



Caregivers and Labour Rights in British Columbia: Barriers to Decent Work

This paper was prepared by Natalie Drolet, Executive Director – Staff Lawyer, and Theresa Etmanski, Legal Advocate, of the West Coast Domestic Workers' Association for the Conference on Temporary Migrant Workers, Simon Fraser University, October 8 & 9, 2015.

Introduction

Domestic work includes the full range of household-related duties, as well as caregiving for children, the elderly and persons with disabilities. Domestic work has traditionally been undervalued with workers being denied labour rights and protections. The work is gendered, performed largely by women, many of whom are migrants.¹ Regulatory challenges persist for a workforce that is employed in and for private households with the result that caregivers are among the most marginalized of workers in British Columbia.

While domestic work is performed by both “domestic” domestic workers and foreign nationals, the focus of this paper is on foreign national caregivers who come to Canada to provide in-home care through federal immigration programs, including the former “Live-in Caregiver Program” and the current “In-Home Caregiver Program,” which are jointly administered by Employment and Social Development Canada (ESDC) and Citizenship and Immigration Canada (CIC).

ESDC policy stipulates that caregivers under these programs are regulated by provincial employment standards legislation. In British Columbia, caregivers are subject to the *Employment Standards Act*; however, in practice, caregivers face significant barriers to accessing their labour rights, rendering their status to that of an underclass. “Legislative precariousness”² is the chief obstacle faced by caregivers vis-à-vis effective enforcement of their labour rights. Caregivers’ precarious immigration status and gaps in the *Employment Standards Act* and *Regulations* are barriers which at once present law reform and public policy challenges while highlighting the critical need for advocacy as an element in protecting caregivers’ labour rights.

Background

¹ The ILO estimates that there are 53 million domestic workers in the world, the majority of which are women and migrant workers. See International Labour Office, *Domestic Workers Across the World: global and regional statistics and the extent of legal protection* (Geneva: International Labour Organization, 2013).

² This term is taken from Virginia Mantouvalou, “Human Rights for Precarious Workers: The legislative precariousness of domestic labour” (2012-2013) 34 *Comp. Lab. L. & Pol’y J.* 133.

The 1992 Live-in Caregiver Program

Since the 1960s, the various incarnations of the federal Live-in Caregiver Program (LCP) have allowed families in British Columbia to hire foreign nationals to work as full-time caregivers in private households. The program was instituted in response to labour market shortages of caregivers in Canada willing to live in the home of their employer. In the absence of a national program for affordable caregiving services, the LCP has been a vehicle for affordable care for families with children, or persons with medical needs, including people with disabilities or the elderly. The demand for caregivers will only increase as British Columbia's population ages.

Since 1981, the former Foreign Domestic Movement Program and subsequent LCP introduced in 1992 have been the only federal immigration programs for so-called low-skilled workers with a direct pathway to permanent residence. Under the LCP, if workers completed 24 months, or 22 months with 3,900 hours, of full-time live-in caregiving work within four years of arrival in Canada, they became eligible to apply for permanent residence for themselves and their dependents. To enter the program, applicants were required to demonstrate that they had completed high school, and had one year of work experience as a caregiver or had completed a 6-month caregiver training program. Workers were paid minimum wage and room and board could be deducted from their wages according to provincial labour standards.

In 2013, of the 1,479 caregivers who received permanent residence in British Columbia, 83% originated from the Philippines.³ Ninety-five percent of caregivers are women⁴ who come to Canada to escape chronic underemployment in their countries of origin and poverty to be able to support their families. A vast majority of caregivers have children of their own and leave their families behind in order to take care of children and other family members in Canada. On average, caregivers are separated from their families for 7 years while they complete the program and wait for their permanent residence application to process.

³ See BC Stats, *BC Immigrant Landings by Source and Class (January to December 2013)*, online: <<https://qspace.library.queensu.ca/bitstream/1974/13402/9/270062821-BC-Immigrant-Landings-2013-by-Source-and-Class.pdf>>

⁴ Fay Faraday, *Made in Canada: How the Law Constructs Migrant Workers; Insecurity* (Toronto: George Cedric Metcalf Charitable Foundation, 2012). 36.

