isarc FAITH COMMUNITIES IN ACTION AGAINST POVERTY

Exclusions and Exemptions from the LRA and ESA

Submission to the Ministry of Labour

by

The Interfaith Social Assistance Reform Coalition (ISARC)

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Interfaith Social Assistance Reform Coalition (ISARC)
#300-3250 Bloor St. W, Toronto, Ontario M8X 2Y4
Email: coordinator@isarc.ca Website: www.isarc.ca

INTRODUCTION

The Interfaith Social Assistance Reform Coalition (ISARC) welcomes this opportunity to have a voice in the consultations on addressing exclusions and exemptions from the Labour Relations Act and the Employment Standards Act.

Our Coalition represents the Anglican Diocese of Toronto, the Anglican Diocese of Niagara, the Anglican Provincial Synod of Ontario, the Assembly of Catholic Bishops of Ontario, the Canadian Unitarian Council, Catholic Charities of the Archdiocese of Toronto, Dicle Islamic Society, the Canadian Council of Imams, the Council of Canadian Hindus, the Eastern Synod of the Evangelical Lutheran Church in Canada, the Western Ontario District of the Pentecostal Assemblies of Canada, the Islamic Humanitarian Service, Mennonite Central Committee Ontario, North American Muslim Foundation, the Presbyterian Church in Canada, the Redemptorists in Canada, the Society of St. Vincent de Paul, the Toronto Board of Rabbis, and the United Church of Canada.

We are particularly interested in this consultation for three key reasons. First, because as people of faith, we believe that every human being has value and dignity, and thus our public policies and employment/labour relations standards must reflect this belief in the value of every human being. Secondly, for approximately 30 years we have advocated for measures to reduce poverty in Ontario, and we are deeply concerned about current employment practices that are deepening poverty, uncertainty and stress for tens of thousands of Ontario workers and their families. Thirdly, the government has committed itself to poverty reduction and to fair treatment of workers. We believe that the denial of equal rights to any group of workers must be demonstrably justified and narrowly construed.

The saying, that it is better to teach a person to fish instead of just giving a person a fish, also inspires our call for stronger measures to protect vulnerable workers. Maimonides, the medieval Jewish philosopher, had a hierarchy of ways of giving charity and at the top is the directive to help make the recipient self-sufficient so that aid would

no longer be necessary. We know that a significant segment of the poor are working poor. These are people who already have jobs but are still incapable of supporting themselves and their families. Our goal in this consultation process is to ensure that any exclusions and exemptions not deny any workers the entitlement to fair treatment and appropriate compensation.

Similar mandates can be found in the beliefs of ISARC'S other faith communities. For Muslims, the Qur'an affirms that the socio-economic welfare of the individual and of society depends on the degree of justice and equity in the distribution patterns of income and wealth. The poor also have a right to the wealth of the nation and the community (The Qur'an 51:19). Muslims are obligated to support and advocate for the needy, because failing to uphold that duty would be tantamount to the rejection of faith (The Qur'an 107:1-3). Christians are inspired by the biblical mandate to "lighten the burden of those who work for you. Let the oppressed go free." (Isaiah 58:6). Other biblical texts reinforce this call to justice for all, including a warning to rich oppressors who cheat labourers out of their wages (James 5:4).

Catholic social teaching has an important insight to offer here. Pope St. John Paul II begins his 1981 document on human work with the observation that "only human beings work". In a way, being a worker defines the human person. This truth is reflected in the Book of Genesis where humans are spoken of as being created "in the image of God" so that they can carry out a role for God, acting as managers of God's creation. Hence the words: "Let us make humankind in our image, according to our likeness [so that they can] have dominion over the fish of the sea . . . ." (Genesis 1:26). This is why humans should be seen as having a **right** to employment, and indeed employment in which they can feel they are **truly contributing to the common good**. It is in this sense that Catholic teaching views human work not simply as a job (a purely economic term) but as a vocation.

As faith leaders we see firsthand the stress experienced by workers who are unable to make ends meet. Even those with full-time jobs are not immune from these stresses.

Too many of our congregants rely on food banks, despite working long hours. They worry about not spending quality time with their children, not being able to care for their own parents or being unable to participate in community activities. The parents` struggle for paying the bills and putting proper food on the table creates unhealthy and unnecessary family strife.

