

ACKNOWLEDGING THE TRUE WORKER STATUS OF CAREGIVERS: CURRENT RIGHTS AND MOBILIZATION

RESEARCH
REPORT:
PROSPECTS
FOR THE
MOBILIZATION
OF DOMESTIC
WORKERS

With the cooperation of:



Association des
aides familiales
du Québec

caregivers'
Association of
Québec

UQAM | Service aux collectivités



Union des employées et employés de service
SECTEUR LOCAL 800



Fédération
des travailleurs
et travailleuses
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LIST OF ABBREVIATIONS AND ACRONYMS

| | |
|--------|--|
| AAFQ | Association des aides familiales du Québec |
| CDPDJ | Commission des droits de la personne et des droits de la jeunesse |
| CIAFT | Conseil d'intervention pour l'accès des femmes au travail |
| CIC | Citizenship and Immigration |
| CLSC | Centre local de services communautaires |
| CNT | Commission des normes du travail |
| CSSS | Centre de santé et de services sociaux |
| CSST | Commission de la santé et de la sécurité du travail |
| CSW | Council on the Status of Women |
| DFATD | Department of Foreign Affairs, Trade and Development |
| EESAD | entreprise d'économie sociale en aide domestique |
| ESDC | Employment and Social Development Canada |
| ILC | International Labour Conference |
| ILO | International Labour Organization |
| IRPP | Institute for Research in Public Policy |
| LCP | Live-In Caregiver Program |
| MAMROT | Ministère des Affaires municipales, des Régions et de l'Occupation du territoire |
| MCCCF | Ministère de la Culture, des Communications et de la Condition féminine |
| MIDI | Ministère de l'Immigration, de la Diversité et de l'Inclusion |
| MSSS | Ministère de la Santé et des Services sociaux |
| NOC | National Occupational Classification |
| OECD | Organisation for Economic Cooperation and Development |
| PEFSAD | Financial Assistance Program for Domestic Services |
| SCC | Supreme Court of Canada |

1 INTRODUCTION

In the fall of 2012, the Service Employees Union, Local 800 (FTQ) (SEU-800), the Service de la condition féminine [Status of Women Sector] of the Fédération des travailleurs et travailleuses du Québec (FTQ) and the Association des aides familiales du Québec (AAFQ) [Quebec Association of Caregivers] asked the Service aux collectivités [Community Services] of UQAM to prepare a legislative overview of labour rights and of the status of the work situation of caregivers in Canada. One of the catalysts for this request was the adoption in June 2011 by a very large majorityⁱ of the member states of the International Labour Organization (ILO) of *Convention No. 189 concerning Decent Work for Domestic Workers* and of *Recommendation No. 201 concerning decent work for domestic workers*.ⁱⁱ The convention is open for ratification and came into force in September 2013. In June 2015, 21 countries had already ratified it. This study is meant to be used within the framework of a provincial and federal mobilization of labour organizations and women's and rights groups around the ratification of the convention by Canada in connection with the worldwide ratification campaign launched by the International Trade Union Confederation,ⁱⁱⁱ in order to apply pressure on provincial, territorial and federal legislators and governments to comply with it by adapting their legislations and policies.

The Government of Canada affirmed its intention of considering the ratification of Convention No. 189 at the time of its adoption in 2011^{iv}: caregivers are still waiting.

Declaration of the Government of Canada representative at the plenary session of the International Labour Conference following the votes on Convention No. 189 and Recommendation No. 201: "Canada voted in favour of the adoption of the new Convention [...]. We hope that this new Convention significantly contributes to the improvement of the lives and working conditions of domestic workers globally. Some technical requirements of the convention could potentially make it difficult for Canada to ratify. However, the Government of Canada will review the new Convention thoroughly, in consultation with the provincial and territorial governments, and give careful consideration to its ratification."

As a Member State of the ILO, Canada is obligated to submit conventions and recommendations adopted by the International Labour Conference to national authorities. As such, in 2014, a report was tabled in the Parliament of Canada on the content of Convention No. 189 and Recommendation No. 201 and on the compliance of Canadian legislation with these instruments.^v The report emphasizes that legislation on labour relations, health and safety and minimum labour standards are within the exclusive jurisdiction of the provinces and that there is no standardization of legal provisions on domestic workers across Canada. The various provincial and territorial laws do not all comply with the provisions of the Convention and of the Recommendation. In order for these laws to comply with the Convention, the provinces and territories would have to amend their legislation.

The report, however, highlights that the *Live-In Caregiver Program* (LIC) that allows workers from other countries to fill caregiver positions in private households “promotes protections and fair working conditions for domestic workers in a manner that is consistent with the provisions in the Convention”.

It also mentions that, generally speaking, provincial legislation regulates private employment agencies and that some specifically target migrant workers: these provisions therefore reflect the objective of the Convention concerning the regulation of agencies that recruit and hire caregivers.

The Government of Canada is therefore aware that, in many respects, Canadian legislation does not comply with the Convention and the Recommendation. Within the framework of the Canadian procedure to ratify international treaties, such as Convention No. 189, the federal government, which has the power to ratify these treaties, generally solicits the support of all provinces and territories before ratification, in order to ensure the full implementation of Canada’s international obligations under these treaties.^{vi} Given the difficulties of obtaining the consent of the ten provinces and the three territories due to the non-compliance of a significant number of their statutory provisions with Convention No. 189 (see below in the report), there is every reason to believe that this way of proceeding, by evoking the complexity of the Canadian federal system, serves as an excuse to avoid the ratification of many conventions.

Caregivers have always been largely invisible or excluded from international and national labour standards.^{vii} Convention No. 189 recognizes, finally, that they are “real” workers and must enjoy the same rights as any other worker. The gaps identified in international instruments and in national statutes have had a significant impact on the level of protection of these workers, on their ability to benefit from decent working conditions and on their possibility of organizing to defend their rights. However, caregivers have been organizing to defend their rights under various forms for a long time, in Quebec and elsewhere,^{viii} and the mobilization of workers around Convention No. 189 at the international level, including the creation of an international federation of domestic workers in 2013 constitutes a new chapter in this organization.^{ix}

In this report, the term “caregiver” is preferred to that of “domestic worker.” It includes any work aimed at care of children, assistance to persons with a handicap, sick or with diminishing autonomy, and to household work. It is considered to better express the contribution of these workers to families and society in general as well as the professionalism looked for by those who entrust their home and their family members to a caregiver. In spite of our use of the term “caregiver,” we have to acknowledge that labour and social protection legislation still refers to “domestic workers.” At the international level, particularly at the International Labour Office, the term “domestic worker” is used, which also recognizes that these women are full-fledged workers.

The objective of this study is to document the arguments required to improve the situation of these workers in Quebec and elsewhere in Canada. In Quebec, various recent political initiatives impact on caregivers, including the *Plan d'action gouvernementale pour l'égalité entre les femmes et les hommes 2011-2015*,^x which in particular provides for an increase in home support services for the frail elderly and strengthened protection of live-in caregivers, as well as discussions underway for several years around legislative amendments to extend the coverage of legislation on occupational injuries to some categories of caregivers.^{xi} The situation of caregivers is also on the agenda of other provinces, including Ontario.^{xii}

The research presents a comparative picture of statutes governing the protection and rights of caregivers in Canada with the standards established in Convention No. 189 and in Recommendation No. 201. The characteristics related to caregiver work in the legislation of four provinces, chosen because of the size of their population, that is, Quebec, Alberta, British Columbia and Ontario, were analyzed with respect to minimum standards of work, occupational health and safety, occupational injury compensation, freedom of association and collective bargaining. Given that a number of these workers are LCP participants and participants in the in-home caregivers program that has replaced it since December 2014, the regulations of these programs were also part of the study.^{xiii} The research therefore traces the legislative portrait of any worker, no matter her immigration status, who works as a caregiver in a private household. While there is a significant literature^{xiv} on the exploitation experienced by a good number of women who immigrate to Canada to work as live-in caretakers, they are not the only ones who have difficulty in having their rights recognized. Generally speaking, the child care, personal support and home support work done by women in multiple work situations is slightly, poorly or not at all covered by the legislation that should protect and ensure the exercise of their rights by workers in this category. The study highlights the legal issues on five axes related to: the workplace (a private residence), the employer's identity (private individual or for profit or non-profit enterprise, the employment status (salaried; "independent" contractor; full-time, part-time or casual worker; the tasks performed (child care, personal support, domestic help) and the immigration status (permanent resident or citizen, federal program participant).

Differences and similarities among statutes, and between statutes and Convention No. 189 and Recommendation No. 201, are explored to determine the compliance of Canadian legislation with international standards. This enables the determination of the interventions required to improve the content and enforcement of the legislation in order to ensure a full acknowledgement of rights to the work of caregivers. Once legislative gaps are identified at the national level, the research seeks to enable partners and other social actors – and actresses! – to build an argument to support the demands of these workers in Quebec, and also elsewhere in Canada.^{xv}

The research questions that guided this research are as follows:

- ✓ What is the impact of: (a) the workplace, (b) the employer’s identity, (c) the employment status, (d) the nature of the tasks and (e) the immigration status on the legislative protection of caregivers and on the exercise of their rights in Quebec, Alberta, British Columbia and Ontario?
- ✓ What is the linkage between the provincial and federal legislative frameworks (in immigration matters) and ILO’s Convention No. 189 and Recommendation No. 201?
- ✓ What are the legislative obstacles to representation and collective bargaining for caregivers? Are there models that could be adapted to their situation?

.....

The next section of the report provides a portrait, albeit imperfect, of caregivers. It closely examines, among other things, the legal and statistical definitions of this occupation. In the following section, we review several public policies that impact the working conditions and rights of caregivers and that shape the pursuit of this occupation in Quebec: home support policy, family policy, immigration policy and the policy of equality between women and men. Next, we present the comments of caregivers who participated in the three focus groups in order to have an overview of voices from the ground. A comparative analysis of provincial legislation follows, accompanied by a look at the compliance of this legislation with the international standards adopted by the ILO. Finally, the last section’s objective is to propose some new mobilization perspectives that emerge from the study.

2 OCCUPATION: CAREGIVER

“Domestic work is the work that makes all other work possible.”^{xvi} Domestic workers look after the children of others, ensure a vital support to the frail elderly and to persons who are ill or have a handicap, help in household management and enable women and men to balance work and family responsibilities. This remunerated reproductive labour of women in the so-called “private” sphere of the home is, however, chronically marginalized in labour legislation. Caregiver work is characterized by its feminine nature – the near totality of persons in this occupation are women – and its racization with the significant presence in this sector of immigrant, migrants and visible minority women.^{xvii}

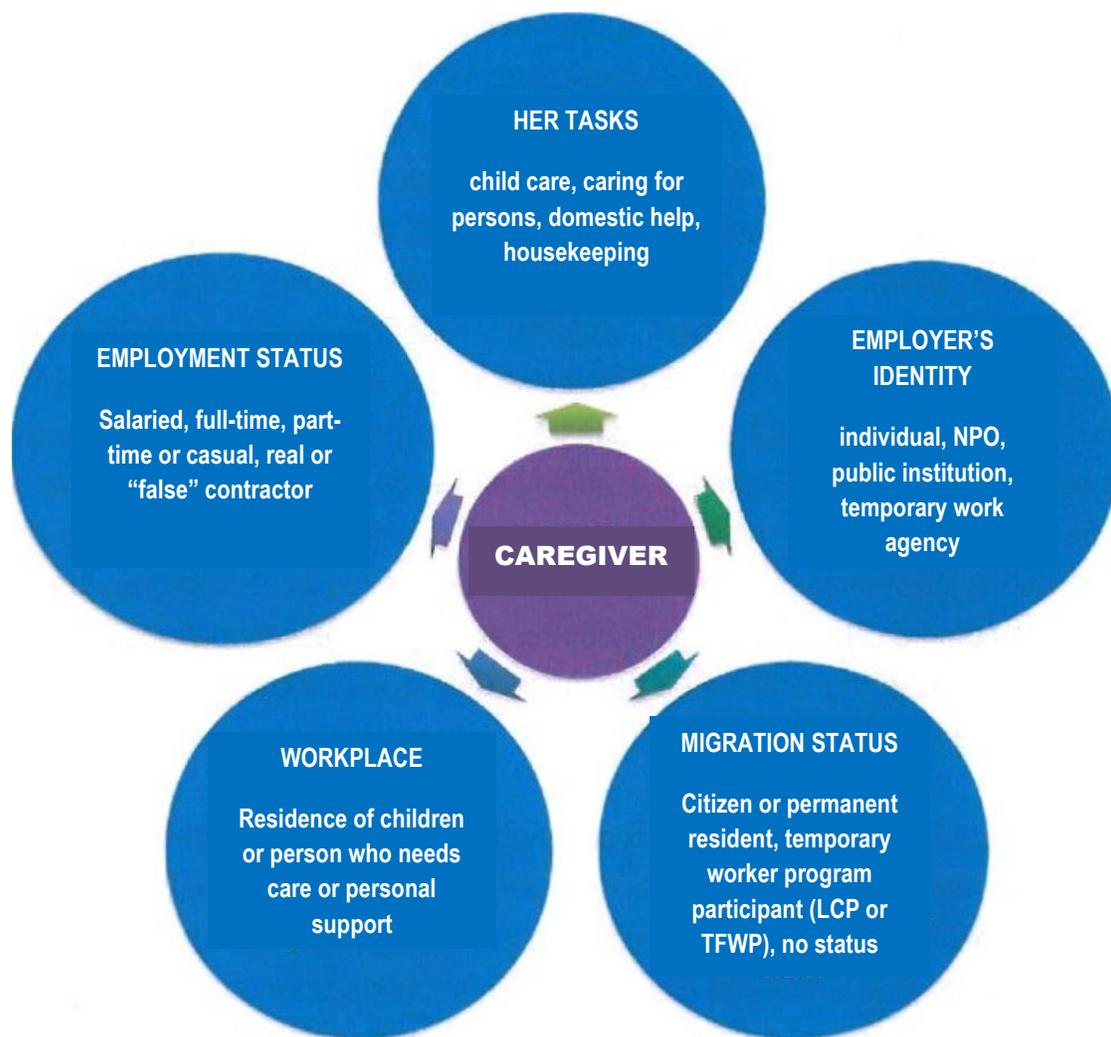
To this must be added the growing outsourcing of home support work to the private sector,^{xviii} which may, in some cases, have the effect of pushing workers toward a situation of lack of protection from labour laws as they become subjected to the multiple partial and total exclusions aimed at caregivers.^{xix} The workplace, a private residence, and the nature of the tasks performed become determining factors, as is the identity of the employer who is either the private individual in the household or a third party.

While many characteristics are common to caregivers, be it their workplace and the tasks performed to support persons and households, the occupation is equally marked by very heterogeneous work situations because of their employment status, the identity of their employers and their migratory status. This factual situation may contribute to putting caregivers in competition with one another from the point of view of the search for economic efficiency in public policies: all things considered, many caregivers finance these policies to a significant degree through their work.

Domestic work is therefore characterized by (1) the heterogeneity of the work situations of the women who perform it and (2) by its non-recognition – historical and actual – as “real” work in labour legislation, here as elsewhere.^{xx} For the purposes of this study, a “caregiver” is a worker who does any work in someone else’s private residence related to personal support, including child care, and care of the household. The National Classification of Occupations (NCO) of Canada refers to several types of occupations that fall into this category under the mention “home care providers”^{xxi}: “home child care providers; home support workers, housekeepers and related occupations; light duty cleaners.” Louise Boivin and Rolande Pinard^{xxii} offer a typology of paid home support work in Quebec that helps us start understanding the heterogeneity of the work situations of caregivers in various provinces. We have enhanced this typology to include the situation of caregivers who take care of children in a private residence (this last category does not include home childcare providers who take care of children in their own home). For the purposes of this study, we make a first categorization of caregivers as follows:

| PERSONAL SUPPORT AND HOUSEWORK HELP SERVICES | HOME-BASED CHILD CARE AND EDUCATION |
|---|---|
| <ul style="list-style-type: none"> • Workers hired by a public health and social services agency (permanent or casual) (e.g. In Quebec, the CLSC/CSSS^{xxiii}) • Workers hired by mutual agreement (e.g. in Quebec, this could be via the service employment paycheque program) • Workers working for OSBL (e.g. in Quebec, the EESAD) • Workers who came to Canada within the framework of the LCP or the In-Home caregiver program • Workers employed by private temporary work agencies | <ul style="list-style-type: none"> • Workers hired by mutual agreement • Workers who came to Canada within the framework of the LCP or the In-Home caregiver program • Workers employed by private temporary work agencies |

The structure of home support and child care services varies greatly from one province to another and this study unfortunately cannot give an account of the whole complexity of these policies in the four provinces studied. However, the research confirms that similarities exist among the provinces with respect to work situations and the relevance of the five criteria selected to analyze the legislative protection and the rights of caregivers (see diagram above). It is therefore important to appropriately distinguish on a legal basis these various situations in order to understand the degree of protection offered by labour legislation.



2.1 AN OCCUPATION DIFFICULT TO DEFINE LEGALLY

Law is struggling to define this occupation and, when it does so, it is essentially to impose total or partial exclusions from labour legislation. It is particularly through the preservation of the remains of the image of the "maid,"^{xxiv} who works behind closed doors to help the family, that attempts have been made to define it, even though the various terms used in the legislation have evolved. In the provincial legislation reviewed, a range of terms used to designate the caregiver can be found, terms that are sometimes the same terms used in public policies related to child care, personal support and household help, and sometimes not, according to the particular statute and province. The statutes refer to maids, babysitter, baby-sitter, sitter, homemaker, night attendant, household servant, etc. In a given province, several terms can be used to define in a different way persons who, all in all, perform tasks and have responsibilities that are very similar.

It is perhaps the ILO's *Convention concerning Decent Work for Domestic Workers* (Convention No. 189) that has narrowed the definition to its simplest expression. The term "domestic work" is used to define first "work performed in or for a household or households,"^{xxv} which includes a range of tasks related to child care, personal support to adults and house work.^{xxvi} The Convention specifies that the domestic work must be performed "within an employment relationship,"^{xxvii} thereby including part-time work and work for multiple employers, whether or not the worker lives in the employer's residence and whether or not she is of national origin or a foreign national. This excludes the – real – independent workers, also called independent contractors.^{xxviii} As a consequence, the Convention applies to all types of domestic workers, with the exception of certain limited categories that may be excluded totally or partially from its scope "after consulting with the most representative organizations of employers and workers."^{xxix} The result of a difficult compromise when it was adopted,^{xxx} the work performed "only occasionally or sporadically and not on an occupational basis"^{xxxi} is not considered "domestic work" within the meaning of the Convention. This does not necessarily exclude daily or precarious workers, although the interpretation that will be given to this exception is a source of concern.^{xxxii}

Although the ILO Convention and the Recommendation emphasize the existence of employer organizations to ensure their implementation, the domestic employer is not clearly defined. The Convention does not specify that the employer must be an individual or a household and does not limit the number of employers for whom a caregiver may work.^{xxxiii} According to the International Labour Office, "the employer may be a member of the household, for which the work is performed, or an agency,^{xxxiv} or a business that recruits domestic workers and offers them to households."^{xxxv}

It is important, at the outset, to specify that labour legislation is intended, except for certain exceptions, for "salaried workers," that is workers who are in a situation of subordination versus their employer, irrespective of who they are, and not to independent workers (also called independent contractors"). According to anecdotal information and to facts related in some tribunal decisions in various provinces, employers frequently consider caregivers as independent workers, or caregivers self-identify as independent workers. However, the qualification of an employment relationship is a matter of fact and cannot be determined by the employer or by the worker – or by a third party, like the government or a temporary work agency – by ignoring the reality of a relationship that ties the worker and the party that is asking her to work for remuneration.

Generally, a caregiver will almost always be a salaried worker due to the many criteria that distinguish the independent worker from the salaried worker: she does not decide her hours of work, the remuneration she will receive for the work performed, how her work will be done and she can be subject to disciplinary measures from her employer, up to dismissal. It is possible for a caregiver to work for several individuals (for example, as a “cleaning woman”) – and not for third parties such as a temporary work agency or a social economy enterprise for home help, for example) – and at the same time for the purposes of certain statutes and according to the province to be considered an independent contractor, but it is necessary in each case to examine the reality of her situation. It is also possible that she may be considered an independent contractor for the purposes of one statute but not for another.^{xxxvi}

If the caregiver works through a temporary work agency, she may experience difficulties related to the identification of her real employer for the purposes of various statutes. Although the responsibilities and activities of temporary work agencies may be relatively well defined in some statutes and in some provinces,^{xxxvii} the role and responsibilities of agencies may be much more ambiguous in others; this is the case in Quebec,^{xxxviii} in particular. A detailed study of questions related to the responsibilities of agencies as employers or intermediaries and to the regulation of their activities in each of the provinces is, however, largely beyond the framework of this study.

2.2 AN OCCUPATION DIFFICULT TO QUANTIFY

Given the heterogeneity of these workers’ employment situations, it is easy to understand why it is difficult to quantify exactly the number of women – and men – who work as caregivers. The problems associated with the statistical data on these “services to persons,” which are necessary to make this work and its complex characteristics more visible in order to develop public policies (that is, policies related to working conditions) are not particular to Quebec and are also present in other industrialized countries.^{xxxix} Within the framework of work leading to the adoption of Convention No. 189 and of Recommendation No. 201, the International Labour Office had highlighted the difficulties related to statistics on domestic workers throughout the world and the lack of precision of the data on this category of workers; estimates of the number of people occupying these jobs on a global scale were between 52.6 million and 100 million.^{xl} It is nevertheless possible to establish certain observations about the caregiver group in Quebec. A first observation from the statistical point of view is the absence of a global understanding of their particular situation. On the one hand, the designations are quite varied^{xli} and their statistical codification is not always linked to the legal definitions of these categories of workers.^{xlii} On the other hand, the data, notably that pertaining to working conditions, fail to define reality due to the disparities related to some factors, including the employer’s identity. According to the federal government:

This occupational group embraces a wide assortment of specialties, and working conditions vary widely with the specialty and the employer category. The data in "Statistics" are averages that should not be applied across the board to all specialties. For example, working conditions for a visiting homemaker employed by a local community service centre (CLSCs) are much better than for a live-in caregiver or a foster parent.^{xliii}

It also appears that certain common characteristics link caregivers. A trait common to all the occupational categories related to caregivers is that they are considered "unskilled staff."^{xliv} Whatever the job category may be, the data reveal that women occupy the large majority of jobs related to care and education of children and personal support. According to the 2011 National Household Survey, 90% of the 94,475 persons occupying jobs in "home support workers, housekeepers and related occupations" are women, while 97% of the 60,710 "babysitters, nannies and parents' helpers" are women.

ESTIMATES OF THE NUMBER OF CAREGIVERS IN CANADA (2011)

| | CANADA | QUEBEC | ONTARIO | ALBERTA | BRITISH COLUMBIA |
|---|--------|--------|---------|---------|------------------|
| VISITING HOMEMAKERS, HOUSEKEEPERS AND RELATED OCCUPATIONS (CNP-S 2006) (G811)* | | | | | |
| MEN | 9625 | 2345 | 2720 | 960 | 615 |
| WOMEN | 84850 | 14 785 | 32315 | 6575 | 11590 |
| BABYSITTERS, NANNIES AND PARENTS HELPERS (CNP-5,2006) (G814) | | | | | |
| MEN | 2540 | 320 | 970 | 415 | 630 |
| WOMEN | 58170 | 7595 | 25920 | 8505 | 9450 |

Source : Statistics Canada, Occupation - National Occupational Classification for Statistics (NOC-S) 2006 (495), Age Groups (5) and Sex (3) for the Employed Labour Force Aged 15 Years and Over, in Private Households of Canada, Provinces, Territories, Census Metropolitan Areas and Census Agglomerations, 2011 National Household Survey, Statistics Canada (Catalogue No. 99-012-X2011061). • This category includes parents of foster families, the number of families being estimated at 17,410 according to the 2011 Census. Statistics Canada, Table 6 Distribution (number and percentage) of private households with at least one foster child aged 14 and under by number of foster children and household type, Canada, 2011 (Online: <http://www12.statcan.gc.ca/census-recensement/2011/as-sa/98-312-x/98-312-x2011001-eng.cfm>).

Statistics combine caregivers into two groups of occupations within the 2006 National Classification of Occupations (NCO). These two groups of occupations are part of a larger grouping that includes all workers considered “Childcare and home support workers.” It is important to take into account that the statistical categorizations do not only include caregivers who work in someone else’s residence but also include other categories, such as foster families.