To hire a foreign worker, an employer in Canada must apply to ESDC and receive a positive Labour Market Impact Assessment (LMIA), formerly known as Labour Market Opinions (LMO)⁵. In 2013, 2,805 LMOs were issued to employers of caregivers in British Columbia.⁶ The LMIA application requires that employers demonstrate their exhaustive attempts to hire a permanent resident or Canadian citizen first before resorting to the LCP. With the LMIA, job offer and job contract in hand, workers then apply to CIC for a visa to enter Canada and a work permit that authorizes them to work for a single employer.

The 2014 In-Home Caregiver Program

On November 30, 2014, the federal government eliminated the LCP and replaced it with the In-Home Caregiver Program, a subset of the temporary foreign worker program (TFWP). The program was introduced without clear, published guidelines to inform workers or employers of the new requirements. The changes were ushered in following closed-door consultations that excluded caregivers and their advocates.⁷ The rationale for the changes to the LCP on the part of the federal government was to “protect caregivers from abuse and reduce family separation.”⁸ Removing the live-in requirement was lauded as protecting caregivers from abuses caregivers have experienced as a result of the previous “live-in” requirement. The government also emphasized the need to reduce backlogs in processing permanent residence applications.

Some positive changes to the program include removing the live-in requirement, thus providing caregivers with the choice to either live-in the home of their employer or live-out. Under the new program, caregivers can no longer be charged for room and board should they choose to live-in. The Government also promised to process permanent residence applications within six months,

⁵ The LMO was replaced by the more rigorous LMIA along with sweeping changes to the Temporary Foreign Worker Program in July 2014. See Government of Canada, *Government of Canada Overhauls Temporary Foreign Worker Program Ensuring Canadians are first in line for available jobs*, online: <<http://news.gc.ca/web/article-en.do?nid=859859>>.

⁶ See Employment and Social Development Canada, *Labour Market Impact Assessments – Annual Statistics*, online: <http://esdc.gc.ca/eng/jobs/foreign_workers/lmo_statistics/annual-lcp.shtml>

⁷ See Canadian Union of Public Employees, *Fact Sheet: Temporary Foreign Workers Program and the Live-in Caregiver Program*, online: <<http://cupe.ca/fact-sheet-temporary-foreign-workers-program-and-live-caregiver-program>>

⁸ See Government of Canada, *Improving Canada’s Caregiver Program*, online: <http://news.gc.ca/web/article-en.do?nid=898729&_ga=1.127505102.257588392.1441911488>

thus reducing waiting times for family reunification significantly. Employers must also now pay caregivers the prevailing wage according to the work location.

These improvements to the program have come at a high cost, however. The ability for caregivers to apply for permanent residence under the new program has been scaled back substantially. Two new pathways, the caring for children class and the caring for people with high medical needs class, to permanent residence have been introduced. Under these pathways, caregivers have the ability to apply for permanent residence upon completion of 24 months of full-time in-home caregiving work according to either pathway. However, each pathway is capped at 2,750 applications that will be processed by CIC each year for a total of 5,500 applications.

There is no cap to the number of caregivers that can enter Canada under the TFWP, however. That number will depend on the number of positive LMIA's issued by ESDC. It is likely that the number of caregivers in Canada will exceed the number of permanent resident applications that will be processed by CIC. In addition, new requirements for permanent residence under the new pathways results in a situation whereby caregivers are qualified to work in Canada as caregivers, but may not be qualified to apply for permanent residence.

The government has introduced more onerous eligibility requirements for permanent residence under the new pathways. Caregivers must have their education credentials assessed in order to demonstrate that they meet the equivalent of one year of Canadian post-secondary education. They are required to take a standardized English language test and obtain Canadian Language Benchmark (CLB) 5 for low-skilled occupations or CLB 7 for high-skilled occupations. Finally, caregivers are required to take a second medical examination at the time of applying for permanent residence.