Increasingly, scheduling constraints and economic necessity are preventing our congregants from attending their houses of worship. Parents say they are anxious that their children are not finding full-time decent paying jobs, especially ones for which they have trained, and end up moving back home. Decisions to get married or start families are being postponed.

Bill 148 makes an important first step in addressing these problems. Raising the minimum wage and entitling part-time and other precarious workers to the same hourly wage as full-time permanent workers will begin to ease these stresses.

However continuing exclusions from the right to collectively bargain and exemptions from minimum standards dealing with the right to be paid for all hours of work, the right to regular hours of work, break time and overtime and other employment standards undermine the relief that we are trying to provide workers. This is especially true for low paid workers in situations where exploitation can easily occur.

As a matter of principle ISARC believes that no category of worker should be excluded from collective bargaining. The Supreme Court of Canada has held that one of our fundamental freedoms – freedom of association includes the right to engage in collective bargaining. This right can only be abrogated if it is demonstrably justified. Employment standards, while they do not have express constitutional protection, form the foundation upon which the right to collective bargaining can achieve improvements. Therefore these standards, as well, should not be denied to any category of worker unless demonstrably justified.

While the thrust of our submissions addresses the situation of home-makers, domestic workers and residential care workers, we ask that you share our comments with the

parties that are dealing with the exclusion of architects and pharmacists from the Labour Relations Act. If other professional disciplines can handle meeting their professional ethics and standards within the environment of collective bargaining, there is no reason why these last two professions cannot do likewise.

The persons working as home-makers, domestic workers and residential care workers are part of the caring professions. Even though they do not have education and training that reaches the level of “professional”, we are entrusting into their care our most treasured resource, other human beings, ones that are lacking in independence whether they be infants, the elderly or the infirm. If we want such workers to show and treat with respect the persons given into their care, then we as a society must show and treat these workers with respect as well. The Golden Rule applies here – “do unto others as you would have them do unto you”.

The Abrahamic faiths all are based on the recognition that all human beings are created in the Divine image. Caring for the infirm and the elderly and providing a safe and supportive environment for our infants are fundamental to how our faith imperatives expect us to act. At the same time however this type of work has historically been undervalued, in part, because it is viewed as women’s work.

As well, persons who are newer immigrants and persons of colour are found in these categories of workers in a higher proportion than they are found in the general population. These persons are finding it harder to join the mainstream of our community. Poverty is higher in this population and systemic racism makes it harder to break out of these job ghettos. The Federal government Temporary Foreign Worker Program exacerbates the situation of such workers in making them even more susceptible to exploitation.

Your consultation provides an opportunity to build on the initial step contained in Bill 148 and at least reduce the disadvantages experienced by persons performing this work.

We have examined the Discussion Questions set out in Tab 3 in each of the Toolkit. They do not strictly apply to us as we are neither front line workers in these categories

ourselves nor are we their employers. Nevertheless we will do our best to follow the discussion direction.

In terms of opening comments on the criteria and process for the review of and continuation of any exclusions and exemptions we recommend the following

1) Add the following principle to the review:
The employees to whom the exemption or special rule would apply are not historically disadvantaged or precariously situated in the labour market. That is, such exemption should not compound existing labour market disadvantage.

2) Ensure substantive fairness in the review process for exemptions and special rules. This must include addressing the power imbalances between employers and employees and soliciting employee feedback.

Labour Relations Act and Exclusion of Domestic Workers

1. We fall within the category of (e) in that we are advocating on behalf of these workers.
2. We recognize that employers of domestic workers require that domestic workers be flexible and understand that the work day on any particular day can extend beyond the regular work hours. This situation merely underlines the need for such workers to be able to negotiate alternative time off and entitlement to overtime.
3. We expect that in most cases a domestic worker will be working alone. That simply underlines the need for the Labour Relations Act to be modified to allow for sole workers at a work site to still be able to access collective bargaining. Sole workers are deprived of the social support of colleagues and are more likely to face exploitation.
4. Given the high level of unemployment and the low level of social assistance levels, many persons do not have a real choice and must take employment positions based on the unilateral determination of terms of employment by the Employer.
5. The duties being performed by domestic workers are similar to those performed by staff at Retirement Homes, at Child Care Centres and in Home Care. Unionization in these other forums is permitted and does exist. It is likely that some workers covered by the Domestic worker exclusion previously worked in a unionized environment. It is also probable that few if any of those workers chose to switch their work environment because the prior one was unionized.
6. ISARC believes that coverage by a collective agreement would be beneficial to the employment relationship between a domestic worker and the employer. The domestic worker would have the right to just cause for discipline and access to a grievance procedure and so would be less fearful of retaliation for approaching the employer with a workplace concern. The knowledge that the domestic worker is being fairly treated under the terms of the collective agreement would likely encourage continuity of employment and decrease reasons for switching

Employers. The Employer would have reduced recruitment and training costs and would have some confidence that problems experienced by the domestic worker were not being dealt with because of the absence of a dispute resolution mechanism.