PORTRAIT OF CAREGIVERS IN QUEBEC (2011)

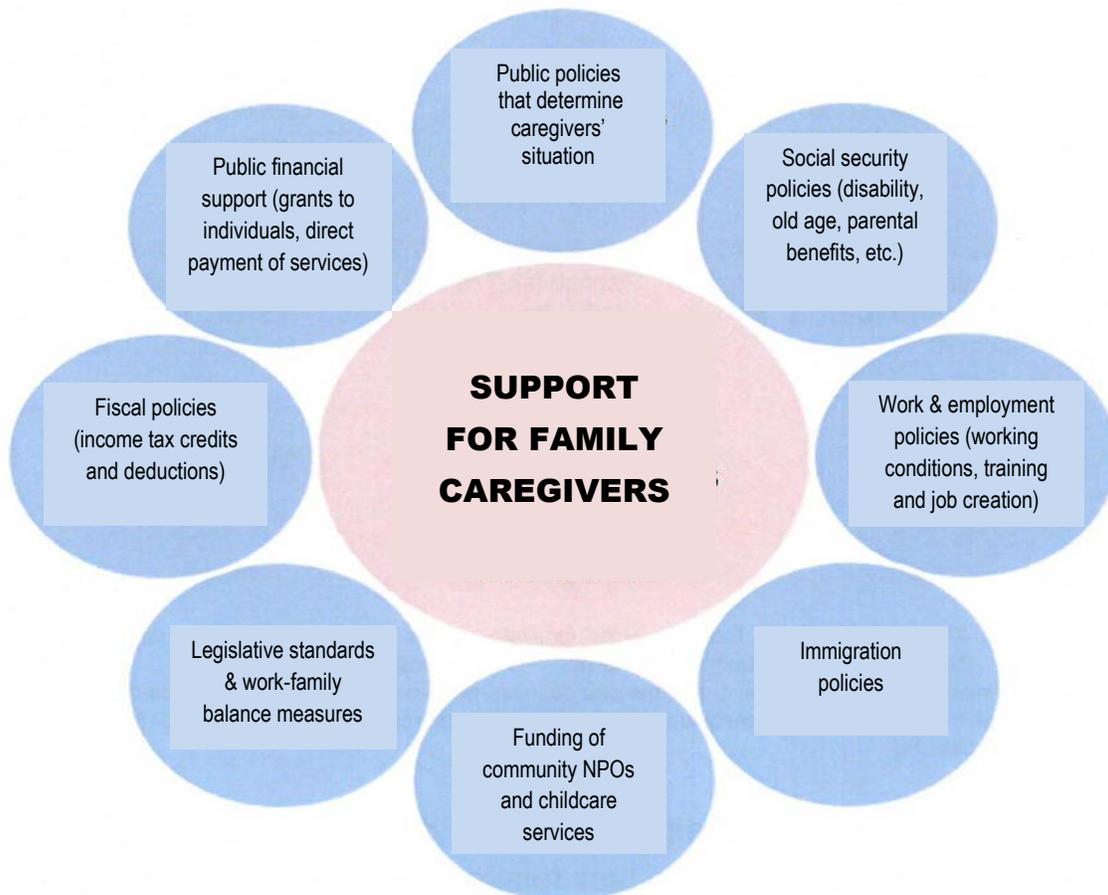
| | BABYSITTERS, NANNIES AND PARENTS' HELPERS (NOC 2006: 6474)^{xlv} | VISITING HOMEMAKERS, HOUSEKEEPERS AND RELATED OCCUPATIONS (NOC 2006: 6471)^{xlvi} | TOTAL EMPLOYMENT IN QUEBEC |
|--|---|--|---|
| NUMBER OF PERSONS | 7,915 (2011 National Household Survey) | 17,130 (2011 National Household Survey) | 3,951,050 |
| EMPLOYED PERSONS BY GENDER | Men: 4% Women: 96% | Men: 14% Women: 86% | Men: 51,9% Women: 48,1 % |
| EMPLOYMENT STATUS | Full-time: 76 % Part-time: 24 % | Full-time: 64 % Part-time: 36 % | Full-time:81,2% Part-time:18,8 % |
| AVERAGE ANNUAL INCOME (FULL-TIME, FULL-YEAR WORK) | Average income \$18,100/year (46.4% full-time, full-year work) | Average income \$27,200/year (44.7% full-time, full-year work) | Average income \$50,300/year (54.8 % full-time, full-year work) |
| DISTRIBUTION OF EMPLOYMENT BY IMMIGRANT STATUS | 37.8% | 22.2% | 13.7% |

Source: Service Canada, Job Futures Quebec 2014: 6471 Visiting Homemakers, Housekeepers and Related Occupations; 6474 Babysitters, Nannies and Parents' Helpers (Online:http://www.servicecanada.gc.ca/eng/qc/job_futures/statistics/6471.shtml). Some of the data comes from the 2011 National Household Survey and the Labour Force Survey. Data, analyses and perspectives in Job Futures were prepared by economists from Service Canada, Quebec region.

Notwithstanding a quite probable underestimate of the number of caregiver jobs, several observations emerge: the predominance of women, the relatively high rate of part-time jobs, low salaries and the high presence of immigrant workers.

3 THE PUBLIC POLICIES THAT SHAPE THE EXERCISE OF THE OCCUPATION: THE QUEBEC EXAMPLE

Caregiver work – whether it be support to adults or care and education of children or tasks related to household maintenance – is intimately linked to and is shaped by a range of Quebec and federal public policies that are interrelated. Policies related to home care concern not only the direct and indirect subsidies to persons who need these services and to organizations that provide them, but also concern access to paid leave related to disability or to accompany a sick parent, the fiscal measures for the person who needs services and for his or her family, and the regulation of working conditions for the persons who provide these services. Child care policies imply not only grants for daycare spaces, but also measures in place to facilitate work-family balance, paid parental leave, fiscal measures related to children, working conditions of persons who care for and educate children, etc. In the face of a shortage of labour to provide personal care services, household help or childcare in the home, policies aimed at the arrival of workers from other countries to occupy jobs with working conditions that are undesirable have been put in place.



3.1 HOME SUPPORT POLICY

In the wake of major changes in the organization of the health and social services system, the 2003 home support policy proposes “[translation] the gradual transition from a traditional pattern of care, in an institution, to support in the living environment.^{xlvii} Home support services, or frontline services, are considered “[translation] a new way of responding to needs, more efficient, better adapted to today’s reality.” The services aim at maintaining in their home a large population of users through a mix of services, measures or activities according to the person’s needs, including home support services (household help or personal support services). For several years, notably because of the aging population, one of the government’s objectives has been to reduce costs in home support services.^{xlviii}

Within this reorganization of the Quebec system, the Centre local de services communautaires (CLSC)[Local Community Service Centre]/Centre de santé et services sociaux (CSSS)[Health and Social Services Centre] is the entry point for services.^{xlix} All requests are directed there and the CLSC/CSSS evaluates needs and responds to them. Household help and personal assistance services are determined by the intervention plan and are offered without charge, or based on income, according to the needs to be met. In this way, the CLSC/CSSS, which remains the prime contractor for the provision of personal assistance and household help services, partially frees itself of household help services by delegating them to social economy enterprises that provide domestic help, to temporary help agencies, to workers hired by mutual agreement through the employment services cheques or not, or by community organizations. The Quebec home support policy therefore rests on the following home support services providers:

- CLCS/CSSS home care workers who provide services to persons with complex needs (unstable medical condition, palliative care, etc.);
- Social economy enterprises that offer household help services (household maintenance and meal preparation – and today increasingly, personal assistance;
- Workers hired by mutual agreement (with or without the employment services cheque) that offer services to persons whose health is stable and who can manage their needs, alone or with the assistance of family members;
- Community organizations and volunteer groups who may offer various services such as meal delivery (meals on wheels), accompaniment, transportation, etc.

The proposal to create a network of social economy enterprises that provide domestic help (EESAD) was launched in 1996, then came about with the creation in 1997 by the Government of Quebec of the Financial Assistance Program for Domestic Services (PEFSAD) that aims to support the EESAD through a subsidy of services required for eligible persons.¹ These businesses are either cooperatives or not-for-profit organizations.

However, PEFSAD only funds household help services (light and heavy duty household maintenance, clothing care, meal preparation, errands) and the EESAD find themselves under-financed, which impacts on the wages and working conditions of those who work there.^{li} Even though the understanding at the beginning with the EESAD networks was to limit their services to household support, notably so as not to substitute their services to those offered by the family and social assistants of the CJCS/CSSS,^{lii} in actual fact a government research demonstrates that in 2009, 32% of EESAD offered personal support services (or “assistance for daily living”) linked to clothing, personal hygiene, etc., and 46% offered accompaniment-respite services in the absence of relatives who usually provide such personal assistance.^{liii} Services are offered following an assessment of needs by a CLSC/CSSS that prepares an intervention plan.^{liv}

In 2011, there were 101 EESADs accredited within this program.^{lv} In 2009, these businesses generated 6,800 jobs, of which slightly more than half were full-time.^{lvi} 93% of these jobs are filled by women and the majority age group is 46-55. The work of people employed in the social economy is characterized by a weak recognition of qualifications and a remuneration that often hovers around the minimum wage.^{lvii} In 2009, the average hourly wage for full-time employees was \$10.60 while that of part-time workers was \$10.44.^{lviii} These businesses offer employee benefits that are slightly above minimum labour standards and 93% of them have a written policy on working conditions for their employees. It is important to highlight the existence of a relatively important union presence among EESAD workers, although lower than that of the homecare workers in the CLSC/CSSS.

Inspired by other international experiments,^{lix} the employment services cheque was introduced in 1998 in order to reduce the burden of users in the management of payment for caregivers hired by mutual agreement, to counter the use of non-declared work in this sub-sector and to improve wages and working conditions of these caregivers, notably by increasing the hourly wage above the minimum wage^{lx} (since at the time part of these workers were excluded from the *Act respecting Labour Standards*). In 2012, 10,036 workers (94% are women) were registered with the employment services cheque program, but this number does not indicate if they were actually working: the numbers concerning the labour force are therefore imprecise.^{lxi}

The CLSC/CSSS determine the number of hours of services required according to the intervention plan, but the payment of the salary and the deductions at source are managed by the Centre de traitement du cheque emploi-service [Employment services cheque processing centre], managed by the Service de paie Desjardins [Desjardins payroll service], a private firm. Persons eligible for this Quebec government program are those with a handicap, sick or with diminishing autonomy “whose condition requires long term home support services.”^{lxii} The person requiring services may select the worker who will provide these services or the CLSC/CSSS can designate a worker.^{lxiii} Home support services offered are varied: they can include personal assistance, such as help bathing, eating and dressing. They can also include household maintenance, such as household tasks, meal preparation, laundry and errands.^{lxiv}

Following is an example of an intervention plan determined by the CLSC/CSSS in the case of a caregiver hired through the employment services cheque. As can be seen, the tasks are allocated by the minute, which does not necessarily represent the actual time required to accomplish them.

The total budget allocated [for the services] is 50 hours per week distributed over 7 days.

This budget is divided into 25 hours per week for activities of daily life:

- *Personal hygiene tasks (bed, wash basin) (excluding transfer help): 20 minutes twice a day for partial toiletry and partial help and 15 minutes twice a week for washing hair.*
- *Dressing (dressing and undressing): partial help 10 minutes twice a day.*
- *Elimination (bowel and bladder function): urinary and fecal incontinence care 10 minutes, twice a day.*
- *Using the toilet including total transfer help: 15 minutes 5 times a day.*
- *Transfers (excluding transfers to the toilet): total help 10 minutes seven times per day.*

Eleven hours per week for activities of domestic life:

- *Meal preparation; 15 minutes for breakfast, 30 minutes for lunch and 30 minutes for dinner.*
- *Maintenance of personal effects; laundry 120 minutes p/ week and bedding 15 minutes per week.*
- *Supplies (groceries) (including storage): 90 minutes per week.*
- *And finally, 14 hours per week for sitting, without any other precision on what this covers.^{lxv}*

It is not possible to know how many people work as caregivers through temporary help agencies. While some of these workers are recommended by the CLSC/CSSS who use their services, others are not. As for workers hired by mutual consent outside the employment services cheque program, it is also difficult to know how many are in this almost invisible labour force.

With an ageing population, there is every reason to believe that the demand for labour to provide home services will only increase. In fact, the previous Quebec government had planned a specific social insurance program to enable eligible persons to be entitled to an income-based allowance for home services. However, the bill^{lxvi} creating the “Autonomy Insurance” program died on the order paper with the 2014 change in government. At the same time, it is acknowledged that an improvement in working conditions, notably in wages, is essential to ensure the sustainability and the quality of these services. And this problem is not specific to Quebec or to Canada. According to the Organization for Economic Cooperation and Development (OECD), which brings together all industrialized countries:

In the long run, improving job quality will be important. High turnover, low quality and low pay are unsustainable strategies, which can lead to not enough workers willing to provide care.^{lxvii}

3.2 FAMILY POLICY

In 1997, the Quebec government launched a new family policy,^{lxviii} which had three main objectives: the establishment of daycare services universally accessible due to a parental contribution reduced to a maximum of \$5 a day, more generous fiscal measures for families with children under 18 and a parental insurance program upon the arrival home of a newborn or of an adopted child that was more generous than the existing program under the federal employment insurance plan. This policy represented a significant change in orientation through which the State was committing to invest more in families through its policies and resources and to alleviate and redistribute the burden associated with children's wellbeing, which rests with families and particularly with women.^{lxix}

Early childhood daycare services in Quebec are distributed among early childhood centres, subsidized daycare centres, and family child care services recognized by a coordinating office, that offer reduced-contribution spaces, and non-subsidized daycare centres that do not offer such places.^{lxx} In addition, there are arrangements entered into by mutual agreement where a caregiver takes care of children in the children's home. In the case of subsidized services, the maximum parental contribution today is \$7.30 (at October 1st, 2014)^{lxxi} and the universal program with a fixed contribution will disappear with the introduction of legislative amendments aimed at increasing parental contribution based on family income.^{lxxii}

The end of the universal program may encourage more parents to make use of mutual agreement arrangements, including within the framework of the LCP or of the program replacing it, especially if they require daycare for more than one pre-school child. Also, the shortage of subsidized places favours a return to non-subsidized daycare centres that on average charge \$35 per day per child.^{lxxiii} It should be noted that, while in 2003 non-subsidized daycare centres offered slightly less than 1% of places (1620 places), in 2014 they offered 17% (46,641) of available places.^{lxxiv} The pay gap between educators, notably between those working for early childhood centres and persons working in family day care centres, is well documented.^{lxxv} Although we do not have data on the remuneration of workers who care for children in a mutual agreement arrangement at the children's home, there is every reason to believe that the gap is just as large, if not larger.

3.3 TARGETED MIGRATORY POLICY

The Live-in Caregiver Program (LCP)^{lxxvi}, a federal program, enables workers from various countries to come to Canada to provide child care at home, home services to seniors or of accompaniment and care to persons with a handicap or suffering from illness. Care givers must, among other things, demonstrate that they have at least six months of training or at least one year of experience that qualifies them for this kind of work, as well as the required linguistic competence in French or English.

Housework and other domestic tasks can only represent a small portion of the total tasks. The employer must demonstrate that reasonable efforts have been made to find a Canadian, a permanent resident or a caregiver under LCP to take the position before being able to hire a worker from another country. The caregiver obtains a temporary employer-specific work permit, that is, she can only work for the employer indicated on the permit. This permit is valid for a maximum period of four years and three months. If she wishes to change her employer, her new employer will also have to demonstrate that he or she has tried to find someone locally, and the worker will have to obtain a new work permit. The caregiver is obliged to live in the employer's residence. She will be able to apply for permanent residence status after working full-time for 24 months or 3900 hours spread out over a minimum period of 22 months.

The employer and the worker must sign an employment contract specifying the terms of employment, which must conform to provincial legislation with respect to working conditions, among others. The contract must include the following elements: a description of the employee benefits that the employer must pay for (transportation from the country of the worker's residence to her place of work in Canada, medical insurance, insurance for accidents at work and occupational diseases, recruitment fees); a job description; the work schedule; the salary; the holidays; conditions for termination; and information concerning lodging.^{lxvii} In Quebec, the two parties must sign a somewhat more detailed contract, whose contents have been determined by the Ministry of Immigration, Diversity and Inclusion.^{lxviii} This contract specifies, among other things, the employer's obligation to provide a separate bedroom with a safety lock to the caregiver. Within the framework of its consultations with these workers, the AAFQ observed difficulties related to the application of these contractual clauses, given the absence of follow up and inspection by governmental authorities.

LIVE-IN CAREGIVERS PARTICIPATING IN THE LCP

| | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | % OF FOREIGN WORKERS (AVERAGE FOR 2007-2011) | % OF FOREIGN WORKERS (FOR 2012 ONLY) |
|---|-------|-------|-------|-------|-------|--------------|--|--------------------------------------|
| NUMBER OF CAREGIVERS ENTERING THROUGH LCP (QUEBEC) | 670 | 615 | 525 | 386 | 312 | 264 | 1.8% | 0.7% |
| NUMBER OF CAREGIVERS ENTERING THROUGH LCP (CANADA) | 12955 | 11867 | 8756 | 7545 | 5884 | 6242 | 5.3% | 2.95% |
| WORKFORCE OF CAREGIVERS PARTICIPATING IN LCP (QUEBEC) | 2819 | 2697 | 2511 | 2187 | 1539 | 1066 | 7,6% | 2.4% |
| WORKFORCE OF CAREGIVERS PARTICIPATING IN LCP (CANADA) | 33717 | 38463 | 39551 | 33235 | 26521 | 19830 | 13% | 5,9% |
| NUMBER OF CAREGIVERS WHO ARE PERMANENT RESIDENTS (QUEBEC) | 3433 | 1261 | 1392 | 1082 | | 645 lxxix | - | - |

Sources: MIDI, « Portraits statistiques : L'immigration temporaire au Québec 2007-2012, Gouvernement du Québec », January 2014, pp. 15 and 18 (Online: http://www.midi.gouv.qc.ca/publications/fr/recherches-statistiques/Portraits_Immigration_Temporaire_2007_2012.pdf (no longer available)); CIC, « Faits et chiffres 2012- Aperçu de l'immigration : Résidents permanents et temporaires. Résidents temporaires. Canada- Entrées totales des travailleurs étrangers selon le sous-statut annuel » and CIC, « Faits et chiffres 2012 – Aperçu de l'immigration : Résidents permanents et temporaires. Résidents temporaires. Canada - Effectif au 1^{er} décembre des travailleurs étrangers selon le sous-statut annuel » (Online: <http://www.cic.gc.ca/francais/ressources/statistiques/faits20121> (no longer available)); MIDI, « Tableaux sur l'immigration permanente au Québec, 2008-2012 », avril 2013, p. 11 (Online: <http://www.midi.gouv.qc.ca/publications/fr/recherches-statistiques/Immigration-Quebec-2008-2012.pdf> (no longer available)).

The LCP was abolished on December 1st, 2014, and workers from other countries can no longer use it, although those who are in Canada already or have filed an application to participate before that date continue to be governed by the program. The program was replaced by a sub-program of the Temporary Foreign Worker Program (TFWP)^{lxxx} focused on homecare service providers divided into two groups: (1) providers of care to children under 18, considered low skilled and corresponding to NOC 6474 (Babysitters, Nannies and Parents' Helpers); and (2) providers of care to persons with high medical needs, for persons aged 65 or more or persons suffering from a chronic or terminal illness or with a handicap, considered skilled or low skilled, and corresponding to various NOC codes related to among others psychiatric nurses, auxiliary nurses, nursing aides and housekeepers (NOC 3152, 3233, 3413, 6471).

As for the LCP, the employer must demonstrate that reasonable efforts have been made to find an employee in Canada. The new program specifies that the employer must offer the prevailing wage in the province for this type of job, otherwise the application to bring in a caregiver will be refused. The work permit will continue to be employer-specific and the caregiver will have to apply for – and pay for – a new permit if she changes her employer. The new program provides explicitly that two employers can get together to bring over a caregiver. Unlike with the LCP, the worker is not required to reside with the employer. They may however agree that the caregiver will reside with the employer. In that case, the employer cannot ask for payment of room and board. If the “low-wage” caregiver does not reside with the employer, the employer must ensure that the caregiver has access to adequate and affordable housing.

Employers of “low-wage” caregivers must pay for transportation and will not be able to claim them back from the worker. However, they are not obliged to pay transportation costs for “high wage” caregivers. The new program distinguishes between the “low-wage” caregiver and the “high-wage” one: however, details as to what constitutes a “high-wage” are not available as of the time of writing. This distinction seems important within the framework of the new program, given that in addition to transportation and lodging, the employer is only required to pay for health insurance and to register the caregiver with the workers’ compensation program for occupational injury if she is “low-wage”. With the new program, requirements are also greater with respect to linguistic knowledge, particularly in the case of providers of care to persons with medical needs and requiring greater care. These service providers will have to demonstrate a higher level of postsecondary education according to the tasks to be performed.

Finally, while the LCP allowed all eligible caregivers to apply for permanent residence, the new program requires them to follow the same procedures as other TFWP workers to seek permanent residence. The new program also sets a quota for applications to be accepted in Canada each year of 5,500 homecare providers, 2,750 for each of the two streams leading to permanent residence (“Caring for children” and “Caring for People with High Medical Needs”). In provinces that have a provincial nominee program,^{lxxxii} including Alberta, British Columbia and Ontario, these workers will have to meet the criteria established by each government. Among the provinces and territories reviewed, only Quebec does not have such a program that provides an entry route to permanent residence for TFWP participants: it remains to be seen if caregivers who come to Quebec will eventually have the option of settling permanently within the framework of the new program.^{lxxxiii} These recent changes represent a set-back for live-in caregivers: access to permanent residence within the framework of the LCP (and the program that preceded it), without the establishment of quotas, was won after a long struggle almost 40 years ago.

3.4 THE POLICY OF EQUAL STATUS BETWEEN WOMEN AND MEN

The *Plan d'action gouvernementale pour l'égalité entre les femmes et les hommes 2011-15*^{lxxxiii} [Action Plan for Equality between Women and Men 2011-15] includes a significant number of objectives that affect caregivers, either with respect to their working conditions and their integration into the workforce, or with respect to the implementation of policies aimed at improving the situation of women who require the support of caregivers to meet their family obligations (work-family balance and support in their role as caregiver).

The Plan calls for better knowledge, acknowledgement and taking into consideration the issue of the women workers with respect to integration into the workforce, notably in the case of immigrant women newly arrived in Quebec (Actions 27 and 28). Strengthening the application of the *Pay Equity Act* remains a priority (Actions 39, 40 and 42) and constitutes a particularly important objective for caregivers, a very highly female dominant occupation. Although family child care providers are not included in our definition of caregiver, since their work takes place in their own residence, the fact remains that the objective of improving their working conditions (Action 43) demonstrates a concern for ensuring that one of the categories of persons who care for children may benefit from better conditions. Live-in caregivers participating in the LCP are expressly mentioned in the plan, which provides for strengthening their protection, notably through education on their rights and the support for accompaniment services to seek redress related to the failure to respect their rights in the workplace (Action 48).

The Plan also highlights the need to implement measures to better prevent occupational injuries for these workers, and particularly in sectors with a high proportion of female labour, among other things through a gender-based analysis in the implementation of measures in various sectors (Action 73). This action is included in a related action plan on gender-based analysis, which also includes this analysis in the area of social economy enterprises for home help where the vast majority of persons who work there, as well as those who benefit from their services, are women (Actions 1 and 2).^{lxxxiv}

The *Plan d'action gouvernementale pour l'égalité entre les femmes et les hommes 2011-15* [Action Plan for Equality between Women and Men 2011-15] attaches particular importance to family member caregivers and to the need to introduce measures to support them, notably by adapting health services and social services – in which a significant number of caregivers work – in order to better respond to their needs (Actions 49, 50 and 51). There are plans to increase home support services, particularly for older women, as well as to develop a policy to support older people so that they may remain in their homes as long as possible (Actions 70 and 71), which – once again – necessarily implies an important contribution from caregivers.

4. VOICES ON THE GROUND: CAREGIVERS' TESTIMONIALS

Three focus groups were organized in the fall of 2013 with the collaboration of the Association des aides familiales du Quebec and of the Service Employees International Union (SQEES-298 FTQ), who solicited the participation of workers according to criteria predetermined by the study's steering committee. The committee also developed a set of questions to guide the interviews.^{lxxxv} In total, 25 workers took part in group discussions.

4.1 DISCUSSIONS WITH UNIONIZED WORKERS (SQEES-298) FROM SOCIAL ECONOMY ENTERPRISES FOR HOME HELP

The first discussion, held in Quebec, included unionized female workers (6) and male workers (2) who are permanent residents or Canadian citizens and who are employed as home care providers in social economy enterprises for home help. Half of the participants were from Montreal or Quebec, and none were immigrants. They were between 45 and 60 years old and had from 9 to 17 years of service with the same employer; none had more than one employer. The employers were all social economy enterprises for home help (EESAD) constituted either as cooperatives or not-for-profit organizations. All participants perform tasks of personal assistance, called "activities of daily life" (AVQ) (get clients out of bed, bathe them, provide hygiene care) and household maintenance tasks, called "activities of domestic life" (AVD) (cleaning, meal preparation, etc.) and had received training to perform their tasks. The number of hours of service for the clients using the EESAD is determined by the CLSC/CSSS. Participants spoke of their working conditions, notably their work schedule, their salary and the conditions around performance of their tasks.

Work schedules vary from one employer to another and all participants indicated that they must be available week days and weekends, but not all have a guarantee of a set number of hours of work per week. For some, the number of hours offered are calculated on a monthly basis (for example, 160 hours/month) and it is only after this number of hours that overtime is paid at the overtime rate, even if the number of hours in a week is more than 40; hours beyond the normal work week are banked to compensate for weeks with fewer than 40 hours during the month. Work schedules can also be split.

I can start at 8:30 a.m. and finish at 9:30 p.m. because I have to put someone to bed. For sure, it is not continuous. Yesterday, I had a client in the morning and one in the evening.

On the one hand, employers demand a lot of flexibility, notably because of a high turnover rate in the sector, which leads to periods of labour shortages, and, on the other hand, there is uncertainty with respect to the number of hours that will be worked in a given week, among other things, because of cancellations by clients. Although practices vary, several of the participants expressed their frustration at losing hours and not getting paid.

It's the fact that you know you have the "gift of self", there's a pressure from the employer toward these employees to add on, because there is a flagrant lack of staff. There is a terrible lack of staff, so employees are pressured, in spite of the number of hours they have taken on, to add some more. They are constantly adding on hours, even if we are available 30, 35, 40 hours, due to the lack of staff, they get called and their feelings are abused. I find that an enormous difficulty. Because the person has to be able to say no, which is not always the case, and she feels trapped in the system.