Low-skilled caregivers also find themselves competing with high-skilled caregivers when applying for permanent residence. Under the high medical needs pathway, four National Occupational Classification (NOC) occupations have been added, including high skilled "caregivers" such as registered nurses and licensed practical nurses, which must be registered by their regulatory body in Canada. This drastically changes the definition of "caregivers" used under the LCP to include high skilled professionals, which radically opens up the pool of candidates for permanent residence.

Even if caregivers meet the new requirements for permanent residence, there is no guarantee that their applications will be processed by CIC. This exacerbates worker insecurity, as caregivers will be motivated to complete 24 months of work as quickly as possible in order to maximize their chances to apply for permanent residence in the four years that they are permitted to stay in Canada as temporary foreign workers. They may feel compelled to remain working under abusive employment conditions in order to be able to apply for permanent residence.

Unique characteristics of domestic work

There are four unique characteristics of domestic work which contribute to worker vulnerability. These include: employment in private households; personal and intimate yet highly unequal employer-employee relationships; work that is seen as “women’s work” and of low status and value; and worker isolation and invisibility.⁹ Given these characteristics, domestic work as an occupation in and of itself poses challenges to regulation. There is a widespread perception that private homes are off limits to labour regulation and inspection. Domestic work takes place behind closed doors, out of the public eye and the eyes of authorities. Domestic work has traditionally been informal and unorganized with the result that domestic workers have not enjoyed the same labour rights as other workers.

Employment relationships between caregivers and their employers are highly unequal and this can be exacerbated by the social location of caregivers, including aspects such as class, gender, race. A recent BC Human Rights Tribunal decision, *PN v. FR and another* involved a Filipina domestic worker who came to Canada on a business visa with her employers from Hong Kong.¹⁰ She was subject to sexual, physical and verbal abuse by her employers, worked long hours for no pay, was kept isolated, and was described by the Tribunal Member as a “virtual slave.” The worker was awarded \$5,866.89 for lost wages and \$50,000 as damages for injury to dignity, feelings and self-respect, the highest standing award in the Tribunal’s history. At the hearing, expert evidence was provided by Dr. Anna Guevarra on stereotypes and prejudices of Filipina workers. Dr. Guevarra provided evidence that domestic workers from the Philippines are perceived as docile, obedient,

⁹ *Supra* note 2 at 138.

¹⁰ The case is indexed as *PN v FR and another* (No.2), 2015 BCHRT 60 [*PN v FR*]. The decision was rendered on April 1, 2015.

God-fearing, loyal, honest, cooperative and compliant, and are perceived to be naturally inclined to perform caregiving work.

Stereotypes of domestic workers create the perception that they serve at the whim of their employers, and do not have any recourse against them:

First, employers do not expect Filipino workers to complain or protest about any aspect of their job. Instead, employers expect them to submit to their authority unquestionably, as gratitude for their employment. Second, employers often contain or isolate their employees in their household, largely because of their own fears that commingling with other workers will promote an awareness or consciousness about domestic labour rules and rights, and allow workers to organize to improve their wages and living conditions.¹¹

The unique characteristics of domestic work facilitate employer control and exploitation of workers, including breaches of the *Act*, including long hours of work without payment for overtime.

Barriers to accessing labour rights in BC

According to Virginia Mantouvalou, legislative precariousness refers to “the special vulnerability created by the explicit exclusion or lower degree of protection of certain categories of workers from protective laws.”¹² As described by Mantouvalou, “the employment relationship is commonly described as one of submission and subordination, and labour law is meant to address this situation. In the case of domestic workers, the problem is that legislation reinforces (rather than addressing) the relation of submission and subordination.”¹³ Legislative precariousness functions to exacerbate caregivers’ already-vulnerable status by creating conditions whereby workers can be exploited by unscrupulous employers with impunity.

Non-profit organizations like the West Coast Domestic Workers’ Association (WCDWA) have played a key role in advocating for the rights of workers in British Columbia under the LCP. In its 29th year of operation as a community legal clinic, WCDWA meets with caregivers on a daily basis to

¹¹ *PN v FR*, *ibid* at paragraph 80.