7. Access to unionization by domestic workers
    a. Yes, the definition of bargaining unit needs to be reviewed
    b. No, the current situation does not work as it deprives domestic workers employed in private homes access to collective bargaining
    c. Yes, we need new forms of bargaining for this sector. Even if the exclusion of domestic workers employed in private homes were repealed and the requirement for the bargaining unit to be composed of more than one worker was removed, collective bargaining would be very inefficient. The traditional employer in this situation would generally have no experience in collective bargaining and the domestic worker would have little bargaining power.
        i. The Government should consider establishing for domestic workers employed in homes a parallel agency to the one it is currently establishing for PSWs performing Home Care on a continuing basis in a private home. That way, the Agency would be the formal employer and would have the necessary expertise to engage in collective bargaining and workers would have collective bargaining power. The Agency could have an advisory committee of interested clients or their designated decision makers.
        ii. If the Government Agency approach is not adopted then the Labour Relations Act should be amended to require the establishment of an Employer Council Bargaining Agent for such employers.

    The regime could allow for individual employers and domestic workers to agree to superior provisions in one or more areas but would not allow for any inferior provisions even if on a package basis it was superior to the collective agreement.

8. No – see 7 above
9. No, thank you

Employment Standards Act

In respect of the exemptions, the discussion questions are related to the specifics of the actual work situation which could vary tremendously. We have no contribution to make to those questions. We will however comment on the injustices in the current special conditions that are set out at pages 4-8 of Tab 1 in the Toolkit

- Minimum wage – cap on number of hours that attract pay
    - Home-makers are capped at 12 hours of pay per day even if they work more hours
    - Residential Care Workers can get up to an additional 3 hours paid if they keep accurate records and claim the pay in the pay period after the one in which the hours were worked. Any hours above 15 in a day are worked without pay.
    - It is unconscionable that the normal rules do not apply that an employee is entitled to pay for all hours worked and that the Employer has a duty to stop an employee from working for hours that the employee will not be paid. There is no valid administrative reason why an Employer cannot ensure that the employee is not working for more hours than the Employer wishes to pay for. In particular,
        - in regard to Homemakers, Employers of other staff who work on the site of a client have no problem paying the employee for all hours worked even though there is no supervisor of the Employer on that site to document the hours worked.
        - In regard to Residential Care workers, if the worker is employed directly by the client, there is no reason to treat this category of worker different from domestic worker, who are not subject to this cap. If the worker is employed by an outside party, then the comments above in relation to Homemakers apply to this category of worker as well.
        - furthermore in regard to Residential Care workers, if any specific hours are to be deemed as work and the rest not paid for, we

should at least assume that the client receiving care is awake and receiving that care for 16 hours and sleeping for the other 8 hours in the day. Even during the client's 8 hours of sleep, if the Residential Care worker is still on-site, the Residential Care worker continues to have responsibilities if the client wakes up and needs care.

- Subject to the paragraph below, either the exemption should be completely removed in each of these situations or the law should provide that the rate of pay for such employees must be a multiple of the minimum wage to compensate for the extra hours that are sometimes workers that are not going to be paid because of the arbitrary cap.
- In regard to Residential Care workers, an alternative would be to pay that worker at least for the 16 hours at the regular rate of pay and to treat as on-call, the remaining 8 hours in the day, for which the worker should be entitled to the Bill 148 "on call" provision, now part of the ESA.
- Finally in regard to domestic workers, given the changes to the Caregiver Program removing the requirement that domestic workers under the Temporary Foreign Worker Program "live-in" and given the new prohibition in the Temporary Foreign Worker Program against Employers charging domestic workers for room and board, where such workers do live in, the Employment Standards Act should no longer exempt Employers of domestic workers from paying the full general minimum wage to such employees and furthermore the Act should prohibit Employers from deducting anything from the pay of such workers in respect of the value or cost of providing room and board.