Where I work, there are no guaranteed hours. I get my schedule on Monday [...]. If I have my schedule, I am available 23 hours per week, I have my schedule, but if for X reason I have a client who cancelled that week, I lose 3 hours, I lose 3 hours if they have not been able to give me a replacement because they had no one to give me for that period of my schedule, well I lose my 3 hours of service.

I find that pretty frustrating. Because we don't lose three hours, we lose 2 hours because the employer still pays us for 1 hour. But I still find that frustrating because the assignment agents don't bother more than that. We are a service enterprise. Sometimes it doesn't always suit the assignment agents to look a little more to see if a person has a need.

The lack of certainty around work schedules is also related to the clients' wish to change caretaker.

There is a small problem with holidays that will have to be settled. They offer clients the possibility of having a replacement or not having a replacement during our holidays. But when the worker comes back, they ask the client: Do you want to keep the worker who is present? Then the client has a choice [...] it creates insecurity [...]. I am scared of being pushed out.

Salaries are not very high, the starting salary being the minimum wage or a bit more.

My hourly salary after 13 years of service is \$11.52. When I started in 2000, I was getting \$7.30/hour.

In spite of salary increases (for example, after 1500 hours worked in a year) and the steps included in collective agreements, the highest salary does not reach \$16 per hour. The salary is a bit higher for tasks related to personal support. In some cases, bonuses (for example, \$1.50/hour) are provided for hours worked at night or on weekends. Several participants lamented the lack of funding of home support programs, which has a direct impact on their rate of remuneration.

Employers' practices also vary with respect to payment of mileage and the time required to travel between clients.

The starting point is the credit union. Within a radius of 5 kilometres around the credit union, you don't get paid. Beyond 5 kilometres, you do get paid. You are paid for time and for mileage. [...] For example: I work with a client from 8 a.m. to 10 a.m., and then at 10 a.m. I leave to go to another client from 10:15 a.m. to 12:15 p.m., well my time and mileage are paid in full there [...]

The starting point is the office and I live right next to it. But things are limited to pay the least possible travel time, so that is why they have divided up the clientele according to the sector you are in, where the starting point is, just so they have to spend as little as possible on travel time. [...] the time between two clients is always paid [...] but as for mileage, it has to be over your [...] 10 km.

Time and mileage are paid. If there are more than two hours between clients, you are not paid. But between two clients, you are always paid.

Several participants mentioned the lack of equipment to do their work well and the fact that they sometimes pay out of their own pocket to buy adequate work tools.

When you get there [...] there is no bucket, no wash cloth and a mop from the Dollar Store and you have to clean with that, at times, there is no vacuum cleaner, you have a small broom with worn bristles. You know, a minimum of tools.

The nature of the work is such that workers experience difficult situations on the emotional level that can impact their psychological health.

At that time, they were giving me 90-year old people in terminal phase. I had them for a month or two and then poof! I lost nine over a winter, the last one was 48 and had six children. So that when I left there, I said enough. I wanted to quit for good, but she [the employer] said no, we will keep you, we will keep you to do house work and when you are ready to return to personal service, we will send you back there, but I never wanted to go back.

The client likes you, another day she likes you less, you lose her. That is something that I find a little difficult, because it is like, I always have the feeling of being rejected, almost every time a client says "I don't want him anymore".

In spite of the problems mentioned, participants emphasized that they like their work and get personal satisfaction from it. At the same time, they believe that it is undervalued and poorly known by the public.

I am an essential nucleus of society. Especially since families are no longer together. So persons like me going into homes are absolutely necessary. How others see my work, they don't know much yet. They are beginning to understand what I do. They still see me like a cleaning woman, but things are slowly getting better.

People, the humanity we share, I could not see my work otherwise. It is impossible for me to say that I go into a house and that it is limited to maintenance. It is impossible because we are the ears, we see what the CLSC cannot see because they are not there every day. So that sometimes when a senior is abusing medication [...] we are listening to all that.

The vision of others, what they often tell me is "I don't know how you do that job, I wouldn't be able to do it." It is the comment that is repeated time and again. [...] The message I get is that it is as if we are angels for this clientele, simply because we take care of them. [...] Certainly I consider it fulfilling to do that, precisely because we help these people who are frail, who have a vital need, who are all alone and left to themselves. [...] I think it makes us more aware, it does for me, we are perhaps more aware of happiness, of our little personal satisfactions, because we see people in relation to ourselves. We see people who experience problems regularly every day. So, automatically, you cannot remain insensitive to that and it creates an awareness with respect to your own life.

We ask ourselves, "I wouldn't be able to change someone's diaper. I don't know how you do it." I tell them, I am doing something good for that person, she has to be changed. It is my vision of things that is different.

[The person who does this work], because he gives support, he is happy, he is in heaven. And with these people, sometimes we are the only person they see every fifteen days, when we go and clean their house. And, well, the perception of others, we are cleaning women. And I say to them, "I am not a cleaner, I do household maintenance."

This group discussion highlighted the commitment of the workers to the persons who need their support, as well as their lack of satisfaction with respect to working conditions, notably with their salaries and work schedules. For the participants, retaining staff constitutes a major problem that leads to overwork and lack of certainty in distribution of hours. All are of the opinion that improving working conditions, especially salaries, would help to reduce staff turnover.

4.2 DISCUSSION WITH CAREGIVERS FROM THE ASSOCIATION DES AIDES FAMILIALES DU QUÉBEC

The second focus group, held in Montreal, included workers without permanent resident status who participate in the LCP and reside in their employer's residence. Eleven (11) women, of which 10 were from the Philippines, participated in the meeting. They were between 28 and 52 years of age. Several had worked as caregivers in other countries (for example, in the Middle East and Asia). All had followed specific training to become caregivers or had acquired work experience enabling them to participate in the LCP and several had acquired specific qualifications recognized in their country of origin (for example, midwife, nurse, primary school teacher, physiotherapist, etc.). The majority were taking care of children, but three were providing assistance to dependent adults.

A third focus group, also held in Montreal, included six (6) workers, of which five were from the Philippines, who had participated in the LCP and who are now permanent residents or in the process of obtaining this status and who had work permits allowing them to work for any employer ("open permits"). These workers did not provide information on their age. All were taking care of children, except for one who was providing support services to a senior. They had also undergone training or acquired work experience enabling them to access the program.

The comments obtained during these two meetings are combined given that the two groups spoke of their experience with the LCP. The discussions focused on working conditions, notably on work schedules and salaries, and on the specific conditions of the LCP.

Generally, working hours are long and the requirements for availability of employers are significant. This is particularly true for caregivers who participate in the LCP. Since they live in their employer's residence, most feel that they must be ready to work according to the needs of the employer (even beyond the tasks described in the contract), no matter the day or the hour.

I'm taking [care] of [an] 84 year old lady. She has [a] brain tumor. [...]. They [my employers] want me to come at night, it's not paid. It should be, it should start in the morning, but they want me to come at night because nobody is taking care of her. So I'm taking care of her at night. [A]t night she's always calling me. My room is upstairs and her room is downstairs. So at night, every minute she calls me, "Come here, come here". I have a baby monitor, so up and down, up and down at night. During the day, I always walk her inside the house. And then preparing her food. And then cleaning the house too, but it's not so big because we're just 2 at the house. I give her baths. In the middle of the day, 11 a.m. or 1 p.m., we go out for a walk. And at 8 p.m. I put her in bed. And even in bed, she always calls me. So it should be 24 hours, but the brother just pays me \$100 a day. So I ask him, but I'm working too at night, not just during the day. (LCP PARTICIPANT)

I signed a contract with strictly 8 hours a day. But, I exceeded. For 2 years I exceeded that, going to sleep almost [at] 11 p.m., because she needs help. She has nobody, you know, [she has] multiple sclerosis [...] so she needs help. [...] On top of that, in the contract, I was just to take care of her, do some home management, but I also did gardening and taking care of a dog. I also took care of everything, including the husband. But that was nothing to me. [...] I don't mind working [for] people who treat me as a person also. (NO LONGER A LCP PARTICIPANT)

I work from 6:30 a.m. to 10 p.m. And for me it's a little stressful because they give me a cellphone. Do this, do that, go to there, go here. Go to the laundry, iron it, that's the thing I don't like too much. Maybe around Saturday or Sunday I like to rest and they text me, please, I want you to work 3 hours, from 3 to 6. It's ok, it's ok. [...] That's the one thing I don't like too much. (LCP PARTICIPANT)

The remuneration that caregivers receive is very modest and the workers who participate in the LCP are paid weekly, without taking into account the hours actually worked. Those who have an open permit and no longer reside with the employer are able to negotiate better salaries and to change employer if the current one will not accommodate them.

I receive \$400 a week for unlimited hours. And then my compensation, is like, sometimes maybe they [...] see that I'm not happy, so they give me a free ticket for a concert, something like that. [...] (LCP PARTICIPANT)

My salary for a week is \$341.26. If I am on call for Saturday or overtime, they give me \$50, but it was being deducted from my plane ticket to come here. So I was paying for my overtime. (LCP PARTICIPANT)

I receive \$341.49 per week, 40 hours. But sometimes they ask me to come Saturday or Sunday, but they didn't pay me an extra. Just say thank you. I work for 3 hours, 4 hours, but they didn't pay me. They say, "because I sponsor you, say thank you." (LCP PARTICIPANT)

My present employer, the older woman, the brother pays me \$400 per 4 days, 24 hours. [...] It seems like I belong to their family. And the older woman is attached to me already, so it seems they are my family here in Canada. So it's okay for me if they give me \$400 per 24 hours. The other family, with the children, she pays \$299 for 23 hours. It's not declared, but I want to declare it, it's always "Okay, okay, next week". But until now, it's not declared. (LCP PARTICIPANT)

Since I ended my 2 years in the Live-In Caregiver Program, and we had the talk, I was raised to \$15 an hour by my boss, so I'm happy with that. And then I wanted to take another job actually, because I finished a course as a nursing aid, and then I am planning on applying to hospitals to make \$18 an hour, and then they wanted to catch up. "If you're gonna earn \$18, we're gonna pay you that amount, stay with us." So I think I'm going to stay, because I got used to the family, the kids know me, I'm attached to them[...]. (NO LONGER A LCP PARTICIPANT)

Employers of caregivers who are LCP participants must provide them with a private bedroom with a lock. However, conditions vary according to the employer.

The whole basement is mine, but I have a little burden, because the machines, the Hydro, everything is there. The humidifier, it's always running. The noise is too hard. Someday I need to do something: some cotton in my ears to try to sleep. Everything is included, television, internet, and the good thing is that I can receive friends if I want, or they can stay with me all weekend. I like that. (LCP PARTICIPANT)

I have my own room. [T]he whole basement is mine. I have my own kitchen, my own bathroom, a big room, but I am not allowed to lock it, even if you go out for your day off, you're not allowed to lock it. And because you are staying with them, you cannot work for 8 hours only. You stay in a nice house, you should do work for long hours, because you stay in a nice place. Yeah, that's what the employer says... (LCP PARTICIPANT)

I also live in a luxurious mansion in the basement. Everything is free and the most thing I enjoy, is that when I come out from the garage I see all the luxurious cars of my boss. Ferrari, Porsche, and I like it. (LCP PARTICIPANT)

[T]hey don't want me to use computers, [my employers] don't want me to use the phone, I said "How can I talk to my children?". I want to know what happened to my children. Even at night, I finish already, 11 p.m., I want to open my computer, but she said "You don't need to use your computer now, because it's night. Tomorrow you have work." I said, I can use my computer and work tomorrow. But she took my computer. I don't have a way to talk to my children. (NO LONGER A LCP PARTICIPANT)

Issues of lack of respect and the lack of value of the work done by caregivers were often mentioned, particularly by LCP participants. Generally, when they obtained their open permit, they felt more appreciated and regained their autonomy by being able to negotiate with their employer and to leave the job if it did not suit them.

We come from a poor country. That's how Philippines is pictured. We come from a poor country, but not really poor. It's just mismanagement. We come from a poor country, and [my employer] always tells me: "You come from a very poor country". And I'm always hurt, you know, Philippines is not really a poor country, we are very rich in natural resources, but are being exploited. (NO LONGER A LCP PARTICIPANT)

I just want to let them know, the employers, how can they do business, how can they work {...} if [there is] no nanny? They need the nanny, they need the caregiver. Who will work for their home if they don't have a caregiver or a nanny or a cleaning lady? So I want to let them know to respect us because to come here in Canada is not easy. [...] We take exams, a lot of exams, it's hard for us to come here. Just a [little] respect... (LCP PARTICIPANT)

I want to change the way they look at us as live-in caregivers or homecare providers. Because they have that notion in mind that you are just merely a cleaning lady or somebody who is working with them and they look at us as not a good thing [...]. Like the little one that I'm taking care of, she told me one time, and it's a big slap on my face, she said "I am the boss and you are just a cleaning lady." Where is the integrity as an individual? I am not respected as a human [...]. So they don't consider the affection, the love and care that you have showed to them that they can never repay you. [...] Like what I said to my [previous] employer previously, [...] it is not the money that counts. [...] (LCP PARTICIPANT)

I came here to Canada as a live-in caregiver. For 24 months I'm a live-in. After that, I live out [...]. But I can say with my employer, they are very nice to me and they consider me as a family. Until now, I'm [still] working with them. [...] For a live-out, it's better because you have your rights, you have more freedom and it's more open. It's also good [as] a live-in, but if your work is not finished, you have to do something about it because you are living with them. But if you're a live-out, you're finished at 7, even if there is still work, you can leave. ...]. [M]y relationship with my employer is closer [...] they're more nice to me and more friendly. And luckily, because maybe it's time, I want to tell them I want to leave them because I have my profession. I took a nursing aide course so I need to apply for the hospital or nursing home. They know that one day I will be leaving them. And luckily, just luckily, a month ago, my employer told me maybe if I can work with them only for a few days and a few hours. [...] I want to continue my relationship and working with them because they are nice to me. (NO LONGER A LCP PARTICIPANT)

For me it's the best thing when we received our open permit, it's like Waaaaaah! We receive our freedom. {As a} live-in caregiver, you get your contract and Ooooooh when will I finish this contract...? [...] When we have the open permit it's good, because you can have a lot of employers, as you wish. You can choose what you want, and you can also choose the job you want to. The only thing, you need to speak French. But it's good, learning is good. (NO LONGER A LCP PARTICIPANT)

The vast majority of caregivers who participated in focus groups in Montreal want to continue to work either with children or with seniors, persons who are sick or are disabled. Some say they want to work in childcare in a private residence or in a daycare, for example, and others are completing or want to complete training to qualify as patient care attendants or nurses. Independent of their plans, almost all caregivers mentioned the obstacle of knowing French in the pursuit of their professional plans.

These caregivers are experiencing problems related to their low income, work schedules, the lack of respect they are shown and their freedom as LCP participants. According to them, the government must increase monitoring of compliance with the legislation by employers who have workers living in their home, especially if these workers are LCP participants. They highlight that there is little control on actual hours worked and deductions at source or of recruitment agency activities. Several LCP participants explained difficulties related to asserting their rights.

We are afraid to say no to the employers, because we're thinking of providing support [to our families in our country]. We spent a lot of money to come to Canada, so it makes sense to be afraid to [...] say no to our employers. (NO LONGER ON LCP)

[T]hey need to monitor all the employers, especially for the hours of the live-in caregivers. [...] Really they abused my time. Because of the documents, the open permit, we just wait and be patient. They have to check about that and support the caregivers. (NO LONGER ON LCP)

[The government needs] to check all these agencies, because the agencies are the only ones who are getting money and who suffers? The live-in caregiver. They're negotiating with the employer, and they sign, and this employer abuses the employee. There are a lot. (NO LONGER ON LCP)

Voices on the ground tell us that the work of a caregiver is under-valued, poorly paid and is performed under conditions that are often difficult. At the same time, workers tell us that they like working with children and persons who need support in the home and generally derive great satisfaction from their work irrespective of these problems. In the following section, we can observe that labour legislation structures this work poorly, often leaving the door open to abuse and failure to recognize the rights of caregivers.

5. OVERVIEW OF LEGISLATION GOVERNING THE RIGHTS OF CARETAKERS: A COMPARATIVE VIEW

In the provinces studied, that is, Quebec, Alberta, British Columbia and Ontario, we find that caregivers are probably the workers who have been the object of the most legislative exclusions and exceptions with respect to their rights in the workplace.

The categorization of caregivers according to the identity of the employer (private or third party), the nature of the tasks performed (childcare, household maintenance, personal support), the regular period of work for an employer (occasional or not), is used to determine the extent of their rights. If the caregiver is not included in one of these categories, she is an ordinary salaried worker as any other worker and enjoys the same rights. The statutes examined address minimum employment standards, health and safety at work, employment injury compensation and rights related to union organization and collective bargaining: they almost all include particular provisions aimed at governing the rights of certain categories of caregivers. The principles in Convention No. 189 (article 6) are a reaffirmation of the rights of any person who works to decent working conditions, and the obligation for States to ensure equality of treatment between caregivers and workers in other sectors. When caregivers live in, they must also enjoy decent living conditions and respect for their private life. We will see in the following pages that equality of treatment is far from being achieved. We will also see that even if caregivers often perform the same work, there also exists unequal treatment among caregivers.

5.1 MINIMUM EMPLOYMENT STANDARDS: THE RIGHT TO DECENT WORKING CONDITIONS

In Canada, the objective of minimum employment standard legislation is to establish a minimum threshold of protection, notably as concerns wages, hours of work and various leaves. However, the degree of protection of these statutes with respect to workers working in a private household depends on factors previously identified. It is within the framework of legislation on employment standards that we see the greatest variety of total and partial exclusions of these workers from legislative protection.

| STATUTES ON MINIMUM EMPLOYMENT STANDARDS | QUEBEC | ALBERTA | BRITISH COLUMBIA | ONTARIO |
|--|---|--|--|--|
| FULLY SUBJECT | Caregiver not working for a private party "Domestic" | Caregiver not working for a private party (except for caregiver) | Caregiver not working for a private party (except live-in support worker) Domestic worker | Caregiver not working for a private party Domestic worker |
| PARTIAL EXCLUSIONS / VARIATIONS IN TREATMENT | "Baby-sitter" | Domestic worker Caregiver | Live-in support worker Night attendant | Homemaker |
| COMPLETELY EXCLUDED | Occasional baby-sitter | Baby-sitter | Sitter | Baby-sitter |

5.1.1 DEFINITIONS CONTAINED IN THE LEGISLATION: SOURCES OF INCLUSION AND EXCLUSIONS

In **Quebec**, the *Act Respecting Labour Standards*^{lxxxvi} includes three definitions that apply to caregivers. The “domestic” employed by a private party performs household tasks and childcare or takes care of a person who is elderly, sick or disabled in the employer’s residence. She may live in or not and the legislation makes no distinction between those who live-in and those who live out. LCP participants are normally found in this category.

Next, we find the “sitter” whose exclusive task is to take care of a person – child or adult – although she can also perform “domestic duties that are directly related to the immediate needs of that person”. As soon as she performs tasks not related to the needs of the person cared for, the sitter becomes a “domestic”. The statute specifies that, for the worker to be considered a sitter, the employer must not be engaged in a profit-making enterprise: in opposition to the situation of the domestic, it is not specified that the employer must be an individual.

Since June 1, 2004, the statute applies to all “sitters”, with the exception of those who work on a casual basis (unless the employer is engaged in a profit-making enterprise, for example, a private temporary help agency) or within the framework of a relationship of family or community mutual support. According to the interpretation of the Commission des normes du travail (CNT) [Employment Standards Commission]^{lxxxvii}, “the use of the expression *casual* means that the involvement is irregular, occasional or that it takes into account the sporadic needs of the employer.” In a pamphlet intended for the public,^{lxxxviii} the CNT gives the example of parents who have their child cared for in order to go out, that is the babysitter. The CNT’s interpretation specifies that “mutual support within the family is based on relationships of mutual and natural support existing within a family and is not limited only to parents and children and the mutual support within the community [...] is seen as a reflection of the mutual support that may exist as much at the community level as at the level of a smaller group, for example, community groups or sharing between friends and neighbours.” In any case, as with any provision aimed at the total or partial exclusion from the legislation, regardless of the province, this exclusion must be interpreted in a restrictive manner in order to ensure that the greatest number of workers is protected.

In **Alberta**, there are two main categories of caregivers. First, the domestic worker works for the resident of a private residence and provides care to a child or an adult and household maintenance.^{lxxxix} The legislation provides specific provisions for live-in domestic workers. As for the caregiver, it is an employee who provides domestic help and personal assistance services under the provincial home support program.^{xc} If the employer is a private party, she will not be a caregiver, but rather a domestic worker. Although the statute does not specifically mention it, baby-sitters are not considered domestic workers and are excluded from minimum employment standards because of their occasional and limited work.^{xc}

The greatest number of caregiver categories is found in **British Columbia**. There are four categories, each of which has various specific exclusions. The first category is that of *domestic*, which includes workers who live in the employer's residence and perform services such as cooking, cleaning and care of children.^{xcii} This definition normally applies to LCP participants. In contrast to the *domestic*, the *live-in support worker* is not the employee of a private individual and does not reside on a continuous basis at the residence of the person who requires personal support and domestic help: she is employed by an agency or another employer within the framework of a government grant program.^{xciii}

She stays at the person's residence during 24-hour shifts. The *night attendant* is employed by a person who needs personal assistance overnight in a private residence. Her shifts are 12 hours or less.^{xciv} Finally, a *sitter* is a person employed by an individual in a private residence and whose tasks include care of a child or personal assistance to an adult and the household tasks related exclusively to the care of that person.^{xcv} Personal assistance can include a range of tasks, some of which require specific training (bathing, dressing, accompaniment, change of catheter, etc.).^{xcvi} The *sitter* is totally excluded from the legislation.

In **Ontario**, the *Employment Standards Act*^{xcvii} includes three types of caregivers. The first is that of the *domestic*, a person hired by an individual to provide housekeeping or personal support to a person who is a frail elderly, has a handicap or is disabled, or to take care of a child. She may live in or not. LCP participants are in this category. The second is the *homemaker*. Homemakers provide household help services in a private residence, but are employed by a person other than the head of the household (an agency or an NPO, for example). As soon as the worker provides personal assistance services, she is considered a *personal support worker* – who, like the *homemaker*, is a category of worker designated by the legislation that governs home support programs in Ontario – and the general provisions of the act apply.^{xcviii} Finally, there is the *baby-sitter*, a person who looks after a child occasionally and for a short time, who is totally excluded from the legislation.

5.1.2 THE RIGHT TO FAIR AND EQUITABLE PAY

Convention No. 189 (articles 11, 12(2)) and Recommendation 201 (article 14) provide that caregivers must receive minimum wage and that remuneration must be set without discrimination based on sex. While payment in kind (for example, room and board) is common practice with live-in caretakers, these international instruments provide that this type of payment must represent a limited percentage of the caregiver's remuneration and must be as favourable as that applied to other categories of workers. Moreover, no deduction from salary must be made for housing, unless the worker agrees. Uniforms, tools and protection equipment, as well as their maintenance, must not be subject to deductions from remuneration.

Quebec legislation protects the right to minimum wage,^{xcix} set at \$10.35/hour (2014).^c All caregivers covered by the legislation, regardless of their status or the identity of their employer, are entitled to this salary, at the very least. The employer cannot deduct any amounts from her salary – with the exception of those authorized by statute or by a collective agreement – without the written authorization of the worker indicating the nature and the amount of the deductions. The worker can cancel, in writing, this authorization to deduct from her pay at any time.^{ci} The employer cannot ask the caregiver to pay for training the employer asks her to take or for expenses related to travel undertaken at the employer's request.^{cii}

A benefit that has a monetary value (for example, a private telephone line) may not form part of the calculation of the salary paid at minimum wage.^{ciii} The legislation and the jurisprudence do not clearly exclude the possibility that part of the salary be paid in kind, as long as the worker receives the minimum salary. However, if the employer deducts the value of this benefit from the salary, the employer must have the written consent of the worker for each pay period. While the statute and its regulations provide for the possibility of maximum deductions for room and board, in Quebec, such deductions are not authorized in the case of a caregiver who lives or takes her meals in her employer's residence and room and board cannot constitute payment in kind, regardless of whether she earns more than minimum wage.^{civ} This legislative provision is especially important for workers who came to Quebec within the framework of the LCP, which imposes the obligation of residing in the employer's residence. The rules of the new In-home caregiver program forbid employers from demanding amounts from care providers for room – if they decide to live in the employer's residence – and board.^{cv}

With respect to expenses related to the performance of the work, if the worker must wear a particular piece of clothing (a uniform or an apron, for example) and she earns only minimum wage, the employer must provide it without charge; similarly, the employer cannot demand that the worker pay for the upkeep of this clothing.^{cvi} The worker may have to pay if the employer makes it compulsory to use specific material or equipment (cleaning products, personal protection equipment, for example) to perform the work: she will not have to pay for these items if she only earns minimum wage or if the fact of paying for these items would result in her earning less than the minimum wage.^{cvii} Once again, the employer will only be able to deduct these amounts with the written consent of the worker. The possibility that the worker may have to incur costs that should be paid by the employer (as long as she earns the minimum wage) constitutes a significant legislative shortcoming.

In **Alberta**, the minimum wage varies according to whether one is a *domestic worker* or *caregiver*, lives in or out and the length of shifts.^{cviii} The *domestic worker* who lives in the employer's residence – and is most often a LCP participant – must receive a minimum of \$1937 per month (2014), or a prorated amount, if, for example, she regularly works for only part of the day (mornings or overnight, for example).