¹² *Supra* note 2 at 133.

¹³ *Ibid* at 134.

assist with immigration applications and employment standards claims. The following examples of immigration policies that create precariousness and gaps in employment standards legislation in BC are provided by WCDWA's experience of legal advocacy for caregivers on the ground.

Precarious immigration status

Recruitment fees

Caregivers wishing to work in Canada are required to have secured a job offer, employment contract, and LMIA with their prospective employer prior to being issued authorization to enter and work in the country. In order to be matched with an employer, caregivers often have little choice but to hire third party recruitment agencies in their country of origin. Payments to these agencies average several thousand dollars. Caregivers typically borrow money from relatives and friends to be able to pay recruitment fees, with the result that they are indebted upon entry into Canada.

Under section 10 of the *Employment Standards Act*, workers cannot be charged for employment or information about employment in British Columbia. However, in practice, paying illegal recruitment fees is the norm. These fees are difficult for caregivers to recuperate once in Canada, as they are commonly paid in cash in the country of origin. Caregivers are also subject to a type of fraud known as “release upon arrival” in the recruitment process whereby they receive a job offer, employment contract and LMIA for an employer in Canada from the agency only to find that the employer does not require their services upon arrival in Canada. This leaves caregivers in an exceedingly vulnerable position, as they are ineligible for Employment Insurance during the lengthy period it takes to search for a new employer and obtain authorization to begin work.

Tied work permits

Live-in caregivers enter Canada with a “tied” work permit which authorizes them to work for a single employer. If that employer no longer requires their services, or the caregiver decides to leave because of abusive conditions, the caregiver does have the right to find a new employer who requires a caregiver. However, before the caregiver can begin working for the new employer, the

employer must first obtain a positive LMIA, and the caregiver can then apply for a new work permit from CIC.

With current processing times, caregivers are required to wait at least six months before work permits for their new employers will be issued. For caregivers who do not meet the requirements for Employment Insurance, this is a very long time to survive without an income, particularly if they have family abroad who depend on their remittances for daily survival or if they have incurred debt related to their recruitment for employment. One consequence of these delays is that caregivers feel constrained to continue working under abusive conditions. Another consequence of these delays is that caregivers who choose to leave abusive employers feel compelled to engage in unauthorized work, such as beginning to work for a new employer while their work permits are still being processed.

WCDWA has also seen a significant number of cases of caregivers who are either not paid at all by their employers, or are not adequately compensated for the amount of work they are required to complete. In some of these cases, caregivers who do not feel they have the option of leaving their employer may find alternative ways of making ends meet. This may include working on the weekends cleaning houses, or caring for other families' children. Some caregiver employers not only encourage this unauthorized work, but also facilitate it by referring their caregiver out to their friends.

In any case involving a caregiver who has performed unauthorized work, accessing rights under the *Employment Standards Act* becomes a risk to their status in Canada. Employers who wish to retaliate against a caregiver who files a complaint against them can easily file an anonymous complaint with Canada Border Services Agency (CBSA), the result of which could be the caregiver being arrested and deported from Canada.

Project Guardian

On 16 April 2014, an article was published on embassynews.ca titled “CBSA looking into abuse by live-in caregivers”.¹⁴ The article describes an initiative called “Project Guardian” which began in January 2014, and is specific to British Columbia and the Yukon. CBSA Officer Chris Schwartz is quoted as describing the initiative as having “the mission of protecting Canada’s coveted Live-In Caregiver Program (LCP) from abuses in the form of fraud, misrepresentation, conditions violations, etc.” He is further quoted as explaining that the concern is for Canadian families “who hire Live-in Caregivers, only to see them arrive in Canada and disappear, often already having another job lined up before arriving in Canada.” Project Guardian, is therefore meant to “Guard” those families, and the integrity of the Live-In Caregiver Program itself from abuses.” The article does not provide any guidance as to where the data fueling this initiative was obtained, however it does suggest that this “problem” has been raised by caregiver employers for years.