- Hours – daily and weekly
  - Both Homemakers and Residential Care workers are not entitled to the limits found in the law applicable to other workers, namely the right to refuse work in excess of 8 hours daily and in excess of 48 hours weekly.
  - If the current normative provisions for hours of work can apply to Domestic Workers, there is no reason why such provisions cannot apply to

Homemakers. The Employer can simply inform the client of this worker entitlement.

- In regard to Residential Care Workers, these exemptions should apply only if the recommended revised special rules on wages are complied with.

- Daily Rest Periods
  - Both Homemakers and Residential Care workers are not entitled to the time off found in the law applicable to other workers, namely the right to a period of 11 consecutive hours free from work.
  - If the current normative provisions for daily rest periods can apply to Domestic Workers, there is no reason why such provisions cannot apply to Homemakers. The Employer can simply inform the client of this worker entitlement.
  - In regard to Residential Care Workers, these exemptions should apply only if the recommended revised special rules on wages are complied with.
- Time off Between Shifts
  - Both Homemakers and Residential Care workers are not entitled to the time off found in the law applicable to other workers, namely the right to a period of 8 consecutive hours free from work between shifts.
  - If the current normative provisions for time off between shifts can apply to Domestic Workers, there is no reason why such provisions cannot apply to Homemakers. The Employer can simply inform the client of this worker entitlement.
  - In regard to Residential Care Workers, these exemptions should apply only if the recommended revised special rules on wages are complied with.
- Weekly/Bi-weekly Rest Periods
  - Both Homemakers and Residential Care workers are not entitled to the time off found in the law applicable to other workers, namely the right to a

period free from work of either 24 consecutive hours in each work week or 48 consecutive hours in each two consecutive work weeks..

- If the current normative provisions for weekly/bi-weekly rest periods can apply to Domestic Workers, there is no reason why such provisions cannot apply to Homemakers. The Employer can simply inform the client of this worker entitlement.
- In regard to Residential Care Workers, these exemptions should apply only if the recommended revised special rules on wages are complied with.

- Eating Periods
  - Both Homemakers and Residential Care workers are not entitled to the time off found in the law applicable to other workers, namely the right to a period free from work of 30 minutes after each 5 consecutive hours of work.
  - If the current normative provisions for eating periods can apply to Domestic Workers, there is no reason why such provisions cannot apply to Homemakers. The Employer can simply inform the client of this worker entitlement.
  - In regard to Residential Care Workers, these exemptions should apply only if the recommended revised special rules on wages are complied with.
- Overtime Pay
  - Both Homemakers and Residential Care workers are not entitled to the premium pay provision found in the law applicable to other workers, namely the right to be paid at the rate of time and one half for all hours in excess of 44 in a week or for time off in lieu at the compounded rate
  - If the current normative provisions for overtime can apply to Domestic Workers, there is no reason why such provisions cannot apply to Homemakers.
  - In regard to Residential Care Workers, these exemptions should apply only if the recommended revised special rules on wages of payment for

16 hours plus on call pay are complied with. Furthermore the denial of the right to time and one half in these circumstances can be viewed as offsetting the exemption for the Residential Care worker for payment of the room and board obligations of the Domestic Worker

- Records of Hours Worked
    - Employers of both Homemakers and Residential Care workers are exempt from the record keeping obligations in the law applicable to Employers of other workers, namely the obligation to maintain records regarding the identity and employment particulars of each worker until 3 years after the worker's employment was terminated.
    - If the current normative provisions can apply to Domestic Workers, there is no reason why such provisions cannot apply to Homemakers. Businesses are in a far better position to maintain such records than individual clients.
    - In regard to Residential Care Workers, the same obligations should apply based on the principle set out in regard to Homemakers.
- Time Deemed To Be Work
    - If the current normative provisions can apply to Domestic Workers, there is no reason why such provisions cannot apply to Homemakers or Residential Care Workers.

Finally ISARC does not believe that any of the governing conditions and criteria for exemption set out in Tab 2 of the Toolkit are met for any of these categories of workers.

Conclusion

We urge you before the end of the current fiscal year, to remove from the LRA and the ESA, the existing exclusions and exemptions and insert, if you are so persuaded, a revised special condition for Residential Care Workers.

These categories of workers are today's "hewers of wood and drawers of water". They are the persons into whose care we entrust our children, elders and infirm. They are entitled to our respect, compassion and consideration. The Labor Relations Act and the Employment Standards Act and the Regulations thereunder should manifest our appreciation for the work they do.