Those who don't reside with the employer must receive at least \$10.20 an hour (2014), that is, the general minimum wage rate, for all hours worked. The *caregiver* who has a 24-hour shift must receive at least 12 hours of salary at the minimum wage rate. If she has a shift of less than 24 hours, she must be paid at least the minimum wage for every hour worked, with the exception of a maximum period of eight hours – the number of hours is determined by the employer – during which she is assumed to be sleeping. If she must work during this period (for example, having to get up to accompany a person to the bathroom), she must be remunerated for this time. If she must accompany the client to an appointment or on holidays, that time is considered time worked and she must be paid accordingly. There is every reason to believe that the situation would be the same for the *domestic worker* who does not reside with the employer given that she must receive an hourly rate, as opposed to the live-in worker who receives a monthly salary.

The employer may not make any deduction on the salary without the written consent of the worker. Deductions made for a uniform or its upkeep cannot reduce her salary below the minimum wage.^{cxix} The employer may not deduct amounts, even with the written authorization of the worker, to compensate or to redo work that was poorly done (for example, an item of clothing poorly mended by the worker) or for damages to the employer's property (for example, broken dishes). The only deduction from salary made by an employer that can reduce the salary below minimum wage is that for room and board. However, these deductions are limited to a maximum of \$3.35 per meal and \$4.41 (2014) per day for lodging.^{cx}

In **British Columbia**, the general minimum wage rate is set at \$10.25 an hour (2014). With the exception of the *live-in home support worker* whose minimum salary is \$102.50 per day or partial day (2014),^{cxii} caregivers subject to the legislation must receive the general minimum wage rate. The legislation provides that an employer cannot make deductions, directly or indirectly – that is, by asking the worker to pay the employer directly in person – from the salary for whatever reason. Moreover, the employer may not ask a worker to pay for costs directly related to the performance of the work.^{cxiii} When wearing a specific type of clothing or a uniform is compulsory, the employer must provide it without cost to the employee, regardless of the salary rate.^{cxiii} A benefit with a monetary value cannot be considered in calculating the salary, whether the worker is earning more than the minimum wage or not.^{cxiv} A maximum of \$325 per month can be requested for room and board in the case of *domestics*.^{cxv} As for *live-in home support workers*, these workers do not have to pay for room and board.^{cxvi} *Sitters* are excluded from the application of the legislation, the provisions related to salary and those related to payment in kind.^{cxvii}

In **Ontario**, the general rate for the minimum wage is set at \$11.00 an hour (2014) and the employer is obliged to make the hourly rate known in writing.^{cxviii} *Domestics* must receive at least the general rate of the minimum wage, while *homemakers*^{cxix} must receive the minimum wage for the actual number of hours worked or for twelve hours, whichever is less, on a 24-hour period. Time for travel and training required by the employer is considered time worked and must be remunerated at least at minimum wage (and not necessarily at the regular hourly rate).^{cxx}

An employer may not make deductions on the salary unless the worker consents in writing.^{cxxi} Authorized deductions and the amounts must be specified. In no case can the employer deduct amounts for work poorly performed or for theft or damage to property if persons other than the worker have access. Amounts may be deducted from the salary of the domestic worker, as long as she receives at least minimum wage after that deduction, for the room – but only if it is a private room – and meals, up to \$31.70 (2014) per week for the room and \$85.25 for room and board (or \$53.55 if the room is not private).^{cxxii}

RECRUITMENT AGENCY AND TRANSPORT COSTS

*Convention No. 189 (article 15) provides that recruitment costs may not be deducted from the caregiver's remuneration. In **Alberta, British Columbia and Ontario**, agencies are forbidden to request fees from a worker for an employment search.^{cxxiii} No statute forbids it in **Quebec**. The contract form provided by Employment and Social Development Canada for live-in caregivers under LCP, as well as that of the Ministry of Immigration, Diversity and Inclusion in Quebec, forbids employers from asking for the amounts spent on recruitment or related to hiring, or for transport from the place of residence of the worker to the new workplace in Canada; if the worker spent such amounts, the contract provides that the employer must reimburse them. The rules of the In-home caregiver program, which replaces the LCP, are similar. These provisions, however, have no impact on the common practice of recruiters in the country of origin of demanding significant amounts from workers at home for finding an employer.^{cxxiv}*

With respect to remuneration, several conclusions can be drawn concerning the compliance of provincial legislation with Convention No. 189 and Recommendation No. 201. While in Quebec caregivers are entitled to the general minimum wage rate, in the other three provinces, peculiarities exist according to the category of caregiver. Deductions for room and board are totally forbidden in Quebec, although the legislation allows, with the written consent of the worker, that amounts be deducted for equipment, uniforms and tools, as long as the worker receives minimum wage for each hour worked. The other three provinces allow deductions for room and board for most categories of caregivers, but the rules concerning deductions are generally stricter than in Quebec. None of the statutes are in compliance with the Convention and the Recommendation. There are clear breaches to the principle of equal remuneration between caregivers and other workers.

5.1.3 HOURS OF WORK

Convention No. 189 (article 10) and Recommendation No. 201 (articles 9 to 13) contain provisions concerning the regulation of working time for caregivers. The State must ensure equality of treatment between caregivers and other workers with respect to normal work days and work weeks, compensation for additional hours, rest periods and holidays. Weekly rest must be at least 24 consecutive hours. If the caregiver must work during her weekly rest period, arrangements for make-up time must be considered. The period during which the caregiver is available to respond to the household's needs must be considered time

worked and therefore be remunerated; this obligation to be available must also be limited to a maximum number of hours. Caregivers must also have breaks during the day to eat. Finally, Recommendation No. 201 provides that when a caregiver accompanies her employer on holidays, this period must not be considered as being part of her own holidays.

- **Normal work day and work week and additional hours**

In **Quebec**, only sitters are excluded from premium pay for additional hours, that is, those that exceed the normal 40-hour work week (there is no normal work day in Quebec). Other caregivers, including “domestics” that live in their employer’s residence, must receive 150% of their hourly rate for each hour worked beyond the normal week or receive an equivalent compensatory leave. The worker can refuse to work after 14 hours in a day (or 12 hours if she has an irregular schedule) or 50 hours within one week, or if she has family obligations after her regular hours of work that no one else can assume.^{cxxv} This right of refusal does not apply if there is danger to the health or safety of another person, which could be the case if a caregiver were to leave a child or a person who is ill or disabled unattended.

In **Alberta**, where the normal work day is 8 hours and the normal work week is 44 hours, *domestic workers* are excluded from provisions concerning the increase to 150% of the hourly rate for additional hours (or for compensatory leave).^{cxxvi} They are also excluded from the right other workers enjoy to refuse to work more than 12 hours in a day.^{cxxvii} This is also the case for *caregivers*: those who do not work 24-hour shifts will receive the increased rate after 12 hours of work in a day and for hours worked beyond 264 hours in a month; those who work 24-hour shifts receive the increased rate after 264 hours worked in a month.^{cxxviii} Hours of sleep – unless the worker must get up during the night – are not counted in the calculation of additional hours.

In **British Columbia**, the normal day of work is 8 hours and the normal week is 40 hours. Hours worked beyond 12 hours in one day must be paid double the normal hourly rate, and not at 150%.^{cxxxix} Among caregivers, only *domestics* are subject to provisions for an increased salary for additional hours: others are excluded. In **Ontario**, additional hours are all those worked beyond 44 hours per week and are remunerated at 150% of the normal hourly rate or by an equivalent compensatory leave.^{cxxx} Among caregivers, only *domestics* are subject to provisions on additional hours, including the possibility of refusing to work beyond the maximum 48-hour week, unless they consent to do so in writing.^{cxxxi}

▪ Rest time and availability

In **Quebec**,^{cxxxii} all caregivers are entitled to a minimum weekly rest period of 32 consecutive hours. In **Alberta**, legislation provides for a rest period of one day a week, or four days after 24 consecutive days of work for any worker, including caregivers. In **British Columbia**,^{cxxxiii} all caregivers, with the exception of domestics, are excluded from provisions concerning weekly rest. The act provides for a rest of 32 consecutive hours per week, which can, however, be replaced by monetary compensation representing 150% of salary if the employer demands that the caretaker work. In **Ontario**, the act provides for a rest period of 24 consecutive hours per week or of 48 hours every two weeks. However, the homemaker is excluded from the right to weekly rest.^{cxxxiv}

The possibility of having a daily rest period between shifts is not explicitly provided for in **Quebec**. On the other hand, the legislation indicates that a worker can refuse to work after a certain number of hours of work in a day (see above). It is incumbent on the worker to exercise this right of refusal each time she wants to stop working, which is far from easy in many cases. **Alberta** legislation does not provide for daily rest periods but, in contrast to other provinces, it provides for the obligation of the employer to inform a worker of a change in shift at least 24 hours in advance and to ensure that the worker has eight hours of rest between shifts when there is a change.^{cxxxv} This obligation is imposed on employers of *caregivers*, but not on those of *domestic workers*. In **British Columbia**, the *domestic*, like all other workers, must have eight hours of rest between shifts.^{cxxxvi} However, the employer does not have such an obligation with respect to other caregivers. **Ontario** legislation provides for a weekly rest of 11 hours per day for all workers, including *domestics*; however, *homemakers* and on-call workers do not enjoy this right.^{cxxxvii}

As for health breaks, in **Quebec**, any worker has a right to a non-remunerated break of 30 minutes after five consecutive hours of work.^{cxxxviii} If she cannot leave the workplace because, for example, she must attend to the children's needs, she must be remunerated. **Alberta** legislation also provides for non-remunerated minimum rest periods of 30 minutes after five consecutive hours of work, unless it is not reasonable for the worker to take a break. There is every reason to believe that this exception would apply to caregivers who cannot leave a person unsupervised, even though they are not specifically excluded from this provision.^{cxxxix}

In **British Columbia**, a rest period of 30 minutes after five consecutive hours of work is also provided for, and it must be remunerated if the worker must remain in the workplace.^{cxl} All caregivers are excluded from this provision, with the exception of *domestics*. In **Ontario**, workers, with the exception of *homemakers*, are entitled to a non-remunerated break after five hours of work.^{cxli} Even if, according to the province, several caregivers are not excluded from the provisions concerning rest periods, the exercise of this right remains rather theoretical in most cases.

Too often, the caregiver must remain on the work site to respond to requests (for example, a call from a frail elderly to be accompanied to the bathroom), but on the other hand, she can take part in activities not related to her work (for example, read or watch television). In **Quebec**, a worker must be paid if she must remain available on the work site and wait to be given work.^{cxlii} For example, a tribunal has ruled that a non-live-in caretaker who had to be present overnight from 11 p.m. to 7 a.m. had to be remunerated for the eight hours, even though, in actual fact, she only took care of two handicapped children for 50 minutes each night and the government grant for home support only covered this brief period.^{cxliii}

Alberta legislation is silent on the issue of availability. In **British Columbia**, availability time is not considered work time if the work site is a private residence.^{cxliv} In **Ontario**, if the worker is on the work site and is waiting to be given work, she must be paid.^{cxlv} However, she will not be paid if she can have at least six hours to sleep on the work site or if she can look after her personal affairs during this period.^{cxlvi} The time during which she is effectively working must be paid (for example, if she must get up at night, or interrupt her personal activities). As for the *homemaker*, she will not be remunerated for more than 12 hours per day, even if she must stay at work beyond this period.

5.1.4 HOLIDAYS

▪ Statutory holidays and annual vacations

In the four provinces studied, only the *baby-sitters* or *sitters* excluded from the legislation do not enjoy rights concerning statutory holidays. This is also the case with respect to the right to annual leave. Legislative interpretation in all the provinces provides that the caregiver who must accompany on holidays the family or the person for whom she works, whether the employer is an individual or not, is not on holidays during this period, but effectively at work.^{cxlvii}

- **Leave for family reasons**

All the statutes examined provide that caregivers can have parental leave (and paternity leave in the case of Quebec), maternity leave and leave to take care of a gravely ill relative, and that they have the right to reintegrate their job after the leave.^{cxlviii} However, the length of the leaves and the eligibility conditions vary from one province to the other.

All caregivers including LCP participants (and the new In-home caregiver program) can, in theory, receive allowances to replace part of their income. These allowances come from either the employment insurance program,^{cxlix} or the Quebec parental insurance program^{cl} (with the exception of so-called compassionate allowances to take care of a gravely ill close relative). However, caregivers must meet eligibility criteria, that is, have earned at least \$2000 during the reference year for the Quebec plan and, for the other provinces, have accumulated 600 insurable hours during the reference year. Meeting these eligibility criteria is not always easy for caregivers who often work part-time. Moreover, immigrant caregivers must demonstrate that they are in possession of a work permit (or will be in a position to obtain a new permit at the end of their leave if they are no longer employed) to have a right to the allowances. Also, given the LCP requirements (and those of the new program), with respect to the work time in Canada necessary to apply for permanent residence, immigrant caregivers will of necessity limit the length of their leave.

Only **Alberta** does not provide for a minimum number of days of leave per year for family reasons (for example, taking care of a sick child), while **Ontario** legislation requires that the employer have 50 or more employees for the provisions to apply, which automatically excludes all caregivers who work for an individual or an agency with few employees.^{cli}

- **Sick leave**

It is only in **Quebec** that all workers, including caregivers, enjoy the possibility of being absent in case of illness or accident, with a right to return to work, for a maximum period of 26 weeks if they have at least three months of continuous service with their employer.^{clii} In **Ontario**, the possibility of an employee being absent for ten days per year is provided for, but, once again, employers with less than 50 employees are excluded from this provision.^{cliii} This means that a worker who becomes ill is not assured of keeping his or her job, unless the worker exercises her or his rights in accordance with provincial statutes on human rights governing the obligation to accommodate worker due to their health status.^{cliv} When a worker is absent due to illness, she can receive special employment insurances allocations, as long as she meets eligibility requirements.

Convention No. 189 and Recommendation No. 201 provide for equality of treatment as far as normal work day and week and compensation for overtime and rest periods are concerned. However, in Quebec, caregivers who work for an individual and only provide personal support services or child care are not entitled to payment of overtime at higher rates. Just like other workers, they can nevertheless refuse to work beyond a certain number of hours if this refusal does not imperil the health or security of others. In other provinces, exclusions or particular provisions concerning the payment of overtime and the possibility of refusing to work beyond a certain number of hours are also provided for and vary according to the nature of the tasks performed. Weekly rest periods are guaranteed to all caregivers in Quebec and Alberta, which is not the case in British Columbia or In Ontario. The right to a meal break, guaranteed to all caregivers in almost all provinces, remains more theoretical than real when the caregiver cannot leave the workplace because she must stay by a person requiring assistance or a child. If one relies on jurisprudence, only Quebec guarantees payment of availability time, although the legislation does not put a limit on the amount of time the employer can demand that the worker be available. With respect to leave, provincial statutes grant the same rights to caregivers in matters of statutory holidays and annual holidays, and do not distinguish caregivers from other workers with respect to other types of leave.

5.1.5 APPLICATION OF THE LEGISLATION AND REMEDIES

Convention no. 189 (articles 16 and 17) provide that States must take measures to enable caregivers, just like any other worker, to have an effective access to the courts and to other resolution mechanisms to address disputes with their employers. Among other things, States must provide the means, including complaint mechanisms, to ensure that employers comply with the legislation, as well as an inspection system that takes into account the particular characteristics of caregivers' work, accompanied with sanctions in cases of non-compliance with the legislation. The inspection mechanisms must notably provide for the conditions under which inspectors can have access to the residence, that is, the workplace.

Caregivers who are excluded from the legislation, that is the baby-sitters and the sitters (and more particularly, sitters in **British Columbia** who do not work solely on an occasional basis to baby-sit children on a Saturday night...), only have remedies under common law, that is they can sue their employer in an ordinary court, such as Small Claims Court. Caregivers covered by the legislation can go to the Commission des normes du travail (CNT) [Labour Standards Commission] in Quebec^{clv} and to the minimum employment standards branch of the department of labour in other provinces. Government agents will then be responsible for inspecting the workplace where legislation permits it, to receive complaints when employers do not comply with the legislation, and to sue employers when they refuse to pay or to act in a manner that is consistent with the legislation.

Moreover, all the statutes provide for a worker who faces reprisals as a result of exercising her rights to have recourse against the employer. In **Quebec**, the worker will also have specific recourse in case of dismissal

without just and sufficient cause if she has been working for the employer for two years or if she believes she is a victim of psychological harassment at work.^{clvi}

It is well documented that the vast majority of non-unionized workers only exercise their right to recourse against their employer once the employment relationship is broken, because they are afraid to lose their job if they complain. This situation is exacerbated due to the fact that they work in a private residence. This is even more so in the case of caregivers who live in the employer's residence and participate in the LCP (or in the new program): not only are they afraid to lose their job and their housing, they are also afraid of not being able to remain in Canada.

Although caregivers are subject to the protection available under the *Act respecting Labour Standards* in Quebec, for example, their unique situation, particularly in the case of migrant workers, is an obstacle to its effective application. Beyond these workers' fear of losing their job following a complaint, which can have disastrous consequences for these workers, several complaints are rejected for lack of evidence, before any possibility of investigation or testimony from workers. Working alone in private residences, they are not in a position to provide testimony from work colleagues about hours actually worked or about harassment on part of the employer. For example, in order to be considered sufficient proof, notes on the hours actually worked must have been taken by the worker on a daily basis from the date of hiring. Such a requirement, particularly in the case of migrants who are not aware of local labour laws, places an excessive burden of proof on these workers. In order to be totally effective, labour standards should provide for adjustments to the unique reality of these workers.

THE REQUIREMENT TO ENTER INTO A WRITTEN CONTRACT

Convention No. 189 (articles 7 and 8) provides that States must ensure that caregivers are informed in an easily understandable language of their working conditions, preferably by means of a written contract. The Convention also provides that States must ensure that caregivers receive a written job offer or a written work contract that spells out working conditions before they arrive at the country of destination.

One of the great difficulties encountered by caregivers, notably those who are employed directly by an individual, is proof of the agreement made with the employer on working conditions. In actual fact, the obligation of entering into a written contract is foreign to the labour relations culture in Canada. Only British Columbia legislation requires that a written contract be entered into between an employer and a domestic (employers of other categories of caregivers are not subject to this requirement), which contract must provide for the tasks, the hours of work, the salary and the cost of room and board.^{clvii} Within the framework of the LCP (and of the new In-home caregiver program), the employer and the worker must also enter into a contract before the caregiver's arrival in Canada.^{clviii} The Quebec government also demands that a written contract be entered into in the case of migrant caregivers.^{clix}

▪ **Workplace inspection**

In **Quebec**, private residences are not subject to any particular provision in terms of inspection, and the Supreme Court has already confirmed the validity of inspection powers provided under a Quebec statute that allows for the inspection of a private residence in order to achieve the objectives of a statute that protects workers that may find themselves in a vulnerable situation.^{clx} In fact, an inspector may enter any workplace at a reasonable hour.^{clxi} In 2012-2013, within the framework of a program aimed at migrant workers, the CNT targeted live-in caregivers as a priority group for its monitoring actions related to compliance with the statute and decided to undertake “preventive interventions”, that is visits to certain employers. Only eleven interventions took place.^{clxii}

In **Alberta**, an inspector must have the consent of the occupant of the residence, whether or not the occupant is the employer.^{clxiii} The situation is the same in British Columbia and Ontario. In British Columbia, an employer must inform the employment standards branch of the ministry of labour of the hiring of a domestic, that is, a caregiver who lives in or not.^{clxiv} In the case of LCP caregivers, they must be registered before they are hired and arrive in Canada. The branch keeps a register of these workers with the names and coordinates of the employer and the worker: this measure seeks to facilitate enforcement of the legislation. However, we have no information on the number of domestics who are in fact registered. In **Ontario**, the inspector may enter the workplace if a warrant is obtained.^{clxv} Ontario legislation nevertheless provides that an employment standards inspector may demand a meeting with the worker or the employer if the latter resides in the same residence as the worker in order to verify that the employer is in compliance with the statute.

▪ **Recourse**

In **Quebec**, a complaint to recover amounts due may be filed by a worker or a non-profit workers’ rights organisation.^{clxvi} This last possibility enables the worker to have an intermediary in its relations with the CNT, which may facilitate the process. In the case of a complaint for psychological harassment or unjustified dismissal (or any other reprisal), a CNT lawyer may represent the worker at no charge in front of the Commission des relations de travail [Labour relations commission], the tribunal that hears these cases.^{clxvii} However, domestics and sitters are treated differently from other workers with respect to the reparation they can have in case of dismissal. The tribunal cannot order their reinsertion into the job, and the statute does not provide any indemnity to compensate for this fact.^{clxviii}

In contrast to **Quebec**, in the other three provinces, workers must first demonstrate to officers of the department of labour that they have tried to resolve the situation of non-compliance with their employer, and a self-help kit is made available to this end.^{clxix} In **British Columbia**, the domestic – but not the night attendant who is also employed by an individual and subject to the legislation – does not have this obligation. In **Ontario**, caregivers hired by individuals are not required to proceed with this exercise. In **Alberta**, while the worker is not strictly bound to undertake this process, departmental documents strongly encourage it: no exceptions are mentioned for caregivers.

Convention No. 189 provides that all caregivers must have actual access to tribunals and other mechanisms for the resolution of conflicts with their employer, as well as the possibility of filing complaints. Provincial legislation makes no distinction between caregivers and other workers in this respect, but it generally does not provide any particular mechanism to facilitate compliance with the legislation as far as they are concerned. The inspection of the workplace presents difficulties in all provinces. While, in Quebec, an inspector may in theory enter a private residence, we do not know if they do so. In the other provinces, formalities must be observed before an inspection can be conducted.

5.2 OCCUPATIONAL HEALTH AND SAFETY: THE INVISIBILITY OF THE WORK OF WOMEN IN PRIVATE RESIDENCES

Convention No. 189 (articles 13 and 17(2)(3)) and Recommendation No. 201 (article 19) state that caregivers have a right to a safe and healthy working environment. States must therefore take effective measures that take into account the specific characteristics of their work, that aim at eliminating or reducing to a minimum the risks and dangers at work and that promote health and safety at work in the residence, i.e., the workplace. They must also put in place an inspection system that ensures access to the residence, and sanctions in cases of non-compliance with occupational health and safety legislation. In order to better understand the risks and dangers specific to a residence as a workplace, States must collect and publish statistics on work accidents and illnesses related to caregiver work and other data on the risks that can contribute to these accidents and illnesses. Finally, states must offer advice on health and safety at work on, for example, the ergonomic aspects and the protection equipment and develop training programs specific to caregiver work.

The private residence as a workplace presents a number of occupational health and safety risks: exposure to infectious illnesses and to noxious chemical cleaning products, burns, falls, physical and verbal assault, physical and psychological exhaustion, heavy loads, repetitive actions, etc.^{clxx} Several of these dangers are the same as those found in more institutional settings, such as hospitals or long-term care facilities or in daycare centres.

There are also additional risks, such as accidents while travelling between clients' residences. The control of caregivers' working conditions includes many gaps, and is non-existent in many cases. Moreover, workers do not necessarily receive adequate training to eliminate dangers at work, or immediate measures do not exist for either the worker or the employer, regardless of the employer's identity, to modify the working environment in a private residence (for example, a lift for the patient). The recognition of risks related to this work remains difficult due to the workplace and the chronic non-recognition of the risks associated with predominantly female work.^{clxxi}

Provincial occupational health and safety legislation includes significant obligations for employers in order to prevent occupational diseases related to sanitation in workplaces, to training on risks related to work and to the provision of protective equipment. Legislation also enables workers to refuse to perform work that is dangerous and to exercise recourse in cases of retaliation. However, during the consultation process previous to Convention No. 189, the Government of Canada made known its reluctance to adopt measures specific to caregivers in matters of health and safety at work:

The typical hazards faced by domestic workers (household chemicals, cleaning products, musculoskeletal injuries, etc.) are not sufficiently unique or technical in nature so as to require explicit regulations, but are adequately covered under more general sections of occupational safety and health legislation (such as the employer's duty to maintain a safe workplace and to provide workers with information and training relating to their occupational safety).¹

However, it is still necessary for the worker to be included under the legislation. In addition to the specific and little acknowledged risks related to caregiver work, one of the main problems is the exclusion from provincial legislation of many caregivers, by the legislation itself or because of the practical inapplicability of some standards.

5.2.1 ARE CAREGIVERS PROTECTED BY LEGISLATION?

In **Quebec**, in spite of the contrary interpretation put forward by the Commission de la santé et de la sécurité au travail (CSST)[Quebec Workers Compensation Board], the *Act Respecting Occupational Health and Safety*,^{clxxii} as a result of its broad definition of the notion of “worker”, applies to all caregivers, not matter the identity of their employer or the nature of the tasks performed. The greater majority of the jurisprudence, and above all the most recent, contradicts the CSST’s claim that “domestics” and “sitters” employed by an individual are excluded from the legislation.^{clxxiii} According to a CSST directive, caregivers who provide personal support services and domestic help to the frail elderly, disabled or convalescing through a service employment paycheque would also be excluded from the legislation.^{clxxiv}

Quebec legislation notably provides for a right that is not found in the other provinces examined, that is the right to preventive withdrawal from the workplace for a pregnant or breast-feeding worker (also known under the name of the program, *Pour une maternité sans danger* [Maternity without Danger]). According to the CSST web site, [Translation] “The *Maternity without Danger* program targets all women to whom the definition of the word “worker” applies according to its meaning under the *Act Respecting Occupational Health and Safety*, that is a person who does work for an employer in Quebec.[...]