An Access to Information and Privacy Act request for 2014 reveals that a total of 26 investigations were carried out under Project Guardian that year, resulting in 10 removals and three voluntary departures.¹⁵ While the ATIP request also sought a further description of Project Guardian and further policy rationales for this initiative, all that was provided was a statistical breakdown of cases investigated under this initiative.

WCDWA first became aware of Project Guardian in early 2015, when three different clients came into our office after having been interviewed by CBSA Officer Schwartz. In all three cases, Schwartz and another officer had showed up at their residences unannounced, and began questioning the caregivers about their immigration status. None of these caregivers were given the opportunity to obtain legal advice prior to the interview. All ultimately admitted to having done unauthorized work, and were subsequently referred to the Immigration Division for admissibility hearings. WCDWA has since met with five more caregivers in the same situation.

In four of these cases, the CBSA officers arrested the caregivers on the spot, and they were brought into immigration detention for several days before being released with reporting conditions, the seizure of their passports, and Notices to Appear for admissibility hearings.

¹⁴ Peter Mazereeuw, *CBSA looking into abuse by live-in caregivers*, online: <http://www.embassynews.ca/news/2014/04/16/cbsa-looking--into-abuse-by--live-in-caregivers/45424>

¹⁵ Access to Information Act request obtained by West Coast Domestic Workers Association on March 29, 2015.

While each case has had slightly different circumstances, none have met the description of abuses to Canadian families by Officer Swartz to embassynews.ca. More often than not, the caregivers had left their previous employers because of abusive working conditions including unpaid wages. Needing to survive in Canada and often being the sole economic provider for their family overseas, they found another Canadian family who required a caregiver and began working for them while their LMIA and work permits were being processed. For some, employers had insisted that the caregiver start work immediately if they wanted the job. In only two of the eight cases was the “unauthorized” work in a field other than caregiving, and in one of those two cases, the caregiver was legally working as a live-in caregiver again by the time she was arrested by CBSA.

These caregivers generally did not know who reported them to CBSA, but the anonymous tip line is often used for this very purpose.

The consequences for caregivers who are “caught” under Project Guardian are devastating. For the admissibility hearings that have gone ahead, Exclusion Orders have been issued, and the caregivers have been removed from Canada with a one-year bar for returning. The best case scenario WCDWA has seen is one caregiver who was allowed to “voluntarily” depart Canada so as to avoid the Exclusion Order being issued. Some requests for other caregivers to do the same have been denied, while other cases are still pending. Having to leave Canada means they will no longer be eligible to apply for permanent residence under the now eliminated Live-in Caregiver Program, and they will have to apply again to return to Canada under the new program, and start the process from the beginning. For those caregivers who have accrued recruitment debt, having to leave Canada means leaving behind the income that would have allowed them to re-pay their debt. There is also a real question of whether caregivers who have unauthorized work on their Canadian immigration records will be issued subsequent work permits by overseas visa officers.

Limitation periods

There is a process under immigration law where the caregiver them self can disclose the unauthorized work to CIC, and apply to have their status “restored”. This option is generally only available prior to the unauthorized work coming to the attention of CIC or CBSA. If the caregiver’s status is restored, Federal Court case law suggests that any inadmissibility caused by the

unauthorized work is essentially ‘cured’ and cannot later be used against them.¹⁶ This is a fairly straight forward process, but must be part of a complete application for a new work permit. A complete application includes a positive LMIA obtained by the new employer through ESDC. The current process of obtaining a LMIA is that the employer must advertise the job for four weeks, and then wait at least two months for the assessment to be processed. Many applications are returned for technical reasons, resulting in the new employer having to start this process again from the beginning. Also bearing in mind the time it may take for caregivers to find new employers, the result is an extended period of at least three to four months before a caregiver is able to make this disclosure, if not longer.

In British Columbia, the deadline for submitting a complaint with the Employment Standards Branch (ESB) is six months from the date the violation occurred, or the last date of employment. WCDWA often advises caregivers who have performed unauthorized work to disclose it to CIC prior to filing a complaint with the ESB, to ensure that their employers cannot use their precarious status as a retaliatory weapon or intimidation technique. Unfortunately, given the timelines already mentioned, it is not always possible for them to do so within the deadline for filing complaints. In these cases, caregivers are left with the choice between pursuing their employment rights but potentially losing their status in Canada, or accepting the exploitation out of fear of reprisal.

