workers Compensation Standards system in B.C. The review must include a gender-based and race-based analysis of the effects of the changes.

- The provincial government provide WCB with the resources necessary to provide effective education, enforcement of the *Workers Compensation Act* and Regulations and spot monitoring/random inspections of employers of domestic workers and caregivers.

- The provincial government include the Workers Compensation system in a Tri-Partite Committee created and mandated to oversee Employment Standards and Workers Compensation compliance by employers of domestic workers and caregivers.

Human Rights

The *Human Rights Code* covers discrimination in tenancy, employment, employment advertisements, publications, public services and facilities, purchase of property and discrimination by unions or associations. Discrimination complaints may be based on race, colour, age, sex, sexual orientation, physical or mental disability, religion, marital status, family status, place of origin or ancestry. Human rights legislation in Canada is founded on our international obligations and commitments.

The government has been making many changes to the B.C. Human

Rights system. The government has eliminated a major part of the B.C. Human Rights system, introduced new barriers and pressures for those with human rights matters, and abandoned its own responsibility for human rights in B.C.

Recent changes include the elimination of the Human Rights Commission and its investigators. This puts domestic workers and caregivers at a disadvantage in the human rights complaints system, especially if a lawyer represents the employer (or the employer is a lawyer)—domestic workers/caregivers simply cannot afford to hire a lawyer.

There is now no legal requirement the government provide education and research on human rights and no agency to make reports to government on human rights in B.C. B.C. is the only province in Canada without a Human Rights Commission.

Also included in the recent changes are new pressures and barriers for people with human rights complaints. You now have six months, reduced from one year, to file a complaint. There is no longer any public body to ensure that people with complaints receive legal help. The complaint process will become more formal and legalistic, making it more difficult to do without help.

Costs could be awarded against the person making the complaint. The fear that they may be required to pay hundreds of dollars in costs may dissuade many domestic workers and caregivers from even making a complaint.

Mediation between the person making the complaint and the person accused of discrimination is not appropriate, in most cases, for domestic workers/caregivers who make a complaint against someone who exercises great control over many important aspects of their life such as their immigration status, job, benefits, and accommodation.

The Tribunal may dismiss a complaint if a "reasonable offer" to settle is refused by the person bringing the complaint. Domestic workers/

caregivers could be pressured to settle for less than they are entitled to receive.

In addition to the changing laws, the budget of the B.C. Human Rights system has been cut by at least one-third.

CDWCR recommends that:

•The B.C. government undertake a review, including consultation with community organizations, of the effects of changes to the Human Rights system in B.C. The review must include a gender-based and race-based analysis of the effects of the changes.

•The B.C. Human Rights system be strengthened to provide a system that *encourages* complainants to exercise their rights, rather than *discourages* them.

Migrant live-in domestic workers and caregivers have minimal entitlements and are effectively discouraged from asserting the few rights they do have. This is the structure of the system that governs immigrant live-in domestic workers and caregivers in Canada. The federal government should grant landed status to domestic workers and caregivers upon their arrival in Canada. Immigration reform is key to the realization of all other rights for domestic workers and caregivers, including legal rights related to Employment Standards, Human Rights and Workers' Compensation.

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Darla Tomeldan is a member of the Vancouver Committee for Domestic Workers and Caregivers Rights and a collective member of Vancouver Rape Relief and Women's Shelter. She immigrated to Canada in 1994.

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LEA LITTLEWOLFE

breakfast

three, four, then five shuffle in
slowly, leaning on canes.
where do they hatch from?
all old men, wives taking off husbands' coats
old women getting the food
the more viable gender asking if
he can make out by himself in the washroom.
it must be a stroke support group.

in this public place the women fasten suspenders
do up buttons, smile like Mother Teresa
and still more men come crouching from the
restroom
grab onto chairs, cling to walls.
do the women massage zinc oxide cream
onto male butts and groins?
many ladies in this post-church gaggle are
mateless
survivor partners of former hellraisers.
do the lone flowers envy their laboring sisters?

Lea Littlewolfe's poetry appears earlier in this volume.