Some workers are not eligible for the program, notably “domestics working for a private individual...”^{clxxv} However, such is not the case and all caregivers are subject to the whole legislation since they are included in the broad definition of “worker”, which, according to the Supreme Court of Canada,^{clxxvi} “reflects a clear intention to extend occupational health and safety protection as widely as possible., including to students, interns, apprentices and individuals, whether or not they are remunerated.”

As a starting point, **Alberta** occupational health and safety legislation^{clxxvii} excludes from its application any work that takes place in or around a private residence and is done by a household servant who is employed by an individual. According to the administrative interpretation, the legislation consequently does not apply to “*domestic workers such as nannies and housekeepers*”, but does apply to “*home support workers*” who are not working for an individual.^{clxxviii} Specific prevention rules are also provided for persons who work alone on a workplace without the presence of other workers, including “*home support workers*”.^{clxxix}

In **British Columbia**, the *Workers’ Compensation Act*,^{clxxx} the law that governs worker compensation and whose third part is dedicated to occupational health and safety, excludes different categories of caregivers. Provisions on occupational health and safety apply to every employer.^{clxxxi} However, the Workers’ Compensation Board has the power to order the exclusion of some employers and workers from the scope of the law.^{clxxxii}

Caregivers directly employed by an individual are excluded, but only if they work an average of less than 8 hours per week for that employer; or if they take care of children before or after school less than 15 hours per week; or if they are hired for a fixed-term contract of less than 24 hours.^{clxxxiii} In other words, in spite of this general scope, caregivers who work on an ad hoc basis, irregular hours or few hours per week, particularly when they are babysitters, are excluded.^{clxxxiv} These exclusions do not affect caregivers who do not work for an individual. It is interesting to note that British Columbia also has specific provisions for persons who work alone.^{clxxxv}

In **Ontario**, the *Occupational Health and Safety Act* does not apply to a caregiver who works for an individual, regardless of the number of hours worked.^{clxxxvi} However, it applies if the caregiver is the employee of a government agency, a temporary work agency or another organization. This exclusion has been criticized on numerous occasions and a committee of experts mandated by the minister of Labour recommended in 2010 the revision of this exclusion, which he found incompatible with the approach adopted in the *Employment Standards Act* and in the workers’ compensation legislation that cover, at least partly, these workers, as well as with the specific provisions adopted to protect live-in caregivers under the LCP.^{clxxxvii} The law applies to other caregivers who are not employed by an individual.

| OCCUPATIONAL HEALTH AND SAFETY LEGISLATION | QUEBEC | ALBERTA | BRITISH COLUMBIA | ONTARIO |
|--|---------------|--|--|---|
| SUBJECT TO THE FULL REQUIREMENTS | Any caregiver | Caregiver not working for an individual | Caregiver not working for an individual Caregiver working for an individual 8 hrs/wk and more, babysitting 15 hrs and more, or with a contract of 24 hrs and more | Caregiver not working for an individual |
| TOTALLY EXCLUDED | | 'household servanf ('domestid, 'nanny' and 'housekeeper) | Caregiver working for an individual less than 8 hrs/wk, babysitting less than 15 hrs/wk or with a contract of less than 24 hrs | Any caregiver working for an individual |

5.2.2 WORKPLACE INSPECTIONS

In **Quebec**, as in the case of the *Act respecting labour standards*, private residences are not subject to any specific provision. “An inspector, in the performance of his duties, may, at any reasonable hour of the day or night, enter a place where activities are carried on in the fields contemplated in this Act and the regulations, and inspect that place.”^{clxxxviii}

Nevertheless, the inspector must take reasonable steps to advise the employer before proceeding.^{clxxxix} In the case of caregivers remunerated through the service employment paycheque, a CSST directive indicates that the Ministry of Health and Social Services (MSSS) must maintain a register of all caregivers participating in the program and that any question relative to inspection and occupational injury prevention must be referred to the MSSS and not to the CSST.^{cx}

In **Alberta**, inspection powers^{cxci} may be exercised at any reasonable hour and the inspector may enter any workplace.^{cxcii} Private residences therefore do not enjoy any specific exception in this regard.^{cxciiii} In **British Columbia**, inspections may take place at any reasonable hour and in any location where work subject to the law is performed, without any notice to any party.^{cxciiv} The only exception to this broad power of inspection is when the workplace is also a private residence. In this case, the inspection is only possible if (a) the occupant consents, (b) the Workers Compensation Board has given a 24-hour written notice, (c) if the inspector has a warrant, or (d) there are reasonable grounds to believe that a significant risk exists that a worker may die or suffer from a serious illness or accident.^{cxci v}

In **Ontario**, whether it is because of an accident, the exercise of a right of refusal or within the framework of regular inspections, the powers of inspectors are broad and enable them, among other things, to “enter in or upon any workplace at any time without warrant or notice”.^{cxci vi} The only exception is where the workplace is also, in whole or in part, a private residence. In that case, the inspector must obtain the consent of the occupant or a warrant to proceed with the inspection.^{cxci vii}

Convention No. 189 and Recommendation No. 201 indicate that all caregivers must be covered by legislation on occupational health and safety and that the State must take into account, by various means, the conditions of their work. Only Quebec – and this, in spite of the current contrary interpretation of the CSST – provides for all caregivers, including those employed by an individual, to be subject to the legislation. The other provinces establish exclusions of a significant number of caregivers, according to the employer’s identity or the number of hours worked in a week. The powers to inspect a residence are equally limited, particularly in British Columbia and in Ontario.

5.3 OCCUPATIONAL INJURY COMPENSATION

Convention No. 189 (article 14) and Recommendation No. 201 (article 20) provide that States must ensure that caregivers enjoy the same rights in social security matters as do other workers. This includes compensation in cases of accidents at work or occupational diseases. States must therefore institute measures to facilitate payment of social security contributions, including for caregivers working for several employers. In the case of migrant caregivers, States should enter into agreements with countries of origin in order to ensure a right to social security benefits and their portability. Social security benefit rates should also take into account the monetary value of payments in kind.

5.3.1 ARE CAREGIVERS PROTECTED BY THE LEGISLATION?

In **Quebec**, the scope of the *Act respecting industrial accidents and occupational diseases* specifically excludes the domestic (“a natural person engaged by an individual for remuneration, whose main duty is, in the dwelling of the individual, (1) to do housework, or (2) to care for a child or a sick, handicapped or aged person and who lives in the dwelling”), as well as the “natural person engaged by an individual to care for a child or a sick, handicapped or aged person and who does not live in the dwelling of the individual”.^{cxviii} The caregiver who is hired directly by an individual therefore does not enjoy income replacement or rehabilitation services or other benefits of the law in case of accidents at work or occupational diseases. Nor is she protected if she suffers reprisals, such as dismissal, due to occupational injury. To be protected by this legislation, she will have to subscribe for personal protection, that is pay the contribution to the CSST herself; her employer may do so, but is not obliged to do so, or an association of domestics could do so in her place.^{cxix} Only a very small minority of caregivers take advantage of the opportunity to subscribe for personal protection.^{cc}

Caregivers who are not hired by an individual, but rather by an agency or a domestic help social economy business, for example, are covered by the law like all other workers. The employer is the one who must pay the contribution to the CSST. Those who are hired by an individual and are paid through the service employment paycheque are partially covered. According to an agreement with the MSSS [Department of Health and Social Services],^{cci} the latter is deemed to be the employer for purposes of the legislation and these caregivers are covered in case of occupational diseases and do not have to pay the contribution to the CSST. Unlike other workers covered by the legislation, however, they do not enjoy the right to return to work or protection against reprisals exercised by an employer because of occupational disease. Moreover, they are only covered for the hours allocated within the framework of the service employment paycheque: if they work more hours for the individual or for another individual, they will have to subscribe to an additional personal protection.

The differential treatment of caregivers under the law has provoked serious criticism for a number of years on the part of community organizations and unions, which led to the creation of a coalition of over 200 groups that call for their integral coverage under the law.^{ccii} The Commission des droits de la personne et des droits de la jeunesse [Human Rights and Youth Rights Commission] has also released a notice concluding that this exclusion constitutes discrimination based on sex, ethnic or racial origin and social condition and constitutes an affront to the dignity, safety and integrity of these workers, and violates the right to fair and reasonable conditions of employment in keeping with the Quebec *Charter of Human Rights and Freedoms*.^{cciii}

Another question tied to immigration status is that of caregivers who are neither permanent residents nor Canadian citizens and who must hold a valid work permit to work, but don't have one. This can be the case of caregivers participating in the LCP, but who are waiting for a new work permit, of those who are seeking refugee status, but don't have a permit yet, or of those who come into the country as tourists and work without authorization. Quebec jurisprudence tended until relatively recently to deny the coverage of the law to these workers in cases of employment injury, but has recently accepted claims in a certain number of

cases where workers have been able to demonstrate that they were authorized to remain in Canada, as well as their good faith with respect to the irregularity of their situation.^{cciv}

In **Alberta**, the law^{ccv} provides that the employer who is an individual is excluded from the obligation of contributing to the plan. The caregiver who works for him or her is therefore not covered, no matter how many hours are worked during the week.^{ccvi} The worker who falls into the domestic help category, whether the work is done on an occasional basis, part-time or full-time, and who performs tasks related to household maintenance or babysitting is excluded.^{ccvii} The caregiver who is a LCP participant (nannies) and who performs these tasks is therefore excluded. The employer may, at all times, voluntarily pay the contribution. If the caregiver works for an agency or another for-profit or non-profit enterprise, the employer will have to contribute and the worker will be covered.

The other category of caregivers provided for in the legislation, the home support service workers, provides support services at home to the frail elderly, persons with a handicap or convalescing. Home support is coordinated by health authorities and caregivers may be employed by such an authority or another for-profit or non-profit enterprise, or by an individual. If the caregiver works for an individual, this individual may contribute for individual coverage for her, otherwise she is excluded from the legislation. If she is not working for an individual, the employer must obligatorily contribute and she will be covered by the plan.^{ccviii} According to the information available, live-in caregivers under LCP are considered domestic help. However, it is not clear if they would be covered if the classification of their tasks was under “home support service workers” in the event that they only provide “personal assistance living” within the meaning of “home support service”.

In **British Columbia**, specific rules apply when the employer is an individual who hires someone to provide childcare services, personal assistance or domestic help at his or her residence.^{ccix} The employer’s obligation depends on the number of hours worked and incidentally, on the kind of tasks performed. As soon as the worker works 8 hours per week, the employer must contribute and the worker is covered by the plan. Living-in caregivers on LCP fit into this category. If a worker is hired on a temporary basis for a period not exceeding a total of 23 hours, the employer does not have to contribute.

In the specific case of workers who care for children before and after school for a period of less than 15 hours per week, the employer is also exempted from contributing. The worker who has several clients, always individuals, may be categorized as an independent operator and will have to contribute herself in order to be insured.

In **Ontario**, the caregiver who is employed by an individual and provides domestic services must work more than 24 hours per week to be covered. These services include domestic help and childcare, but not personal support (dressing, bathing, etc.).^{ccx} Caregivers who are LCP participants must work full-time according to the program's rules and are therefore covered by the plan. The worker can contribute herself – or the employer can do so voluntarily – if she works less than 24 hours. The law provides for the exclusion of attendants, that is persons who provide personal support services, and who are employed by an individual, regardless of the number of hours worked. The employer can contribute voluntarily, or the worker can self-insure. The attendant who is employed by a victim of a workplace accident recognized by the plan and who works more than 24 hours per week must be covered by the plan. There is every reason to believe that a caregiver not having a valid work permit when a workplace accident occurs would also be covered by the act if she meets the criteria concerning the number of hours worked during the week for an employer.^{ccxi}

CONTRIBUTION PAYMENTS IN THE CASE OF MIGRANT CAREGIVERS: WHO PAYS?

The model contract provided by Employment and Social Development Canada for live-in caregivers under the LCP provides that the employer must register the caregiver under the relevant provincial/territorial government insurance plan, "if applicable". It is not clear if the mention "if applicable" enables an employer to avoid this obligation if the caregiver's only option is to self-insure for personal protection, as is the case in Quebec, for example. The contract specifies that the employer cannot deduct the contributions for this insurance from the salary of the caregiver. The rules of the In-home caregiver program, that replaces the LCP, provide that the employer must do so only in cases of low skill care providers, that is, according to the information available, persons who fall within our definition of caregivers, that is, those who provide childcare and personal assistance services and domestic help to adults. The rules specify that the employer is not obliged to register specialized care providers, such as nurses and nursing aides.^{ccxii}

Although Convention No. 189 provides that States must ensure that caregivers enjoy the same social security rights as other workers, it must be noted that such is not the case in the provinces studied when the employer is an individual.

| OCCUPATIONAL INJURIES COMPENSATION LAWS | QUEBEC | ALBERTA | BRITISH COLUMBIA | ONTARIO |
|---|---|---|--|---|
| SUBJECT TO ALL REQUIREMENTS | Caregiver not working for an individual Caregiver working via the service employment paycheque | Caregiver not working for an individual | Caregiver not working for an individual Caregiver working for an individual 8 hrs/wk or more, or providing childcare 15 hrs or more, or having a contract of 24 hrs or more | Caregiver not working for an individual Caregiver working for an individual more than 24hrs/wk |
| TOTALLY EXCLUDED | Any caregiver working for an individual | Any caregiver working for an individual | Caregiver working for an individual less than 8 hrs/wk, providing child care less than 15 hrs/wk, or having a contract of less than 24 hrs | Caregiver working for an individual less than 24hrs/wk attendant working for an individual |

British Columbia and Ontario establish the mandatory contribution by the employer if the caregiver works a specific number of hours per week. These provisions may have the effect of encouraging employers to skirt the law by playing with the number of hours of work. The laws reviewed all provide the possibility of these caregivers contributing directly to the provincial occupational injuries compensation plan, but this solution constitutes unequal treatment, notably given the cost of such a protection.

5.4 FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

Convention No. 189 (articles 3 and 18) and Recommendation No. 201 (article 2) indicate that States must ensure the respect, promotion and realization of freedom of association and the effective recognition of the right to bargain collectively with respect to caregivers. They must also take measures so that caregivers may be able to enjoy these rights. States are obliged to identify and eliminate any legal or administrative restriction or any other obstacle to the right of caregivers to constitute their own organizations, federations and confederations. Among other things, they must take or support measures that are aimed at reinforcing the capacity of caregiver organizations to effectively defend the interests of their members.

Within the context of the tripartite structure of the International Labour Office, labour and management organizations are omnipresent in the texts of the convention and recommendation on domestic workers. First, the Convention provides that States must protect the right of domestic workers to form their own organizations, federations and confederations.^{ccxiii} Then, “consulting with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers” is required for the formulation of national standards and their implementation.^{ccxiv} In keeping with tripartism, it is therefore essential that freedom of association and the right to collective bargaining be effectively guaranteed to caregivers, as mandated by the fundamental international conventions in this matter, the 1948 *Convention No. 87 on Freedom of Association and Protection of the Right to Organise* and the 1949 *Convention No. 98 on the Right to Organise and Collective Bargaining*, which do not allow for the exclusion of caregivers from their scope. It is also worth noting that Convention No. 189 applies to all domestic workers and that the exclusion of some of them may only be done after consulting with organizations that represent them and their employers.^{ccxv}

It should be noted that Canada has only ratified one of the so-called fundamental ILO conventions on trade union matters, that is, Convention No. 87. Canada has still not adhered to Convention No. 98 and finds itself among the small minority of countries belonging to the ILO – 21 out of 185 members^{ccxvi} – that have yet to ratify it. One of the reasons indicated by Canada to justify its lack of ratification is precisely the lack of compliance of some provincial laws related to the exclusion of categories of caregivers from laws promoting unionization and collective bargaining.^{ccxvii} In fact, Canada is regularly taken to task by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) – the organization of independent experts mandated by the ILO to provide observations on the compliance by member countries of ratified conventions – on the lack of compliance with Convention No. 87 of provincial legal requirements that deny these workers the right to unionize and to join the union of their choice.^{ccxviii} It should be noted that *Convention No. 189 on Decent Work for Domestic Workers, 2011*, should apply to all domestic workers. It should also be noted that the *Canadian Charter of Rights and Freedoms* and the *Charter of Human Rights and Freedoms (Quebec)*, as well as an array of Supreme Court of Canada decisions recognize the fundamental character of freedom of association and, more recently, of the right to collective bargaining and the right to strike.^{ccxix} Yet, half of the provinces studied specifically exclude some caregivers, that is, those who work directly for an individual, from their legislation.

| LAWS ON UNIONIZATION AND COLLECTIVE BARGAINING | QUEBEC | ALBERTA | BRITISH COLUMBIA | ONTARIO |
|---|---------------|---|-------------------------|---|
| SUBJECT TO THE FULL REQUIREMENTS | Any caregiver | Caregiver not working for an individual | Any caregiver | Caregiver not working for an individual |
| TOTALLY EXCLUDED | | Any caregiver working for an individual | | Caregiver working for an individual |

Even without legislative exclusions, the Canadian union organization and collective bargaining model makes it difficult for caregivers to exercise these rights.^{ccxx} Contrary to many other countries, collective bargaining, generally speaking, is decentralized toward the enterprise and is not sector-based. Also, unions are formed on the basis of the enterprise and the direct employer, and not by sector or profession. Caregivers, who most often work by themselves and sometimes for several employers, are isolated, which may slow down union organizing (even if social media such as Facebook can partially alleviate this problem). The current lack of possibility of sectoral bargaining contributes to maintaining inconsistent working conditions, including wages, among persons who often do exactly the same work. Even in countries where a strong tradition of sectoral bargaining exists, as in France, it can be observed that the structure of professional relations in services to persons and therefore the scope of collective bargaining do not necessarily aim at the harmonization of working conditions.^{ccxxi} This presents significant challenges for unions, including the coordination of the demands of various groups of workers. Although the workplace may be the same, the identity of the employers (State, for profit or non-profit enterprise, individual) plays a determining role in the organization of collective bargaining, as does the aim of the tasks performed for the users. The historical struggles of various categories of caregivers have gone in distinct directions, notably as a function of the identity of their employers. Depending on the province, these directions can also be the result of the exclusion of caregivers from the laws regulating union organization and collective bargaining.

In **Quebec**, caregivers are – in theory – subject to the *Labour Code*,^{ccxxii} given that it does not contain any specific exclusion with respect to them (inasmuch as they are not excluded as independent workers since the *Code* only applies to salaried employees). The possibility of caregivers to unionize and to negotiate with their employer with the aim of entering into a collective agreement will therefore depend in large part on the identity of their employer for the purposes of collective bargaining. The caregiver employed by an individual could form a union of just one person – the *Code* explicitly provides that a sole salaried employee can form a union^{ccxxiii} - but she would likely not have any more bargaining power than if she had not done so. This power will no doubt be even less important if her migrant status is that of LCP participant.

Caregivers who are part of the service employment paycheque program are considered employees of the service recipient – and not of the CLSC/CSSS – for purposes of unionization and collective bargaining.^{ccxxiv} If the employer is a social economy enterprise, regrouping workers into a union becomes possible and bargaining power increases. In fact, several unions regrouping home support workers exist and have been successful in concluding collective agreements. Persons working through a temporary work agency have the same possibility. Few temporary work agency workers are regrouped into a union, although some examples exist.^{ccxxv} One difficulty experienced by all the workers, but to a variable degree, is the lack of opportunities to get to know each other and to meet – in person or virtually – for organizing purposes, as they work in isolation in private residences.

In Quebec, there are a few models of collective bargaining that are worthy of being explored as potential avenues for a model adapted to the realities of caregivers, that of collective bargaining decrees aimed at sectorial bargaining and that governing the working conditions of home childcare providers.

THE COLLECTIVE BARGAINING DECREE MODEL IN QUEBEC. TOWARDS SECTORIAL BARGAINING?

The Act respecting collective agreement decrees, dating from the 1930s, enables the Quebec government to extend some results of a collective bargaining negotiation to all of the enterprises within a sector, even if they are not unionized. There are currently 16 decrees in force in Quebec in sectors as diverse as trucking, automobile services, metal construction, security agencies, hair dressing and maintenance of public buildings. This model requires the presence of unions and employers' associations, which is a problem in the case of caregivers who work by mutual agreement where there are no unions or employers' associations. However, such organizations exist when the employer is not an individual. The Minister of Labour can, upon request by labour and employer organizations, recommend the extension of a collective agreement with the necessary adjustments if: a collective agreement in the sector has acquired significant importance in the establishment of working conditions in the sector concerned; the fact of extending the agreement does not create disloyal competition between Quebec enterprises and those outside Quebec; the extension will not negatively impact the maintenance and development of employment in the sector; and the extension does not unduly overburden the management of the enterprises and employers concerned.^{ccxxvi} Would it be possible to imagine the establishment of a "community of interest" sufficient for all caregivers and all employers for labour and employer organizations to negotiate minimum conditions? Would it be possible to establish wage conditions, for example, that would aim at eliminating disparities in the treatment of workers, and at the same time that would encourage the retention of the labour force in this sector?

THE ORGANIZATION AND COLLECTIVE BARGAINING MODEL OF FAMILY CHILD CARE PROVIDERS IN QUEBEC

In 2009, a new union organization and collective bargaining regime aimed at family child care providers was adopted in Quebec.^{ccxxvii} This regime favours collective bargaining for these workers, defined as "independent workers" under the law, and enables them to enjoy several guarantees of traditional unionization: obligation on employers to negotiate in good faith, protection against reprisals for union activities, possibility of exercising pressure tactics, compulsory union dues, representation monopoly for the certified union, etc. Certification is done on a territorial basis. Workers' associations – or groups of associations – who may or may not be affiliated with a central labour body, negotiate directly with the Ministry of Family and Seniors that subsidizes child care spaces.

Matters subject to negotiation include the rate of subsidized places in family daycare centres (which directly influences the workers' rate of remuneration) and holidays. The law explicitly provides that these workers should receive a grant that would enable them to be remunerated at a level comparable to that of salaried employees doing similar work, notably in early childhood centres, which includes amounts normally paid by employers in an employer-employee relationship, such as leave paid under the Act respecting Labour Standards, contributions to the parental insurance plan and to the CSST, as well as some work-related expenses. The law also provides for conflict resolution mechanisms, such as mediation and arbitration. This regime's feature is that it is intended for independent workers who receive the major part of their remuneration from the State.^{ccxxviii}

Given the heterogeneity of caregiver employment situations, such a regime is evidently not adapted to their reality. Nevertheless, this regime presents some food for thought for workers whose remuneration is in fact largely subsidized by the State (for example, the service employment paycheque). Beyond the considerations related to heterogeneity, this regime aims at reducing disparities in the treatment of workers who do similar work.

SOLIDARITY AGREEMENTS: THE EXAMPLE OF THE SEU-800 AND THE AAFQ

In Quebec, as elsewhere, closer links are developing between unions and caregiver organizations that, up to now, have not been able to exercise their union rights to the same extent as other workers. An example of the development of new relationships between unions and non-unionized caregivers is the solidarity agreement concluded in 2011 between the Service Employees Union, Local 800 (FTQ) and the Association des aides familiales du Québec (AAFQ). This agreement enables AAFQ members to benefit from the knowledge, experience, support and services offered by the union. The main objective is to ensure that the AAFQ is as well-equipped as possible to fulfill its mission to help and defend the rights of caregivers in vulnerable situations. In addition to support to the organization, for example, to offer legal information and francization services, the SEU-800 and the AAFQ are exploring possibilities for caregivers to organize more strongly and to collectively bargain their working conditions.

Alberta legislation specifically excludes from the *Labour Relations Code* – a law equivalent to Quebec’s *Labour Code* – caregivers hired directly by the employer and who lives on the workplace, that is, a private residence.^{ccxxix} This exclusion directly targets domestic employees, that is, persons who work in their employer’s residence to offer personal support to adult and care for children and help with household maintenance.^{ccxxx} As for the caregivers whose home care client – the person who receives personal support – is not the employer,^{ccxxxi} they are not targeted by this exclusion.

British Columbia legislation does not provide for exceptions to its scope with respect to caregivers. Therefore, their forming a union is theoretically possible, even if they work alone in their employer’s residence and if the employer is an individual.^{ccxxxii} Unionized home support workers who are employed by health organizations offering services in the community – that is, for employers who provide services in private residences, group homes, child development centres, centres for persons with mental health problems, day programs for adults or residential community living homes or those who are employed by public health authorities – enjoy a specific sectorial collective bargaining regime imposed by the *Public Sector Employers Act*.^{ccxxxiii} This law provides for the recognition of the *Health Employers Association of BC* as the only bargaining agent with the unions present in their members’ workplaces (see box).^{ccxxxiv}

HOME SUPPORT WORKERS OF BRITISH COLUMBIA SECTORAL COLLECTIVE BARGAINING MODEL

The sectorial collective agreement in the health community sub-sector covers approximately 15,000 workers, of which half are home support workers working for organizations recognized by the government or for the public health sector. Only organizations that receive 1) half of their funding from the provincial government and 2) receive at least \$250,000 yearly from the government, are required to join the Health Employers Association of B.C., which today has over 250 members. A collective agreement – recently renewed (2014-2019)^{ccxxxv} – was concluded with the British Columbia Government and Service Employees' Union (BCGSEU) (63% of employers have staff affiliated with this union), the Hospital Employees' Union (HEU), the United Food and Commercial Workers' Union (UFCW/TUAC) and the Health Sciences Association. The salary negotiated for home support workers is significantly above the provincial minimum wage; they enjoy from 3 to 7 weeks/year of annual leave depending on seniority, a dental, health, life and disability insurance plan paid 100% by the employer; and regular employees – full-time and part-time – in the sector have a defined benefit pension plan whose cost is shared between the parties.^{ccxxxvi}

Domestics employed in a private residence are also excluded from the Ontario legislation.^{ccxxxvii} Although they had been included under the legislation in 1993 under Bob Rae's New Democrat government, Mike Harris' Conservative government excluded them again in 1995.^{ccxxxviii} However, caregivers who are not employed by an individual are not excluded. This is notably the case with personal support workers who work for either for profit or non-profit enterprises, including those who receive government funding from the Community Care Access Centres (CCAC).