Two recent WCDWA clients have faced this decision. One decided that the risk was too great, and did not file a complaint. The other did decide to file a complaint with the ESB, but WCDWA submitted a long written request on her behalf that the file be held and the employer not contacted until she was able to disclose the unauthorized work to CIC. The consequences described above were explained in detail. After consultation with two managers at different ESB locations, WCDWA was advised that this request was refused. We were told that the reason for the refusal was that the basis for the request was not connected to employment standards matters. The client was then given the choice of either withdrawing her complaint, or pursuing it with the understanding that the employer would be informed about the complaint immediately.

¹⁶ See *Tiangha v. Canada (Citizenship and Immigration)*, 2013 FC 211 (CanLII) at paras 13-15

The six-month limitation period from the date the violation occurred also poses challenges with respect to caregivers who wish to recuperate illegal recruitment fees paid months in advance of their arrival in Canada.

Gaps in the Employment Standards Act and Regulations

At Home, On Call

Families often hire live-in caregivers, as opposed to live-out caregivers, because they require someone who is available on a flexible basis, including throughout the night. Caregivers whose clients are elderly, for example, are often required to assist their clients get up multiple times throughout the night to use the washroom, administer medication, or prevent them from wandering or otherwise putting themselves in danger. The caregiver in this context is often the only other person in the home able to fulfill these tasks. However, it is not uncommon for employers to schedule the caregiver's hours during the day, and only pay them for that time period (e.g. eight hours per day). Yet, it is a fundamental expectation of the job that they be available throughout the evening and night, just in case assistance is needed. Caregivers have to be alert and ready to respond at a moment's notice. By any other standard, this work would be considered, at the very least, "on-call". However, because the caregivers happen to be on-call in their place of residence, they are explicitly excluded under the definition of "on-call" in section 1(2) of the *Employment Standards Act* from receiving compensation for this essential work. For some clients, this has meant that they were essentially on-call for 24 hours per day, and cannot claim overtime compensation for these excessive hours.

Regulatory Exclusions of Some Caregivers

Temporary foreign workers who are in Canada under the previous LCP are clearly covered by the *Act* under the definition of "domestic". A key component of meeting that definition is the requirement that caregivers under the LCP are required to reside at their employer's private residence.

On November 30, 2014, the Federal Government declared that it would no longer be accepting applicants under the LCP, and caregivers would now have to apply under a new branch of the

TFWP. As previously discussed, one important change is that caregivers are no longer required to reside in the private residence of their employers.

WCDWA is concerned that caregivers under the new TFWP who no longer meet the definition of “domestic” will not be protected under the *Act*, as their employment may fall within excluded, or partially excluded, professions such as “sitter”, “resident care worker”, “night attendant”, or potentially “live-in home support worker” as defined in the *Employment Standards Regulations*. “Sitters” are completely excluded from protection under the *Act* by section 32(1)(c) of the *Employment Standards Regulations*, and the other occupations are excluded from the protections offered under Part 4 of the *Act* (hours of work and overtime), by virtue of section 34(q), (w), and (x) of the *Regulations*.

While the BC Employment Standards Branch website and factsheets clearly state that temporary foreign workers (TFWs) are covered under the *Act*,¹⁷ this is not guaranteed anywhere in the *Act* or *Regulations*. There is therefore ambiguity regarding whether TFWs are covered by the *Act* and *Regulations* subject to where the *Act* and *Regulations* specifically provide otherwise (as is the case for those defined as sitters, for example), or if this is a blanket protection not diminished by specific wording in the *Act* and *Regulations*. Further clarity on this matter is required to ensure that all TFWs, regardless of their occupation, are protected under the *Act*.

Labour inspection

Section 85 of the *Act* refers to conditions under which the Employment Standards Branch are permitted to enter premises in which work is carried out for the purpose of enforcing the *Act*. While the province of British Columbia relies heavily on a complaint-driven approach to enforcement, a limited number of proactive inspections are carried out in the province.¹⁸ Proactive inspections are desirable from an enforcement perspective for caregivers, as caregivers are among the most vulnerable of workers in BC. Inspections could circumvent the barriers that prevent caregivers from coming forward to enforce their labour rights.

¹⁷ Employment Standards Branch, *Temporary Foreign Workers*, online:
<https://www.labour.gov.bc.ca/esb/facshts/translations/filipino/foreign_worker.pdf>

¹⁸ See Broadbent Institute, *Open for Business, Closed for Workers: Employment Standards, the Enforcement Deficit, and Vulnerable Workers in Canada*, online:
<http://d3n8a8pro7vhm.cloudfront.net/broadbent/legacy_url/1924/open_for_business_closed_for_workers_-_employment_standards_legislation_in_canada_final.pdf?1431296762>

The *Act* provides an exception to inspection, however, where the location of employment is a private household. Section 85 states that “the director may enter a place occupied by as a private residence only with the consent of the occupant or under the authority of a warrant issued under section 120.”¹⁹ As the location of employment for caregivers is in private households, this section of the *Act* reveals a mismatch between the application of employment standards to the private sphere. Abusive employers may be reticent to consent to proactive inspection, rendering section 85 futile for the caregivers. Proactive inspections of private households have the potential to act as a strong deterrent for unscrupulous employers. If employers choose to employ a caregiver, then the household becomes a workplace and should be subject to labour inspection.

Conclusion and Recommendations

Although the rights of caregivers in Canada experienced a setback with the changes brought to the LCP in late 2014, at the international level, the landscape of regulation of domestic work is changing for the better. In 2011, the International Labour Organization (ILO) adopted the Domestic Workers Convention (No. 189) and its accompanying Recommendation (No. 201), the first international labour standards specifically tailored to domestic workers.²⁰ The Convention addresses historical exclusions of domestic workers from other ILO instruments. It guarantees minimum labour protections to domestic workers and recognizes their rights as workers, taking into account the unique aspects of domestic work.

Before and after the implementation of C189, there were global campaigns of domestic workers. Activists focused on building alliances and forming new organizations to push for improved working conditions for domestic workers. Collaboration with trade unions both nationally and internationally has been a significant feature of campaigns. This momentum has not materialized significantly in Canada which has not ratified C189.

¹⁹ *Employment Standards Act*, RSBC 1996, c 113, s 85.

²⁰ The Convention and its accompanying recommendation were adopted on June 16, 2011 at the 100th International Labour Conference in Geneva. The Convention came into force on September 5, 2013. As of October 8, 2015, the Convention has 22 ratifications.

Actions to directly address the protection of caregivers' rights in Canada include systemic advocacy, legal assistance and policy work.

Proposed actions include:

- Canada should ratify the Domestic Workers Convention and bring domestic laws into alignment.
- Ensure effective access to redress, including legal aid, for workers who are abused.
- Improve regulation of recruitment agencies based on best practices.
- Eliminate tied work permits for temporary foreign workers and transition to open work permits.
- Reinstate a direct pathway to permanent residence for caregivers, or transition to permanent residence upon arrival in Canada.
- Eliminate the Canada Border Services Agency's "Project Guardian."
- Allow family members to accompany caregivers to Canada and provide eligible dependents with open work permits.
- Eliminate any restrictions to collective bargaining for caregivers.
- Ensure that all domestic workers are covered by Employment Standards legislation like other workers.
- Establish proactive labour inspection of work premises of caregivers.
- Support domestic worker organizations as a model of empowerment for workers to advocate for their rights.
- Provide pre-departure training for caregivers to gain knowledge about their rights in Canada and how to obtain assistance.
- Establish a national hotline for caregivers who need assistance.
- Support a public information campaign to shift social attitudes towards caregivers.

These proposed actions will reduce the risk of exploitation for caregivers by improving access to labour rights and safe and legal labour migration to Canada.