Although freedom of association and the right to collective bargaining are considered fundamental labour rights by the ILO, we can see that caregivers employed by individuals are expressly excluded from two of the provincial statutes examined and that, generally speaking, the Canadian unionization and collective bargaining framework is poorly suited to their particular situation. We are therefore a long way from the existence of measures to protect, promote and make these rights a reality, as advocated by Convention No. 189.

6 ISSUES FOR CONSIDERATION

This study has enabled us to confirm that the location of the work, the identity of the employer, the employment status, the nature of the tasks and the immigration status all have a significant impact on the caregivers' exercise of their rights to decent work in the four provinces studied. We observe significant differences in the legislative treatment of caregivers, not only with other workers, but also with other caregivers who do the same work. Given the importance of this work within the framework of the implementation of home and family support policies, such differences can only favour a deterioration of working conditions for all caregivers, regardless of the identity of their employer or the nature of their tasks. Emphasis must be brought to bear on equality of treatment and on the valuation of this work.

And this is precisely the objectives of Convention No. 189 and Recommendation No. 201. However, the alignment between provincial legislative provisions and the provisions of these ILO instruments is unequal and, in many respects, provincial laws are not compliant with the precepts of these international instruments. Ratification of Convention No. 189 would constitute a significant lever toward encouraging federal and provincial legislatures, as well as governmental agencies responsible for the application of these laws, to modify the laws and practices to protect, promote and make these rights a reality for caregivers.

With this in mind, several perspectives emerge to mobilize workers and actors preoccupied by the situation of caregivers.

- First, one must aim for ratification of Convention No. 189 and the promotion of Recommendation No. 201 and use them as mobilization tools to disseminate information on the significance of caregivers' labour rights and their social protection. The ILO's standard-setting activity is poorly known.
 - The study demonstrates a lack of information on the number and working conditions of the various categories of caregivers in Quebec and in Canada. To promote equality of treatment, it is essential to know who these workers are. A better picture of the number, their working conditions and the profile of caregivers must be assembled. It is among other things through the statistical categorization (see for example the National Classification of Occupations codes) that divisions among caregivers are created.
 - The research also shows that the occupation of caregiver is difficult to define legally. Over time, laws have created categories of caregivers to include or exclude them from legislation. Sub-categories of workers must be eliminated while developing legislative – and administrative – mechanisms to facilitate the exercise of rights by the caregivers who all work in isolation in private residences.
 - In large measure, working conditions, notably salary-related, of caregivers are determined by public policies related to home and family support (for example, daycare centres and paid leaves). This contributes to the creation of an unfortunate situation where women – and the men who need these services, but don't have the necessary financial resources, may want to resist the improvement of caregivers' working conditions. Although the topic of this study was not the quality and funding of programs under these policies, the fact remains that their underfunding and the growing demand for services have a direct impact on caregivers' working conditions. A labour shortage already exists in these sectors and it will only increase. Acceptable working conditions are the only way to slow down personnel turnover and value this work. Improving public policies and their funding is essential.
- ✓ With respect to the statutes studied, various issues emerge:
- With respect to immigration, even though the obligation of residing at the employer's residence has been eliminated within the framework of the new service provider program, the fact remains that the caregiver is always tied to her employer by an employer-specific work permit.

This type of permit fosters abuse and the maintenance of poor working conditions since it is difficult for the caregiver to change employer. At a minimum, a sectorial work permit linked to the occupation and not to the employer should be issued.

- Continuing with immigration, considerable uncertainty reigns with respect to the real possibility of these workers to request permanent residence under the new program. One should recall that granting of permanent residence was only won after decades of demands by caregivers. In this respect, the new program constitutes a step backwards. A real access to permanent residence must therefore be re-established.
- With respect to minimum employment standards, many amendments could be proposed to improve the situation of workers, including eliminating the total and partial exclusions of certain categories of caregivers. In Quebec, such an amendment would address, among others, the exclusion of babysitters from the provisions on overtime and redress in cases of dismissal. We also request that, as for other laws examined, measures be taken for the *Act respecting Labour Standards* to apply effectively to Quebec caregivers by taking into account their specific situation, including their workplace. To that end, specific programs, beyond pilot projects or one-time projects, must be implemented to facilitate the inspection of workplaces and the exercise of the remedies, if need be.
- With respect to occupational health and safety, legislative exclusions must obviously be eliminated. In Quebec, the CSST's erroneous administrative interpretation relative to the coverage of caregivers working for an individual must receive specific attention. As for the specific risks related to caregiver work, there exists a space to inform and train the various actors, including caregivers, on this issue. Efficient measures for the inspection of private residences as workplaces must also be implemented.
- The total and partial exclusions from occupational injury compensation plans must also be eliminated. The subjugation models found in British Columbia and Ontario based on the number of hours worked go against the principle of equal treatment. Therefore, we request the elimination of any form of exclusion of caregivers in this matter.
- As for the exercise of union rights, further research could be done to explore different models or to develop a model that truly responds to the situation of caregivers. This research for models should be done with a view to creating a stronger solidarity among caregivers, regardless of their employer, the tasks performed, or of their employment or immigration status. The point here is to call upon the creativity of unions and workers to open new paths.

In closing, it is hoped that the results of this research will contribute, among other things, to the development of information, training and mobilization tools so that caregivers may all be recognized as “real” workers.

NOTES

ⁱ The Convention was adopted by a vote of 396 for, 16 against and 63 abstentions, and the Recommendation by a vote of 434 for, 8 against and 42 abstentions. ILO. “100th ILO annual Conference decides to bring an estimated 53 to 100 million domestic workers worldwide under the realm of labour standards”, Press release, June 16, 2011 (on line: http://www.ilo.org/ilc/ILCSessions/100thSession/media-centre/press-releases/WCMS_157891/lang--en/index.htm).

ⁱⁱ Full text of the Convention and of the Recommendation is available at http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_168266.pdf.

ⁱⁱⁱ See the campaign site: <http://www.ituc-csi.org/domestic-workers-12-by-12?lang=en> . In June 2015, 21 States had ratified C189: Argentina, Belgium, Bolivia, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, Finland, Germany, Guyana, Ireland, Italy, Mauritius, Nicaragua, Panama, ,Paraguay, Philippines, South Africa, Switzerland, Uruguay.

^{iv} The Canadian government representative intervened at the plenary session of the ILO when C189 and R201 were adopted (see box): ILO, “Provisional Record No, 30”, 100th Session, Geneva, 16 June 2011, p. 30/6 (Online : http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_158275.pdf). At the end of the work of the Committee on Domestic Workers, “The Government member of Canada stated that, when/if the Conference adopted the Convention, his Government would review it thoroughly and give careful consideration to its ratification. Some technical requirements of the proposed Convention needed to be considered and could potentially make it difficult for his government to ratify, but he fully and strongly supported its principles. He also recognized the significant progress achieved on the adoption of gender-sensitive language.” ILO, Provisional Record No. 15, Report of the Committee on Domestic Workers, 100th session, Geneva, June 2011, p. 15/119 (par. 1261) (Online: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_157696.pdf).

^v Employment and Social Development Canada (ESDC), “Canadian Position with Respect to Convention and Recommendations adopted at the 99th session (June 2010), 100th session (June 2011) and 101st session (June 2012) of the International Labour Conference, Geneva, Switzerland”, 2014 (Online: http://www.labour.gc.ca/eng/relations/international/forums/reports/docs/ILO_2014_en.pdf .

^{vi} Department of Justice. “International Human Rights Treaty Adherence Process in Canada”, Government of Canada (Online: <http://canada.justice.gc.ca/eng/abt-apd/icg-gci/ihrd-didp/ta-pa.html>). Even though it is the Executive branch – the government – that ratifies international treaties, since 2008, when ratification is being considered, the treaty is tabled in Parliament to allow Members of Parliament to express their views. See Global Affairs Canada, “Policy on Tabling of Treaties in Parliament”, Government of Canada (Online: <http://www.treaty-accord.gc.ca/procedures.aspx?lang=eng>).

^{vii} ILO, “Report IV(1): Decent work for domestic workers”, International Labour Conference, 99th session, 2010; A. Blackett, « Introduction: Réguler le travail décent pour les travailleuses domestiques », (2011) 23:1 *Revue femme et droit* 47; J. M. Ramirez-Machado, “Domestic Work, Conditions of Work and Employment: A legal perspective”, *Conditions of Work and Employment*, Series No. 7, Geneva, ILO, 2003; A. Blackett, *Making Domestic Work Visible : The Case for Specific Regulation*, Geneva, ILO, 1998. On the situation in the United States, for exemple, see L. Burnham and N. Theodore, *Home Economics: The Invisible and Unregulated World of Domestic Work*, National Domestic Workers Alliance, New York, 2012.

^{viii} See for example R. de Groot and E. Ouellet, *Plus que parfaites. Les aides familiales à Montréal 1850-2000*, Montreal, Editions du remue-ménage, 2001; H. Schwenken, «Mobilisation des travailleuses domestiques migrantes: de la cuisine à l'OIT», (2012) 51 Cahiers du Genre 113; H.B. Shah and M. Seville, « Domestic Worker Organizing: Building a Contemporary Movement for Dignity and Power», (2012) 75 Albany Law Review 413; E. A. Tungohan, *Migrant Care Worker Activism in Canada: From the Politics of Everyday Resistance to the Politics from Below*, Champaign (Illinois), University of Illinois Press (forthcoming).

^{ix} In 2014, the International domestic Workers Federation included more than 50 organizations (associations, unions and cooperatives) bringing together domestic workers in 40 countries (see their web site: <http://idwfed.org>).

^x MCCCCF, Plan d'action gouvernemental pour l'égalité entre les femmes et les hommes 2011-15 : "Pour que l'égalité de droit devienne une égalité de fait", Quebec, 2011 (Online: www.scf.gouv.qc.ca).

^{xi} See especially Bill No. 60: An Act mainly to modernize the occupational health and safety plan and extend its application to domestics, National Assembly, 39th legislature, 29 session, 2012 (died on the order paper).

^{xii} See for example, Law Commission of Ontario. *Vulnerable Workers and Precarious Work: Final Report*, Toronto, December 2012. <http://www.lco-cdo.org/en/vulnerable-workers-final-report>.

^{xiii} Minister of Citizenship and Immigration, Chris Alexander, News Release: Improving Canada's Caregiver Program. Government of Canada announces reforms to end the live-in requirement, reduce family separation and provide more options to caregivers in Canada, October 31, 2014, Ottawa (online : <http://nouvelles.gc.ca/web/article-en.do?nid=898729>). EDSC, « Familles embauchant des fournisseurs de soins à domicile », (Online : http://www.edsc.gc.ca/fra/emploistravailleurs_etrangerslaide_familialeindex.shtml (no longer available)).

^{xiv} See for example: M. Dumont-Robillard, *L'accès à la justice pour les travailleuses domestiques migrantes : une illusion?*, Montreal, Éditions Themis, 2015; E. Galerand, M. Gallie and J. Ollivier-Gobeil, *Travail domestique et exploitation: le cas des travailleuses domestiques philippines au Canada (PAFR)*, Rapport de Recherche SAC-PINAY, janvier 2015; CDPDJ, *La discrimination systémique à l'égard des travailleuses et les travailleurs migrants*, Quebec, 2011; P.-C. Hsiung and K. Nichol, "Policies on and Experiences of Foreign Domestic Workers in Canada", (2010) 4: 9 *Sociology Compass* 766; S.A. Khan, "From Labour of Love to Decent Work: Protecting the Human Rights of Migrant Caregivers in Canada" (2009), 24 *Canadian Journal of Law and Society* 23; O.K. Stasiulis and A.B. Bakan, *Negotiating Citizenship: Migrant Women in Canada and the Global System*, Toronto, University of Toronto Press, 2005; L. Langevin and M.-C. Belleau, *Le trafic des femmes au Canada : une analyse critique du cadre juridique de l'embauche d'aides familiales immigrantes résidentes et de la pratique des promesses par correspondance*, Ottawa, Condition féminine Canada, 2000.

^{xv} See the Appendix for the methodology used.

^{xvi} Slogan of the United States' National Domestic Workers Alliance. (See: www.domesticworkers.org).

^{xvii} S. Premji, M. Spasevski, S. Athar, Y. Shakya and J. Merolli, "Precarious Work Experiences of Racialized Immigrant Women in Toronto: A Community-Based Study", (2014) 22 *Just Labour: A Canadian Journal of Work and Society* 122; L. Boivin, *Régulation juridique du travail, pouvoir stratégique et précarisation des emplois dans les réseaux: trois études de cas sur les réseaux de services d'aide à domicile au Québec*, Thèse présentée à la Faculté des arts et des sciences en vue de l'obtention du grade de Ph.D. en Relations industrielles, Université de Montréal, August 2013; K. England and I. Dyck, "Migrant Workers in Home Care: Routes, Responsibilities, and Respect", (2012) 102: 5 *Annals of the Association of American Geographers* 1076; S.M. Neysmith and J. Aronson, *Working conditions in home care: Negotiating race and class boundaries in gendered work*, (1997) 27:3 *International Journal of Health* 479.

^{xviii} J.-P. Lavoie, with the collaboration of N. Guberman and P. Marier, *La responsabilité des soins aux aînés au Québec : Du secteur public au privé*, Montréal, IRPP, September 2014.

^{xix} S. Bernstein, *The Regulation of Paid Care Work in Quebec: From the Hearth to the Global Marketplace*, in J. Fudge and R. Owens (eds.), *Precarious Work, Women and the New Economy: The Challenge to Legal Norms*, Oxford, Hart, 2006, 223.

^{xx} S. Bernstein, “The Regulation of Paid Care Work in Quebec: From the Hearth to the Global Marketplace”, in J. Fudge and R. Owens (eds.), *Precarious Work, Women and the New Economy: The Challenge to Legal Norms*, Oxford, Hart, 2006, 223; A. Blackett, “Introduction: Réguler le travail décent pour les travailleuses domestiques”, (2011) 23 :1, *Revue femme et droit* 47.

^{xxi} National Classification of Occupations (NCO) 2011 (<http://noc.esdc.gc.ca/English/noc/welcome.aspx?ver=11>), Major Group “4411 Home child care providers” and Major Group “4412 Home support workers, housekeepers and related occupations” (formerly NOC 2006, Unit groups 6474 and 6471, available at <http://noc.esdc.gc.ca/English/NOC/welcome.aspx?ver=06>).

For now, the 2006 NCO seems to still be used: see for example, the classification of jobs within the framework of the In-home caregiver program (EDSC, « Familles embauchant des fournisseurs de soins à domicile », online http://www.edsc.gc.ca/fra/emplois/travailleurs_etrangers/aide_familiale/index.shtml#tpr).

^{xxii} L. Boivin and R. Pinard, *Les femmes dans l’engrenage mondialisé de la concurrence, étude de cas sur les travailleuses des services d’aide à domicile au Québec*, Montréal, CIAFT, 2007, p. 37; see also A. Martin-Matthews, J. Sims-Gould and C.E. Tong, “Canada’s Complex and Fractionalized Home Care Context: Perspectives of Workers, Elderly Clients, Family Carers, and Home Care Managers”, (2012-13) 68-69 *Canadian Review of Social Policy/Revue canadienne de politique sociale* 55.

^{xxiii} *Centres locaux de services communautaires* [Local community services centres]. An administrative reorganization in the spring of 2015 replaced most CLSCs and Centres de santé et de services sociaux (CSSS) by the *Centres intégrés de santé et de services sociaux* (CISSS) [Integrated health and social services centres] and the *Centres intégrés universitaires de santé et de services sociaux* (CIUSSS) [Integrated health and social services university centres].

^{xxiv} S. Bernstein, “The Regulation of Paid Care Work in Quebec: From the Hearth to the Global Marketplace”, in J. Fudge and R. Owens (eds.), *Precarious Work, Women and the New Economy: The Challenge to Legal Norms*, Oxford, Hart, 2006, 223.

^{xxv} Convention 189, art 1.

^{xxvi} ILO, Conditions of Work and Employment Branch, *Decent Work for Domestic Workers: Convention No 189 and Recommendation 201 in brief*, Geneva, ILO, 2011, p. 8 (Online: <http://www.ilo.org>).

^{xxvii} Convention 189, art 1(b).

^{xxviii} ILO, Conditions of Work and Employment Branch, *Decent Work for Domestic Workers: Convention No 189 and Recommendation 201 in brief*, Geneva, ILO, 2011, p. 8 (Online: <http://www.ilo.org>).

^{xxix} Convention 189, art 2.

^{xxx} ILO, Provisional Record No. 12. Report of the Committee on Domestic Workers, », 99th Session, Geneva, June 2010, p.12/30-12/35 (Online: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_141770.pdf)

^{xxxvi} Convention 189, art 1(c).

^{xxxvii} ILO, Decent Work for Domestic Workers, Report IV (1), Geneva, CIT, 100th session, 2011, p. 5: “With regard to Article 1(c) of the proposed Convention (point 3(c) of the Conclusions), the Office recalls that the wording “not on an occupational basis” was included to reflect the concern of the Committee to ensure that day labourers and similar precarious workers remain included in the definition of domestic worker. Mindful that the intention behind the provision is clear, the Office, however, believes that there is room for improving the current wording which is potentially ambiguous and difficult to understand. The wording “not on an occupational basis” has not previously been used in ILO instruments and the Office would propose replacing it by the phrase “not as a means to earning a living”, in the hope that this more clearly expresses the concerns of the Committee. The Office invites comments on whether this proposed wording should replace the current wording in Article 1(c)”. However, the final text of Convention no. 189 was not amended in that sense.

^{xxxviii} Convention 189, art 1(a).

^{xxxix} See also measures relative to private employment agencies: Convention 189, art 15 et Recommendation 210 at paras. 24 and 26(2).

^{xl} ILO, Conditions of Work and Employment Branch, Decent Work for Domestic Workers: Convention No 189 and Recommendation 201 in brief, Geneva, ILO, 2011, p. 8 (Online: <http://www.ilo.org>).

^{xli} A study of the jurisprudence on this question in the four provinces is largely beyond the scope of this research. For more explanation on the independent contractor status, see notably J. Fudge, E. Tucker and L.F. Vosko, “Employee or Independent Contractor? Charting the Legal Significance of the Distinction in Canada”, (2003) 10:2 Canadian Labour and Employment Law Journal 193; J. Bernier, G. Vallee and C. Jobin, *Les besoins de protection sociale des personnes en situation de travail non traditionnelle*. Rapport final. Québec, Ministère du Travail, 2003.

^{xlii} That is the case under the Employment Standards Act, 2000, S.O. 2000, c. 41, for example. This act determines that the agency is the employer for the purposes of its application and imposes specific obligations and responsibilities on agencies and client businesses (art 74.1-74.18).

^{xliiii} See: J. Bernier, M.-J. Dupuis, L.L. Fontaine and M. Vultur (with the collaboration of Y. Provencher), *Les salariés d’agence de travail temporaire : conditions de travail et pratiques des agences*, Recherche réalisée dans le cadre de l’ARUC- Innovations travail et emploi, Université Laval, 2014, and M. Vultur and J. Bernier (eds.), *Les agences de travail temporaire: leur rôle et leur fonctionnement comme intermédiaires du marché du travail*, Québec, Presses de l’Université Laval, 2014.

^{xliiii} See, for example, on the situation in France: F. Jany-Catrice, “Mise en visibilité statistique des emplois dans les services à la personne”, (2013) 78 :3 La Revue de l’IRES 25-49 (no. spécial: “Conditions d’emploi, syndicalisme et dialogue social dans l’aide à domicile”). However, this study does not address care and education of children.

^{xli} ILO, “Global and regional estimates on domestic workers. Domestic Work : Policy brief 4”, May 2011, p. 7. (Online: http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_155951.pdf).

^{xli} For example: housekeeper, personal aide – home support, visiting homemaker, companion, personal care attendant – home care, family caregiver, home childcare worker, nanny, governess, etc.

^{xlii} For example, for statistical purposes, all foreign caregivers requesting an Application for a Labour Market Opinion to complete the procedures for temporary immigration temporaire within the framework of Canada’s Caregiver Program

are classified in the babysitters category (CNP 6474) regardless of the tasks actually performed RHDCC, « Statistiques annuelles sur les avis relatifs au marché du travail (AMT) 2006-2010 », 2010, Online: www.hrsdc.gc.ca.

^{xliii} Service Canada, “Visiting Homemakers, Housekeepers and Related Occupations” (Online: http://www.servicecanada.gc.ca/eng/qc/job_futures/statistics/6471.shtml)

^{xliiv} To learn more about the problems related to the professionalization and the recognition of skills and qualifications of caregivers in Quebec, see L. Boivin and R. Pinard, *Les femmes dans l’engrenage mondialisé de la concurrence: Étude de cas sur les travailleuses des services d’aide à domicile au Québec*, CIAFT, Montréal, 2007. Pp.2-24.

^{xlv} CNP 6474 (2006). “Babysitters care for children on an ongoing or short-term basis at home or in the children’s homes. They are usually self-employed or may be employed by babysitting agencies. Nannies care for children in the employer’s residence and provide for their health and physical and social development. Parent’s helpers assist parents with child-care and household duties. Nannies and parent’s helpers are employed by private households, where they may also reside.”

This category, however, does not include, for statistical purposes, home child care providers who fall under another classification with daycare centres. Also, the qualification of these workers as « independent contractors » is legally wrong. The 2011 version of the NOC does not classify them as such. We have kept the definitions of the 2006 NOC classification because the statistics given refer to these definitions.

^{xlvi} CNP 6471 (2006): “Visiting homemakers provide ongoing or short-term home support services for individuals and families during periods of incapacitation, convalescence or family disruption. They are employed by government, non-profit and home care agencies, or are self-employed. Housekeepers perform housekeeping and other home management duties in private households, embassies and other residential establishments. Companions provide elderly and convalescent clients with companionship and personal care in residential settings. They are employed by home care agencies or may be self-employed. Foster parents care for children or family members in their homes under the direction of a foster parent agency.”

^{xlvii} MSSS, “Chez soi : Le premier choix, la politique de soutien à domicile”, 2003, p 1, 7, 8 (Online : <http://publications.msss.gouv.qc.ca/acrobat/f/documentation/2002/02-704-01.pdf>).

^{xlviii} J.-P. Lavoie, with the collaboration of N. Guberman and P. Marier, *La responsabilité des soins aux aînés au Québec: Du secteur public au privé*, Montreal, Institute for research on Public Policy, September 2014; L. Boivin, *Régulation du travail, pouvoir stratégique et précarisation des emplois dans les réseaux: trois études de cas sur les réseaux de services d’aide à domicile*. Thesis submitted to the Faculty of Arts and Sciences in partial fulfillment of the requirements of the degree of Ph.D. in Industrial Relations, Université de Montréal, August 2013 (Online: <https://papyrus.bib.umontreal.ca/xmlui/handle/1866/10556>).

^{xlix} MSSS, “Chez soi: Le premier choix, la politique de soutien à domicile”, 2003, p. 13, 17, 18, 20, 2127.

^l MAMROT, *Profit des entreprises d’économie sociale en aide domestique: Partie 1- Tableau synthèse, Plan d’action gouvernemental pour l’entrepreneuriat collectif*, 2012, pi (en ligne: <http://www.chantier.qc.ca/?module=document&uid=1603>).

^{li} J.-P. Lavoie, with the collaboration of N. Guberman and P. Marier, *La responsabilité des soins aux aînés au Québec: Du secteur public au privé*, Montréal, Institut de recherche en politiques publiques, septembre 2014, p. 18.

^{lii} L. Boivin, *Régulation du travail, pouvoir stratégique et précarisation des emplois dans les réseaux: trois études de cas sur les réseaux de services d’aide à domicile*, p. 311, 331-333.

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- ^{liii} MAMROT, Profit des entreprises d'économie sociale en aide domestique : Partie 1- Tableau synthèse, Plan d'action gouvernemental pour l'entrepreneuriat collectif, 2012, p. 11.
- ^{liv} MAMROT, Profit des entreprises d'économie sociale en aide domestique : Partie 1 - Tableau synthèse, Plan d'action gouvernemental pour l'entrepreneuriat collectif, 2012, pp ii-iii.
- ^{lv} MAMROT, Profit des entreprises d'économie sociale en aide domestique: Partie 1 - Tableau synthèse, Plan d'action gouvernemental pour l'entrepreneuriat collectif, 2012, p ii.
- ^{lvi} MAMROT, Profit des entreprises d'économie sociale en aide domestique: Partie 1 - Tableau synthèse, Plan d'action gouvernemental pour l'entrepreneuriat collectif, 2012, p ii.
- ^{lvii} CSF, L'économie sociale et sa filière de l'aide domestique : quel avenir pour l'emploi des femmes, 2006, p. 50.
- ^{lviii} MAMROT, Profit des entreprises d'économie sociale en aide domestique : Partie 1 - Tableau synthèse, Plan d'action gouvernemental pour l'entrepreneuriat collectif, 2012, p iii.
- ^{lix} Voir BIT, Formaliser le travail domestique par l'utilisation des chèques services: Cas particuliers de la France, de la Belgique et du canton de Genève par Samuel Grumiau, BIT, 2013 (Online: <http://www.ilo.org>).
- ^{lx} L. Boivin, Régulation du travail, pouvoir stratégique et précarisation des emplois dans les réseaux : trois études de cas sur les réseaux de services d'aide à domicile, p. 188; MSSS, « Vous recevez de l'aide : Les services d'aide à domicile et le chèque emploi-service », 2009, p 9 (Online: <http://publications.msss.gouv.qc.ca/acrobat/f/documentalio/2008/08-513-02F.pdij>).
- ^{lxi} L. Boivin, Régulation du travail, pouvoir stratégique et précarisation des emplois dans les réseaux : trois études de cas sur les réseaux de services d'aide à domicile, p. 190.
- ^{lxii} MSSS, « Vous fournissez un service d'aide à domicile à une personne handicapée ou en perte d'autonomie : Les services d'aide à domicile et le chèque emploi-service », 2009, p 3 (Online: <http://publications.msss.gouv.qc.ca/msss/document-0008611>).
- ^{lxiii} MSSS, « Vous recevez de l'aide: Les services d'aide à domicile et le chèque emploi-service », 2009, p 3.
- ^{lxiv} MSSS, « Vous fournissez un service d'aide à domicile à une personne handicapée ou en perte d'autonomie : Les services d'aide à domicile et le chèque emploi-service », 2009, p 3.
- ^{lxv} Extract from a decision of the Commission des lésions professionnelles, Joyal et Québec (Ministère de la Santé et des Services sociaux) Programme Emploi Service, 2007 QCCLP4466 (Online: www.canlii.org), cited in L. Boivin, Régulation du travail, pouvoir stratégique et précarisation des emplois dans les réseaux : trois études de cas sur les réseaux de services d'aide à domicile, p. 224.
- ^{lxvi} Bill n°67 : *Autonomy Insurance Act*, National Assembly, 1•18 session, 408 legislature (tabled December 3, 2013) (died on the order paper) (Online: <http://www.assnat.qc.ca/en/travaux-parlementaires/projets-loi/projet-loi-67-40-1.html>).
- ^{lxvii} F. Colombo, A. Uena-Nozal, J. Mercier, F. Tjadens, Help Wanted? Providing and Paying for Long-Term Care, Paris, OECD, 2011, p. 15. http://www.keepeek.com/Digital-Asset-Management/oecd/social-issues-migration-health/help-wanted_9789264097759-en#.V-km5E0VCLg#page17

^{lxviii} Ministre du Conseil exécutif, *Nouvelles dispositions de la Politique familiale: Les enfants au coeur de nos choix*, Québec, Gouvernement du Québec, 1997. Compared to other Canadian jurisdictions, with the coming into force of the Quebec parental insurance program in 2006, Quebec now provides the most generous paid leave for maternity and absences for the birth or adoption of a child: see the *Act respecting parental insurance*, RLRQ, c. A-29.011 and the amendments to the provisions concerning maternal and parental leave of 2002 of the Act respecting Labour Standards, RLRQ, c. N-1.1, art. 81.2-81.17. See also: OECD, *Babies and Bosses - Reconciling Work and Family Life: A Synthesis of Findings for OECD Countries*, Paris, OCDE, 2007 (Online: <http://www.oecd.org/els/family/babiesandbosses-reconcilingworkandfamilylifesynthesisoffindingsforoecdcountries.htm>); see also OCDE, *Doing Better for Families*, Paris, OECD, 2011 (Online : <http://www.oecd.org/social/soc/doingbetterforfamilies.htm>).

^{lxix} On this change in orientation, see notably J. Jenson, « Changing the Paradigm: Family Responsibility or Investing in Children », (2004) 29:2 *Canadian Journal of Sociology* 169.

^{lxx} Educational Childcare Act, RLRQ, c. S-4.1.1.

^{lxxi} Daycare fees in the three other provinces studied are much higher: about \$1000 per month in Calgary, \$1200 per month in Vancouver and \$1500 in Toronto (D. Macdonald and M. Friendly, *The Parent Trap: Child Care Fees in Canada's Big Cities*, Ottawa, Canadian Centre for policy alternatives, November 2014 (Online: <https://www.policyalternatives.ca/publications/reports>)).

^{lxxii} *An Act mainly to implement certain provisions of the Budget Speech of 4 June 2014 and return to a balanced budget in 2015-2016*, L.Q. 2015, chapter 8, art. 160.

^{lxxiii} Ministère de la Famille, « Portrait des garderies non subventionnées du Québec. Enquête auprès des propriétaires de garderies non subventionnées », Gouvernement du Québec, novembre 2014 (en ligne : www.mfa.gouv.qc.ca/fr/publication/Documents/portraitLgns.pdf).

^{lxxiv} Ministère de la Famille, « Création de places en services de garde » (en ligne : <http://www.mfa.gouv.qc.ca/fr/services-de-garde/portrait/places/Pages/index.aspx>).

^{lxxv} See among others the evidence on this related in the case of the *Confédération des syndicats nationaux c. Québec (Procureur général)*, 2008 QCCS 5076 (Online: www.canlii.org), at para. 156 and following. Since that judgment, a significant number of workers in home daycare centres have seen their working conditions improve through collective bargaining with the coming into force of an Act respecting the representation of certain home childcare providers and the negotiation process for their group agreements, RLRQ, c. R-24.0.1.

^{lxxvi} CIC, OP 14 Processing Applicants for the Live-In Caregiver Program, updated February 10, 2014. (Online: <http://www.cic.gc.ca/english/resources/manuals/op/op14-eng.pdf>). For a critical analysis of this program, see M. Dumont Robillard, *L'accès à la justice pour les travailleuses domestiques migrantes: une illusion?*, Montreal, Editions Themis, 2015, pp. 41 and following.

^{lxxvii} EDSC, « Contrat employeur-employé aide familial résident » (2013) (no longer available online). The LCP contract is no longer available on the federal government website. For the new program, see Appendix 1: Programme des travailleurs étrangers temporaires. Contrat employeur-employé pour fournisseur de soins à domicile » (en ligne : <http://www.servicecanada.gc.ca/eforms/forms/esdc-emp5604%282015-05-003%29f.pdf>).

^{lxxviii} MIDI, "Live-in caregiver employment contract" (Online: <http://www.immigration-quebec.gouv.qc.ca/publications/en/form/employment-contract-dyn.pdf>)

^{lxxix} There is every reason to believe that the decrease in the number of caregivers who obtained permanent residence in 2011 and 2012 is due to the significant delays in processing applications by the government.

^{lxxx} EDSC, « Familles embauchant des fournisseurs de soins à domicile » (Online: http://www.edsc.gc.ca/fra/emplois/travailleurs_etrangers/aidefamilialeindex.shtrnl).

^{lxxx}ⁱ CIC, Determine your eligibility – Provincial nominees (Online: <http://www.cic.gc.ca/english/immigrate/provincial/apply-who.asp>) .

^{lxxx}ⁱⁱ One can read on the MIDI site: The pathways “Caring for Children” and “Caring for People with High Medical Needs,” set up by the federal government to provide access to permanent residence, are not offered in Québec. Attaining permanent residence in Québec, depending on the case, is based on the criteria of the Regular Program for Skilled Workers, or based on the conditions of the Programme de l’expérience québécoise (PEQ – Quebec Experience Program). (Online: <http://www.immigration-quebec.gouv.qc.ca/en/immigrate-settle/temporary-workers/obtaining-authorizations/live-in-caregiver/index.html>).

^{lxxx}ⁱⁱⁱ Secrétariat à la Condition féminine, Pour que l’égalité de droit devienne une égalité de fait. Plan d’action gouvernemental Pour l’égalité entre les femmes et les hommes 2011-2015, Québec, Gouvernement du Québec, 2011. Online: http://www.scf.gouv.qc.ca/fileadmin/publications/politique/Pian_d_action_complet_2011-06-13.pdf

^{lxxx}^{iv} Secrétariat à la Condition féminine, Plan d’action en matière d’analyse différenciée selon les sexes 2011-15, Québec, Gouvernement du Québec, 2011 (en ligne: http://www.scf.gouv.qc.ca/fileadmin/publications/politique/ADS_complet_2011-06-13.pdf).

^{lxxx}^v See the methodology used in the Appendix.

^{lxxx}^{vi} Act respecting labour standards, RLRQ, c N 1.1, art. 1(6) “domestic”, art 1(10) “employee”, art. 3(2) “babysitter” [QLN1] (Note: all provincial and federal statutes can be accessed online.). <http://legisquebec.gouv.qc.ca/fr/ShowDoc/cs/N-1.1>

^{lxxx}^{vii} CNT, Interprétation et jurisprudence, août 2014, p. 24-25 (Online: http://www.cnt.gouv.qc.ca/fileadmin/pdf/publicationslc_0111.pdf)

^{lxxx}^{viii} CNT, « Les gardiens et gardiennes de personnes et les normes du travail » (en ligne: http://www.cnt.gouv.qc.ca/fileadmin/pdf/publications/c_0254.pdf).

^{lxxx}^{ix} Employment Standards Regulation, 14/97, art 6 [AESR]. Minister of Labour, Skills, Training and Labour (Employment Standards), "Domestic Employment", September 2014 (Online: <http://work.alberta.ca/employment-standards/999.html>).

^{xc} AESR, art. 9, Minister of Labour, Skills, Training and Labour (Employment Standards), "Caregivers (Home Care and Residential Care)", September 2014 (Online: <http://work.alberta.ca/employment-standards/999.html>). The definition of the caregiver’s tasks is included in the regulation on employment standards that refers to the Co-ordinated Home Care Program Regulation, AR 296/2003.

^{xc}ⁱ Minister of Labour, Skills, Training and Labour (Employment Standards), "Domestic Employment", septembre 2014 (en ligne: <http://work.alberta.ca/employment-standards/999.html>).

^{xc}ⁱⁱ Employment Standard Act, RSBC 1996, c 113, art 1(1) [BCESA].

^{xc}ⁱⁱⁱ Employment Standards Regulation, 396/95, art 1(1) [BCESR] «live-in home support worker» [ESR]. Minister of Labour (Employment Standards Branch), Interpretation Guidelines Manual, ESR Section 1 (Online: <http://www.labour.gov.bc.ca/esb/igm/igm-toc-esa-def.htm>).

^{xciv} BCESR, art 1(1), Minister of Labour (Employment Standards Branch), Interpretation Guidelines Manual, ESR Section 1.

^{xcv} BCESR, art 1(1), 32(1)(c); Minister of Labour (Employment Standards Branch), Interpretation Guidelines Manual, ESR Section 1.

^{xcvi} Interpretation Guidelines Manual, ESR Section 1 - Definitions- Sitter.

^{xcvii} *Employment Standards Act*, 2000, S.O. 2000, c. 41 and *Ontario Regulation 285/01*, art. 1, 11(1).

^{xcviii} Minister of Labour, Ontario Employment Standards Act Policy and Interpretation Manual, continuous updates , section 11 (31.12); task descriptions enumerated in the *Home Care and Community Services Act*, LO 1994, c. 26.

^{xcix} QLNT, art 40.

^c Reglement sur les normes du travail, c N-1.1 r 3, art 3 [QRNT].

^{ci} QLNT, art. 49.

^{cii} QLNT, art. 85.2.

^{ciii} QLNT, art. 41. CNT, Interpretation et jurisprudence, août 2014, p. 49 (Online).

^{civ} QLNT, art. 51.0.1. The statute speaks of the « domestic » at this article, That is the person who also performs domestic tasks not related to custodial care or care for persons. There is every reason to believe that omitting to include sitters in article 51.0.1 of the *Act respecting labour standards* (incorpore par la Loi modifiant de nouveau la Loi sur les normes du travail, LQ 1997, c 72) can be explained by the later inclusion of sitters within the protection afforded by the addition of article 158.3 to the act (2002, c 80, art 74. entre en vigueur June 1, 2004).

^{cv} EDSC, « Contrat employeur-employe aide familial residentant » (2013) en ligne <http://www.servicecanada.gc.ca/eforms/forms/esdc-emp5498%282013-12-009%29f.pdf> .EDSC, « Families embauchant des fournisseurs de soins a domicile » (en ligne http://www.edsc.gc.ca/caffra/emplois/travailleurs_etrangerslaide_familialeindex.shtml#tpr).

^{cvi} QLNT, art. 85.

^{cvi} QLNT, art. 85.1. CNT, Interpretation et jurisprudence, août 2014, p. 145 (en ligne).

^{cvi} AESR; Minister of Labour, Skills, Training and Labour (Employment Standards), "Domestic Employment", September 2014; Minister of Labour, Skills, Training and Labour (Employment Standards), "Caregivers (Home Care and Residential Care)", September 2014 (Online: <http://work.alberta.ca/employment-standards1999.html>).

^{cix} AESC, art 12-13. See also Human Services, Deductions from Earnings, September 2014 (Online).

^{cx} BCESR, art 12.

^{cx} BCESR, art 15, 16(1).

^{cxii} BCESA, art. 21.

^{cxiii} BCESA, art 25.

^{cxiv} BCESA, art 1(1) "wages".

^{cxv} BCESA, art 14.

^{cxvi} BCESR, art 1(1) "live-in home support worker".

^{cxvii} BCESR, art 32(1)(c).

^{cxviii} Ont.Reg 285/01, art 19(1)(b).

^{cxix} Ont. Reg 285/01, art 11(2).

^{cxx} Ministry of Labour (Employment Standards), « Minimum Wage » (Online: <http://www.labour.gov.on.ca/english/es/tools/esworkbooklminimum.php>).

^{cxxi} Ontario *Employment Standards Act*, 2000, S.O. 2000, c. 41, art. 13.

^{cxxii} Ontario *Employment Standards Act*, 2000, S.O. 2000, c. 41, OLNE, art 1(1) "salary" (c), art. 23(2); Reg 285/01, art 5(6).

^{cxxiii} Employment Agency Business Licensing Regulation, Alberta Reg. 45/2012, art. 12(1); BCESA, art. 10; OLNE, art 74.8: *Employment Protection for Foreign Nationals Act*, 2009, S.O. 2009, c. 32, art. 1(1).

^{cxxiv} See notably: E. Giroux-Gareau, *L'encadrement juridique des intermédiaires intervenant dans les migrations transfrontalières de la main-d'oeuvre : Le cas des travailleuses domestiques au Canada*, Mémoire de Maitrise en droit international, Faculté de science politique et droit, Université du Québec à Montréal, 2011.

^{cxxv} Quebec *Act respecting Labour Standards*, art. 59.0.1, art. 122(6).

^{cxxvi} AESC art. 6(a), 21, 22

^{cxxvii} AESC, art 16.

^{cxxviii} AESR, art. 43.4

^{cxxix} BCESA, art. 35, 37(4)-37(6).

^{cxxxx} OLNE, art 22(1), (7).

^{cxxxi} ORNE , art. 11(3).

^{cxxxii} Quebec Act respecting Labour Standards, art. 78.

^{cxxxiii} BCESA art. 34, 36 et 37.

^{cxxxiv} OLNE, art. 18(4), 0 Regl285/01, art. 11(3).

^{cxxxv} AESA, art. 17(2), AESR, art. 6.

^{cxxxvi} BCESA, art. 36 (2), BCESR , art. 34.

^{cxxxvii} OLNE, art. 18, Ont. Reg. 285/01, art 11(1).

^{cxxxviii} *Quebec Act respecting Labour Standards*, art. 79; CNTc.Gedres (Les), Centre d'accueil pour personnes âgées, D.T.E. 94T-1174 (C.Q.); CNTc. Garderie Tantie inc., D.T.E. 2003T-276 (C.Q.).

^{cxxxix} AESC, art. 18, AESR, art. 6(a).

^{cxl} BCESA, art. 32, art. 34.

^{cxli} OLNE, art 20-21.

^{cxlii} *Quebec Act respecting Labour Standards*, art. 57(1).

^{cxliii} CNT c. Deschenes, 2007 QCCQ 4811 (en ligne: www.canlii.org); voir aussi CNT c. Boucher, 2002, AZ-50152777.

^{cxliv} BCESA, art. 1(2).

^{cxlv} O Reg 285101, art 6(1).

^{cxlvi} Ont. Reg 285/1, art. 6(1), art. 11(1).

^{cxlvii} *Quebec Act respecting Labour Standards*, art. 66 et ss; AESR, art 43.5; BCESA, art. 57 et ss; OLNE, art. 33 et ss.

^{cxlviii} *Quebec Act respecting Labour Standards*, art. 122 et ss.; AESC, art. 2(1), 53(1), 53.9-53.94; BCESA, art. 79; OLNE, art. 74, 104.

^{cxlix} Employment Insurance Act (S.C. 1996, c. 23), art. 22 et ss. ; Citoyenneté et Immigration Canada, « Je suis un aide familial résidant. Qu'arrivera-t-il si je perds mon emploi ? » (en ligne : <http://www.cic.gc.ca/francais/centre-aide/reponse.asp?q=226&t=17>).

^{cl} *An Act Respecting Parental Insurance*, CQLR c. A-29.011.

^{cli} OLNE art. 50.

^{clii} *Quebec Act respecting Labour Standards*, art. 70.1.

^{cliii} OLNE, art. 50.

^{cliv} See especially *Hydro-Quebec v. Syndical des employé-e-s de techniques professionnelles et de bureau d'Hydro-Quebec, section locale 2000 (SCFP-FTQ)*, 2008 CSC 43 (Online : <http://scc-csc.lexum.com/scc-csc/fr/nav.do>).

^{clv} In June 2015, Quebec legislators adopted a law that groups the Commission des normes du travail, the Commission de la santé et de la sécurité du travail and the Commission de l'équité salariale, as well as the Commission des relations de travail and the Commission des lésions professionnelles. Ont ainsi été créées la Commission des normes, de l'équité, de la santé et de la sécurité du travail and the Tribunal administratif du travail. See *An Act to group the Commission de l'équité salariale, the Commission des normes du travail and the Commission de la santé et de la sécurité du travail and to establish the Administrative Labour Tribunal*, LQ 2015, c. 15 (online: <http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=5&file=2015C15F.PDF>).

clvi *Quebec Act respecting Labour Standards*, art. 124 and 123.6.

clvii BCESA, art 14(2)(c).

clviii EDSC, « Contrat employeur-employé aide familial résidant » (2013) (en ligne: <http://www.servicecanada.gc.ca/efornns/forrnnslesdc-emp5498%282013-12-009%29f.pdf>); EDSC, « Families embauchant des fournisseurs de soins à domicile » (en ligne : http://www.edsc.gc.ca/fra/emploistravailleurs_etrangers/aide_familiale/Index.shtml#tpr).

clix MIDI, « Contrat de travail d'une aide familiale résidante (Online: <http://www.immigration-quebec.gouv.qc.ca/fr/formulaires/formulaire-titre/contrat-travail.html>); under the new program: MIDI, « Contrat de travail type- pastes à bas salaire- personnes offrant des soins à domicile » (Online : <http://www.immigration-quebec.gouv.qc.ca/fr/formulaires/formulaire-titre/contrat-travail-soins-domicile.html>).

clx Comité paritaire de l'industrie de la chemise v. Potash, [1994] 2 RCS 406. This statute dealt with the powers of inspection provided for in the *Act respecting collective agreement decrees* (RLRQ, c. D-2) in the case of home-based work.

clxi *Quebec Act respecting labour standards*, art. 109(1).

clxii Commission des normes du travail, Rapport annuel de gestion 2012-13, p. 51 (online: http://www.cnt.gouv.qc.ca/fileadmin/pdf/publications/c_0294.pdf).

clxiii Alberta *Employment Standards Code*, art. 77(2).

clxiv British Columbia *Employment Standards Act*, art. 15, British Columbia *Employment Standards Regulations*, art. 13.

clxv Ontario *Employment Standards Act*, arts. 92, 102-102.1; *Employment Protection for Foreign Nationals Act*, 2009, S.O. 2009, c. 32, art. 36.

clxvi *Quebec Act respecting Labour Standards*, art. 102.

clxvii *Quebec Act respecting Labour Standards*, art. 123.13

clxviii *Quebec Act respecting Labour Standards*, art. 123.4, art. 128(3).

clxix See the following websites: http://www.labour.gov.bc.ca/esblself-help/self_help_kit.pdf;
<http://humanservices.alberta.ca/documents/Complaint-Resolution-Process.pdf> ;
<http://www.labour.gov.on.ca/english/es/pubs/start/index.php#contact>.

clxx European Agency for Safety and Health at Work, Current and emerging issues in the healthcare sector, including home and community care. European Risk Observatory Report, European Agency for Safety and Health at Work, Bilbao, 2014, pp. 92-94; J. Hanley, S. Premji, K. Lippel, K. Messing, "Action Research for the Health and Safety of Domestic Workers in Montreal: Using Numbers to Tell Stories and Effect Change", (2010) 20 :4 *New Solutions* 421; I. Gagnon et al., "Organisation du travail et développement de stratégies protectrices: cas d'auxiliaires sociales et familiales de services publics de maintien à domicile", (2003/4) 107 *Gerontologie et société*, 131.

clxxi See the study on the French situation by A. Dussuet, “Santé au travail et prévention des risques professionnels dans les associations d’aide à domicile”, (2013) 78 :3 *Le Revue de l’IRES 77* (Special issue: “Conditions d’emploi, syndicalisme et dialogue social dans l’aide à domicile”). However, this study does not address child care. On the lack of acknowledgement of risks associated with women’s work, see K. Messing, *La santé des travailleuses. La science est-elle aveugle?*, Montreal, Les Éditions du remue-ménage, 2000.

clxxii RLRQ 1979, c S-2.1, art. 1 [*Act Respecting Occupational Health and Safety*].

clxxiii See especially these cases: *Derla and Productions IM60 Inc.*, (2011) Commission des lésions professionnelles du Québec – Québec, QCCLP 5330 and *Deutsch and Krychman*, (2013) QCCL P4063.

clxxiv CSST, “Protection des personnes participant aux programmes des gouvernements fédéral et provincial (articles 11, 12, 12.0.1, 12.1, 15 and 16 of the *Act respecting industrial accidents and occupational diseases*, LRO c. A-3.001)”, No. 52P, CSST, May 21, 2014, p. 84 (online: http://www.csst.qc.ca/lois_reglements_normes_politiques/orientations-directives/notes_orientation/Documents/52P_2014.pdn).

clxxv CSST, “Travailler en sécurité: Pour une maternité sans danger”, CSST, 2010, p. 5 (en ligne: http://www.csst.qc.ca/publications/200/Documents/DC200_1024_1web.pdn).

clxxvi *Dionne v. Commission scolaire des Patriotes*, 2014 CSC 33, par. 32. In this decision, that did not deal with the exclusion of certain caregivers, the Tribunal re-affirmed the importance of the right to preventive withdrawal to counter discrimination against women at work. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13620/index.do>

clxxvii *Occupational Health and Safety Act*, RSA 2000, c 0.2, art 1(s) (ii) [AOHSA].

clxxviii Government of Alberta, Employment and Immigration, Occupational Health and Safety Code 2009: Explanation Guide, 2009, p. 19-20 (Online: http://work.alberta.ca/documents/WHS-LEG_ohsc_p01.pdn).

clxxix Government of Alberta, Employment and Immigration, Occupational Health and Safety Code 2009: Explanation Guide, 2009, p. 28 fol. (Online : http://work.alberta.ca/docurnents/WHS-LEG_ohsc_p28.pdn).

clxxx Workers Compensation Act, RSBC 1996, c 492, art 1(a) [BCWCA].

clxxxi BCWCA, art 108(1)(b). Concerning the field of application of the associated regulation, see OHSR, art 2.1.

clxxxii BCWCA, art 2(1), 106, 111(2).

clxxxiii Workers Compensation Board Assessment Manual: Item AP1-2-1, continuous updating at pp 44-45 (Online: http://worksafebc.com/publications/policy_manuals/assessment_policy_manuaVAssets/PDF/assessment_manual.pdn).

clxxxiv WorkRights.ca, *British Columbia: Workers’ Compensation* (Online: <http://www.workrights.ca>) : “Almost all workers working for a BC employer are covered. Workers working full time, part time and on a casual or seasonal basis are covered. Workers who are covered include nannies, companions and other personal care givers; domestic workers, such as household cleaners”.

clxxxv BC Reg. 318/2007.

clxxxvi *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, c 0.1, art. 3(1).

^{clxxxvii} Expert Advisory Panel on Occupational Health and Safety, Report and Recommendations to the Minister of Labour, Toronto, Ministry of Labour, December 2010, p. 67 (Online: <https://www.labour.gov.on.ca/english/hs/prevention/report/index.php>)

^{clxxxviii} Act respecting occupational health and safety, art. 179(1).

^{clxxxix} Act respecting occupational health and safety, art. 181.

^{cx^c} CSST, « Protection des personnes participant aux programmes des gouvernements fédéral et provincial (articles 11, 12, 12.0.1, 12.1, 15 and 16 of the LATMP LRQ c. A-3.001) », No. 52P, CSST, 21 May 2014, p. 85 (en ligne <http://www.csst.qc.ca/lois_reglements_normes_politiques/orientations-directives/notes_orientation/Documents/52P_2014.pdf>).

^{cx^{ci}} See also AOHS, art 25: the Director has the power to order in writing the regular inspection of a workplace and the manner in which the inspection is to be conducted.

^{cx^{cii}} AOHS, art 8(1)(a).

^{cx^{ciii}} AOHS, art 1 (cc).

^{cx^{civ}} BCWCA, Guidelines: G-011-179-1 Advance notice of inspection, continuous update (Online: www2.worksafebc.com/publications/ohsregulation/GuidelinesWorkersCompensationAct.asp).

^{cx^{cv}} BCWCA, art 181.

^{cx^{cvi}} Occupational Health and Safety Act, R.S.O. 1990, c. O.1, art 54(1)(a).