References

Jurisprudence

PN v FR and another (No. 2), 2015 BCHRT 60 (CanLII)
Tiangha v. Canada (Citizenship and Immigration), 2013 FC 211 (CanLII)

Legislation

Employment Standards Act, RSBC 1996, c 113
Employment Standards Regulations, B.C. Reg. 396/95
Immigration and Refugee Protection Act, S.C. 2001, c. 27
Immigration and Refugee Protection Regulations, SOR/2002-227

International Documents

Domestic Workers Convention, June 16, 2011, C189 (entered into force September 5, 2013)
Recommendation, June 16, 2011, R201

Government Documents

BC Stats, *BC Immigrant Landings by Source and Class (January to December 2013)*, online:
<https://qspace.library.queensu.ca/bitstream/1974/13402/9/270062821-BC-Immigrant-Landings-2013-by-Source-and-Class.pdf>

Employment and Social Development Canada, *Labour Market Impact Assessments – Annual Statistics*, online: http://esdc.gc.ca/eng/jobs/foreign_workers/lmo_statistics/annual-lcp.shtml

Employment Standards Branch, *Temporary Foreign Workers*, online:
https://www.labour.gov.bc.ca/esb/facshts/translations/filipino/foreign_worker.pdf

Government of Canada, *Improving Canada's Caregiver Program*, online: http://news.gc.ca/web/article-en.do?nid=898729&_ga=1.127505102.257588392.1441911488

Government of Canada, *Government of Canada Overhauls Temporary Foreign Worker Program Ensuring Canadians are first in line for available jobs*, online: <http://news.gc.ca/web/article-en.do?nid=859859>

Secondary Sources

Adelle Blackett, "Introduction: Regulating Decent Work for Domestic Workers" (2011) 23 Can. J. Women & L. 19-20.

Broadbent Institute, *Open for Business, Closed for Workers: Employment Standards, the Enforcement Deficit, and Vulnerable Workers in Canada*, online:
http://d3n8a8pro7vnmx.cloudfront.net/broadbent/legacy_url/1924/open_for_business_closed_for_workers_-_employment_standards_legislation_in_canada_final.pdf?1431296762

Canadian Union of Public Employees, *Fact Sheet: Temporary Foreign Workers Program and the Live-in Caregiver Program*, online: <http://cupe.ca/fact-sheet-temporary-foreign-workers-program-and-live-caregiver-program>

Martha Alter Chen, “Recognizing Domestic Workers, Regulating Domestic Work: Conceptual, Measurement, and Regulatory Challenges” (2011) 23 Can. J. Women & L. 183

Fay Faraday, *Made in Canada: How the Law Constructs Migrant Workers’ Insecurity* (Toronto: George Cedric Metcalf Charitable Foundation, 2012)

Fay Faraday, *Profiting from the Precarious: How recruitment practices exploit migrant workers* (Toronto: George Cedric Metcalf Charitable Foundation, 2014)

Judy Fudge, “Global Care Chains, Employment Agencies, and the Conundrum of Jurisdiction: Decent Work for Domestic Workers in Canada” (2011) 23 Can. J. Women & L. 235.

The International Domestic Workers’ Network, The International Trade Union Confederation, & Human Rights Watch. *Claiming Rights: Domestic Workers’ Movements and Global Advances for Labour Reform* (New York: Human Rights Watch, 2013)

International Labour Office, *Domestic Workers Across the World: global and regional statistics and the extent of legal protection* (Geneva: International Labour Organization, 2013)

Virginia Mantouvalou, “Human Rights for Precarious Workers: The legislative precariousness of domestic labour” (2012-2013) 34 Comp. Lab. L. & Pol’y J. 133

Peter Mazereeuw, *CBSA looking into abuse by live-in caregivers*, online: <http://www.embassynews.ca/news/2014/04/16/cbsa-looking-into-abuse-by-live-in-caregivers/45424>

Martin Oelz, “The ILO’s Domestic Workers Convention and Recommendation: A Window of opportunity for social justice” (2014) 153 International Labour Review. 144.