^{cx^{cvi}} Occupational Health and Safety Act, R.S.O. 1990, c. O.1, art 54(2).

^{cx^{cvi}} *Act respecting industrial accidents and occupational diseases*, RLRQ, c. A-3.001, art 2.

^{cx^{cix}} Act respecting industrial accidents and occupational diseases, art. 18 and 19.

^{cc} In 2003, only 13 caregivers in Quebec were registered with the CSST under these provisions. K. Lippe!, S. Bernstein and K. Messing, *Travail atypique: Protection légale des conditions minimales d'emploi et de la santé*, Rapport final soumis au FQRSC dans le cadre du programme d'Actions concertées Le travail atypique, la mutualisation du risque, la protection sociale et les lois du travail, Montreal, 31 March 2004, p. 21.

^{cci} CSST, « Protection des personnes participant aux programmes des gouvernements fédéral et provincial (articles 11, 12, 12.0.1, 12.1, 15 et 16 de la LATMP LRQc. A-3.001) », No. 52P, CSST, 21 May 2014, pp. 66-67, 84-85 (Online: http://www.csst.qc.ca/lois_reglements_normes_politiques/orientations-directives/notes_orientation/Documents/52P_2014.pdn).

^{ccii} See, among others, « Sécurité au travail: les aides familiales exigent une meilleure couverture, Radio-Canada avec la Presse canadienne », 28 octobre 2013 (Online: <http://lici.radio-canada.ca/nouvelles/societe/2013/10/28/002-aides-familiales-csst.shtml>). The last bill on this matter died on the order paper. Bill n°60 : *An Act mainly to modernize the occupational health and safety plan and extend its application to domestics*, Assemblée nationale, 28 session, 348 legislature, 2012; presented by Ms. Lise Thériault, Minister of Labour.

^{cciii} Commission des droits de la personne et des droits de la jeunesse (CDPDJ), « La conformité de l'exclusion du domestique et du gardien de la protection automatique de la Loi sur les accidents du travail et les maladies professionnelles à la Charte québécoise des droits et libertés », Cat. 2.120-2.68, Quebec, December 2008 (Online: www.cdpdj.qc.ca/publications/domestique_protection_CSST.pdn).

^{cciv} A. Sikka, K. Lippel et J. Hanley, «Access to Health Care and Workers' Compensation for Precarious Migrants in Quebec, Ontario and New Brunswick», (2011) 5: 2 *Revue de droit et santé de McGill*//203, pp. 255-261.

^{ccv} *Workers' Compensation Act*, W-15, RSA 2000 [AWCA].

^{ccvi} Rate and Industry Description Manual, Industry codes 87300 and 82704 (WCB, online). Verification of certain element with the Workers Compensation Board (Information for employers and their coverage under the Act sector), August 2014.

^{ccvii} *Workers' Compensation Regulation* (32512002) [AWCR], Schedule A, "Exempted industries".

^{ccviii} Rate and Industry Description Manual, Industry codes 87300 and 82704 (WCB, online).

^{ccix} WorkSafeBC, « Classification unit description : Hiring or Providing Companion Services or Domestic Childcare (764029) », January 2014; «Classification unit description :Community Health Support Services (766006) », January 2014 (Online: www.worksafebc.com) ; Workers' Compensation Board, Assessment Manual, January 2013, AP-1-1, p. 20-2, AP1-1-3, p. 28; AP1-2-1, p. 43-44, 47, AP1-2-1, p. 44-45 (Online: [http://worksafebc.com/publications/policy_manuals/assessment_policy_manuaVdefau .asp](http://worksafebc.com/publications/policy_manuals/assessment_policy_manuaVdefau.asp)).

^{ccx} *Workplace Safety and Insurance Act*, 1997, S.O. 1997, c. 16; WSIB, Operational Policy, Special Cases (Worker Coverage): " Domestic Workers" (12-04-14) and "Nursing and Other Health Care Operations" (H-857-01) (Online: <http://www.wsib.on.ca>).

^{ccxi} A. Sikka, K. Uppel et J. Hanley, "Access to Health Care and Workers' Compensation for Precarious Migrants in Quebec, Ontario and New Brunswick", (2011) 5: 2 *Revue de droit et santé de McGill*, 203-269, p. 248.

^{ccxii} EDSC, « Contrat employeur-employé aide familial résident » (2013) en ligne <http://www.servicecanada.gc.ca/eleforms/forms/esdc-emp5498%282013-12-009%29f.pdf> .EDSC, « Familles embauchant des fournisseurs de soins à domicile », en ligne http://www.edsc.gc.ca/fracemploistravailleurs_etrangers/aide_familialeindex.shtml#tpr

^{ccxiii} C189, art 3(3).

^{ccxiv} C189, art 2(2) (exclusion from the scope of the convention), 13(2) (occupational health and safety), 14(2) (social security), 15(2) (migrant workers), 18 (convention implementation); R201 at para 6(3)-(4) (model contract), 8(2) (hours of work), 19 (occupational health and safety), 22 (repatriation of migrant workers), 25 (policies and programs notably for training and work-life balance).

^{ccxv} C189, art. 2(1) and (2).

^{ccxvi} As of June 1, 2015 (Online: <http://www.ilo.org/global/standards/lang--en/index.htm>).

^{ccxvii} According to the Canadian federal government, « Tous les travailleurs canadiens ont des droits liés à la liberté d'association. La vaste majorité des travailleurs canadiens ont droit à la négociation collective. Dans quelques juridictions les travailleurs des secteurs agricoles, de chasse et pêche, du travail domestique, et certains professionnels sont exclus de la législation sur la négociation collective. » Voir Rapport à présenter le 28 février 2011 au plus tard, conformément aux dispositions de l'article 19 de la Constitution de l'Organisation internationale du Travail, par le gouvernement du CANADA, sur l'état de la législation et de la pratique nationales concernant les questions qui font

l'objet des instruments mentionnés dans le questionnaire suivant. Questionnaire au titre de l'article 19 concernant les conventions fondamentales. Convention (no. 29) sur le travail forcé, 1930; Convention (no. 98) sur le droit d'organisation et de négociation collective, 1949; Convention (no. 138) sur l'âge minimum, 1973, Affaires multilatérales du travail, Programme du travail, EDSC, Gatineau, 2011. According to the Canadian Government, « [Translation] All Canadian workers have rights of freedom of association. The vast majority of Canadian workers have the right to collective bargaining. In some jurisdictions, workers in the agriculture, hunting and fisheries sectors, domestic work, and some professionals are excluded from legislation on collective bargaining.” See Report to be made no later than 28 February 2011, in accordance with article 19 of the Constitution of the International Labour Organization, by the Government of Canada, on the position of national law and practice in regard to matters dealt with in the instruments referred to in the following questionnaire. ... Convention (No. 29) concerning Forced or Compulsory Labour, 1930; Convention (No. 98) concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, 1949; Convention (No. 138) concerning Minimum Age for Admission to Employment, 1973, LABOUR

^{ccxxviii} See particularly the Commission's latest report: Report of the Committee of Experts on the Application of Conventions and Recommendations, Report 111(1A), ILC, 103rd Session, Geneva, p.77 (Online: [http://www.ilo.org/public/libdoc/ilo/P/09661/09661\(2014-103-1A\).pdf](http://www.ilo.org/public/libdoc/ilo/P/09661/09661(2014-103-1A).pdf)).

^{ccxxix} See especially : Health Services and Support- Facilities Subsector Bargaining Assn. v. British Columbia, 2007 CSC 27 and Saskatchewan Federation of Labour v. Saskatchewan, 2015 CSC 4 (Online: www.scc-csc.lexum.com).

^{ccxxx} The provincial laws studied all reproduce this model: Code du travail du Québec, RLRQ, c C-27 [QCTQ]; Labour Relations Code of Alberta, RSA 2000, c L-1 [ALRC]; Labour Relations Code of British Columbia, RSBC 1996, c 244 [BCLRC]; Ontario Labour Relations Act, SO 1995, c 1.

^{ccxxxi} See M. Lefebvre's study on the French situation, « La construction des champs conventionnels dans les services aux personnes: dynamiques et enjeux », (2013) 78 :3 La Revue de l'IRES 99 (Special issue: « Conditions d'emploi, syndicalisme et dialogue social dans l'aide à domicile »). However, this study does not address childcare.

^{ccxxxii} Quebec Labour Code, art 1(L).

^{ccxxxiii} Quebec Labour Code, art. 21 al. 4.

^{ccxxxiv} Syndicat des travailleuses et travailleurs du Centre local de services communautaires Alfred-Desrochers (CSN) et Centre de santé Memphremagog, 2003 QCCRT 0077; for a discussion of this decision, see also G. Vallee, « Les rapports entre la protection des travailleurs et la liberté d'entreprendre : des principes aux manifestations actuelles. » (2007) 86 :1 Revue du Barreau canadien 247, 273-5.

^{ccxxxv} See the case study in L. Boivin, Régulation juridique du travail, pouvoir stratégique et précarisation des emplois dans les réseaux: trois études de cas sur les réseaux de services d'aide à domicile au Québec.

^{ccxxxvi} Act respecting collective agreement decrees, RLRQ, c. D-2, art. 6.

^{ccxxxvii} *Act respecting the representation of certain home childcare providers and the negotiation process for their group agreements*, RLRQ, c. R-24.0.1. Another similar law concerning relating to family-type intermediate resources was adopted at the same time: *Act respecting the representation of family-type resources and certain intermediate resources and the negotiation process for their group agreements*, RLRQ, c. R-24.0.2. This act applies to any family-type resource within the meaning of the Act respecting health services and social services, RLRQ, c S-4.2. These resources receive in their principal residence a maximum of nine clients who are entrusted to them by one or more public institutions.

^{ccxxxviii} On the development and for a critical analysis of this regime, see S. Bernstein, "Sector-Based Collective Bargaining Regimes and Gender Segregation: A Case Study of Self-Employed Home Childcare Workers in Quebec", in J. Fudge, S. McCrystal and K. Sankaran (eds.), *Blurring Legal Boundaries: Commercialization and Informalization of Work*, Oxford, Hart, 2012, 213.

^{ccxxxix} Alberta Labour Relations Code, art 4(2)(f). This Act does not apply to (f) employees employed in domestic work in a private dwelling or to their employer while the employer is ordinarily resident in the dwelling and acting in the capacity of their employer.

^{ccxxx} Are excluded: "employees employed in domestic work in a private dwelling or to their employer while the employer is ordinarily resident in the dwelling and acting in the capacity of their employer" (art. 4(2)f)). The Labour Relations Code does not have a definition of the term "employees employed in domestic work", but there is every reason to believe that one can refer to that in the Employment Standards Regulation, 396/95, art 6 [AESR].

^{ccxxxi} Article 43.1 of the Employment Standards Regulation defines the notions of "caregiver", "home care" and "home care client". These definitions rest upon the implementation of the "Coordinated Home Care Program Regulation" (AR 296/2003). The Labour Relations Code of Alberta does not contain definitions of these terms: there is every reason to believe that they have the same meaning in both laws.

^{ccxxxii} BC Labour Relations Code, art. 1(1) « unit ».

^{ccxxxiii} Public Sector Employers Act, RSBC 1996, c 384, art 6.

^{ccxxxiv} Only agencies that receive 1) at least half of their funding from the provincial government and 2) receive at least \$250,000 yearly from the government must join the association. See the website of the Health Employers Association of British Columbia. Another similar employers' association exists in a related field, that is, the Community Social Service Employers Association. It is possible that some unionized caregivers work for employers belonging to this other association. Information provided by a representative from the CSSEA, November 12, 2014. See also Community Services Labour Relations Act, SBC 2003, c27.

^{ccxxxv} The former collective agreement (2012-14) is available at http://members.heabc.bc.ca/publirJCAs/CBA/2012-2014_Community_CA.pdf. For information concerning the new agreement, see http://heabc.bc.ca/publirJBargaining/2014/Announcements/CBARatificationAnnouncement_Feb3%202014.pdf (Accessed November 12, 2014).

^{ccxxxvi} See the "Community Sub-Sector Fact Sheet" (Online: <http://heabc.bc.ca/publirJBargaining/2014/Fact%20Sheets/Community.pdf>).

^{ccxxxvii} *Ontario Labour Relations Act*, art 1(3).

^{ccxxxviii} J. Fudge, "Little Victories and Big Defeats: The Rise and Fall of Collective Bargaining Rights for Domestic Workers in Ontario" in A. Bakan and D. Stasiulis (eds.), *Making the Match: Domestic Placement Agencies and the Racialization of Women's Household World*, Toronto, University of Toronto Press, 1997, 119.

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APPENDIX 1

METHODOLOGY

The method used for the legal analysis is a traditional legal methodology: review and analysis of statutes, regulations and relevant administrative interpretation guides, doctrine interpreting legislative provisions, international standards and legal and non-legal literature enabling a better understanding of the legislative framework. Documentary research was supplemented as necessary by communications with intervenors from caregivers' advocacy groups, representatives from departments and agencies charged with the application of statutes and specialized lawyers in order to further validate the interpretation of the legislation. The legal research was completed in the fall of 2014 and, save exceptions, does not take into account subsequent amendments to the various statutes.

Three focus groups were organized in the fall of 2013 in conjunction with the Association des aides familiales du Québec and of the Service Employees International Union (SQEES-298 FTQ), who solicited the participation of workers according to criteria predetermined by the study's steering committee. The first, held in Québec, included unionized workers with permanent resident or citizenship status and occupying a position as home care worker in social economy businesses that provide domestic help (EESAD). The second, held in Montréal, included workers without permanent resident status who participated in the LCP and who live in the employer's residence. A third, also held in Montréal, included workers who had participated in the LOC and who are now permanent residents or are in the process of obtaining this status, but who have work permits allowing them to work for any employer ("open permits"). Questions asked were inspired by the legal research and focused on (1) identifying gaps between work standards and real-life experience; (2) identifying problems in legal enforcement; (3) identifying the concerns of workers not addressed by legislation; (4) identifying solutions to the issues raised; and (5) identifying priorities for intervention to improve the working conditions of these workers. The questions put to these focus groups were developed with the study's steering committee. The workers' comments were transcribed and analyzed. Ethics certification was obtained from the University of Québec in Montréal's Comité institutionnel d'éthique de la recherche avec des êtres humains (CIER) [Institutional Ethics Committee on Research involving Human Beings], thereby ensuring the express consent of the workers to participate in the focus groups, the anonymity of responses, the possibility for the workers to withdraw at any time, etc.

APPENDIX 2

COMMENTS PROVIDED BY CAREGIVERS DURING THE FOCUS SESSIONS HELD WITH THE ASSOCIATION DES AIDES FAMILIALES DU QUEBEC

I'm taking [care] of [an]84 year old lady. She has [a] brain tumor. [...]. They [my employers] want me to come at night, it's not paid. It should be, it should start in the morning, but they want me to come at night because nobody is taking care of her. So I'm taking care of her at night. [A]t night she's always calling me. My room is upstairs and her room is downstairs. So at night, every minute she calls me, "Come here, come here". I have a baby monitor, so up and down, up and down at night. During the day, I always walk her inside the house. And then preparing her food. And then cleaning the house too, but it's not so big because we're just 2 at the house. I give her baths. At middle of the day, 11am or 1pm, we go out for a walk. And 8pm I put her in bed. And even in bed, she always calls me. So it should be 24 hours, but the brother just pays me \$100 a day. So I ask him, but I'm working too at night, not just during the day. (LCP PARTICIPANT)

I signed a contract with strictly 8 hours a day. But, I exceeded. For 2 years I exceeding that, going to sleep almost [at]11pm, because she needs help. She has nobody, you know, [she has] multiple sclerosis[...] so she needs help. [...] On top of that, in the contract, I was just to take care of her, do some home management, but also did gardening and taking care of a dog. I also took care of everything, including the husband. But that was nothing to me[...] I don't mind working [for] people who treat me as a person also. (NO LONGER LCP PARTICIPANT)

I work from 6:30am to 10 pm. And for me it's a little stressful because they give me a cellphone. Do this, do that, go to there, go here. Go to the laundry, iron it, that's the thing I don't like too much. Maybe around Saturday or Sunday I like to rest and they text me, please, I want you to work 3 hours, from 3 to 6. It's ok, it's ok. [...]That's the one thing I don't like too much. (LCP PARTICIPANT)

I receive \$400 a week for unlimited hours. And then my compensation, is like, sometimes maybe they[...] see that I'm not happy, so they give me a free ticket for a concert, something like that[...] (LCP PARTICIPANT)

My salary for a week is \$341.26. If I am on call for Saturday or overtime, they give me \$50, but it was being deducted from my plane ticket to come here. So I was paying for my overtime. (LCP PARTICIPANT)

I receive \$341.49 per week, 40 hours. But sometimes they ask me to come Saturday or Sunday, but they didn't pay me an extra. Just say thank you. I work for 3 hours, 4 hours, but they didn't pay me. They say, "because I sponsor you, say thank you. • (LCP PARTICIPANT)

My present employer, the older woman, the brother pays me \$400 per 4 days, 24 hours. [...]It seems like I belong to their family. And the older woman is attached to me already, so it seems they are my family here in Canada. So it's okay for me if they give me \$400 per 24 hours. The other family, with the children, she pays \$299 for 23 hours. It's not declared, but I want to declare it, it's always "okay, okay, next week. • But until now, it's not declared. (LCP PARTICIPANT)

Since I ended my 2 years in the Live-In Caregiver Program, and we had the talk, I was raised to \$15 an hour by my boss, so I'm happy with that. And then I wanted to take another job actually, because I finished a course as a nursing aid, and then I am planning on applying to hospitals to make \$18 an hour, and then they wanted to catch up. "If you're gonna eam \$18, we're gonna pay you that amount, stay with us. • So I think I'm going to stay, because I got used to the family, the kids know me, I'm attached to them[...]. (NO LONGER LCP PARTICIPANT)

The whole basement is mine, but I have a little burden, because the machines, the Hydro, everything is there. The humidifier, it's always running. The noise is too hard. Someday I need to do something : some cotton in my ears to try to sleep. Everything is included, television, internet, and the good thing is that I can receive friends if I want, or they can stay with me all weekend. /like that. (LCP PARTICIPANT)

I have my own room. [T]he whole basement is mine. I have my own kitchen, my own bathroom, a big room, but I am not allowed to lock it, even if you go out for your day off, you're not allowed to lock it. And because you're are staying with them, you cannot work for 8 hours only. You stay in a nice house, you should do work for long hours, because you stay in a nice place. Yeah, that's what the employer says... (LCP PARTICIPANT)

I also live in a luxurious mansion in the basement. Everything is free and the most thing I enjoy, is that when I come out from the garage I see all the luxurious cars of my boss. Ferrari, Porsche, and I like it. (LCP PARTICIPANT)

[T]hey don't want me to use computers, [my employers] don't want me to use the phone, I said "how can I talk to my children?". I want to know what happened to my children. Even at night, I finish already, 11pm, want to open my computer, but she said "You don't need to use your computer now, because it's night. Tomorrow you have work. • I said, I can use my computer and work tomorrow. But she took my computer. I don't have a way to talk to my children. (NO LONGER LCP PARTICIPANT)

*We come from a poor country. That's how Philippines is pictured. We come from a poor country, but not really poor. It's just mismanagement. We come from a poor country, and [my employer] always tells me :
« You come from a very poor country». And I'm always hurt, you know, Philippines is not really a poor country, we are very rich in natural resources, but are being exploited. (NO LONGER LCP PARTICIPANT)*

I just want to let them know, the employers, how can they do business, how can they work [...] if [there is] no nanny? They need the nanny, they need the caregiver. Who will work for their home if they don't have a caregiver or a nanny or a cleaning lady? So I want to let them know to respect us because to come here in Canada is not easy. [...] We take exams, a lot of exams, it's hard for us to come here. Just a [little] respect... (LCP PARTICIPANT)

I want to change the way they look at us as live-in caregivers or homecare providers. Because they have that notion in mind that you are just merely a cleaning lady or somebody who is working with them and they look at us as not a good thing[...]. Like the little one that I'm taking care of, she told me one time, and it's a big slap on my face, she said "I am the boss and you are just a cleaning lady." Where is the integrity as an individual? I am not respected as a human [...]. So they don't consider the affection, the love and care that you have showed to them that they can never repay you[...] Like what I said to my [previous] employer previously, [...]it is not the money that counts. [...] (LCP PARTICIPANT)

I came here to Canada as a live-in caregiver. For 24 months I'm a live-in. After that, /live out[...]. But I can say with my employer, they are very nice to me and they consider me as a family. Until now, I'm [still] working with them.[...] For a live-out, it's better because you have your rights, you have more freedom and it's more open. It's also good {as} a live-in, but if your work is not finished, you have to do something about it because you are living with them. But if you're a live-out, you're finished at 7, even if there is still work, you can leave. [...]. {M}y relationship with my employer is more closer [...] they're more nice to me and more friendly. And luckily, because maybe it's time, I want to tell them I want to leave them because I have my profession. I took a nursing aid course so I need to apply for the hospital or nursing home. They know that one day I will be leaving them. And luckily, just luckily, a month ago, my employer told me maybe if I can work with them only for a few days and a few hours. [...] / want to continue my relationship and working with them because they are nice to me. (NO LONGER LCP PARTICIPANT)

For me it's the best thing when we received our open permit, it's like Waaaaaah! We receive our freedom. [As a] live-in caregiver, you get your contract and Ooooooh when will I finish this contract...?[...] When we have the open permit it's good, because you can have a lot of employers, as you wish. You can choose what you want, and you can also choose the job you want to. The only thing, you need to speak French. But it's good, learning is good. (NO LONGER LCP PARTICIPANT)

We are afraid to say no to the employers, because we're thinking of providing support [to our families in our country]. We spent a lot of money to come to Canada, so it makes sense to be afraid to [...] say no to our employers. (NO LONGER LCP PARTICIPANT)

[T]hey need to monitor all the employers, especially for the hours of the live-in caregivers. [...]Really they abused my time. Because of the documents, the open permit, we just wait and be patient. They have to check about that and support the caregivers. (NO LONGER LCP PARTICIPANT)

[The government needs] to check all these agencies, because the agencies are the only ones who are getting money and who suffers? The live-in caregiver. They're negotiating with the employer, and they sign, and this employer abuses the employee. There are a lot. (NO LONGER LCP PARTICIPANT)

APPENDIX 3

**C189 - DOMESTIC WORKERS CONVENTION, 2011 (NO. 189)
CONVENTION CONCERNING DECENT WORK FOR DOMESTIC WORKERS
(ENTRY INTO FORCE: 05 SEP 2013)
ADOPTION: GENEVA, 100TH ILC SESSION (16 JUN 2011) - STATUS: UP-TO-DATE INSTRUMENT
(TECHNICAL CONVENTION).**

PREAMBLE

The General Conference of the International Labour Organization, Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 100th Session on 1 June 2011, and

Mindful of the commitment of the International Labour Organization to promote decent work for all through the achievement of the goals of the ILO Declaration on Fundamental Principles and Rights at Work and the ILO Declaration on Social Justice for a Fair Globalization, and

Recognizing the significant contribution of domestic workers to the global economy, which includes increasing paid job opportunities for women and men workers with family responsibilities, greater scope for caring for ageing populations, children and persons with a disability, and substantial income transfers within and between countries, and

Considering that domestic work continues to be undervalued and invisible and is mainly carried out by women and girls, many of whom are migrants or members of disadvantaged communities and who are particularly vulnerable to discrimination in respect of conditions of employment and of work, and to other abuses of human rights, and

Considering also that in developing countries with historically scarce opportunities for formal employment, domestic workers constitute a significant proportion of the national workforce and remain among the most marginalized, and

Recalling that international labour Conventions and Recommendations apply to all workers, including domestic workers, unless otherwise provided, and

Noting the particular relevance for domestic workers of the Migration for Employment Convention (Revised), 1949 (No. 97), the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), the Workers with Family Responsibilities Convention, 1981 (No. 156), the Private Employment Agencies Convention, 1997 (No. 181), and the Employment Relationship Recommendation, 2006 (No. 198), as well as of the ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration (2006), and

Recognizing the special conditions under which domestic work is carried out that make it desirable to supplement the general standards with standards specific to domestic workers so as to enable them to enjoy their rights fully, and

Recalling other relevant international instruments such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the United Nations Convention against Transnational Organized Crime, and in particular its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and its Protocol against the Smuggling of Migrants by Land, Sea and Air, the Convention on the Rights of the Child and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and

Having decided upon the adoption of certain proposals concerning decent work for domestic workers, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention; adopts this sixteenth day of June of the year two thousand and eleven the following Convention, which may be cited as the Domestic Workers Convention, 2011.

ARTICLE 1

For the purpose of this Convention:

- (a) the term domestic work means work performed in or for a household or households;
- (b) the term domestic worker means any person engaged in domestic work within an employment relationship;
- (c) a person who performs domestic work only occasionally or sporadically and not on an occupational basis is not a domestic worker.

ARTICLE 2

1. The Convention applies to all domestic workers.
2. A Member which ratifies this Convention may, after consulting with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers, exclude wholly or partly from its scope:
 - (a) categories of workers who are otherwise provided with at least equivalent protection;
 - (b) limited categories of workers in respect of which special problems of a substantial nature arise.

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3. Each Member which avails itself of the possibility afforded in the preceding paragraph shall, in its first report on the application of the Convention under article 22 of the Constitution of the International Labour Organisation, indicate any particular category of workers thus excluded and the reasons for such exclusion and, in subsequent reports, specify any measures that may have been taken with a view to extending the application of the Convention to the workers concerned.

ARTICLE 3

1. Each Member shall take measures to ensure the effective promotion and protection of the human rights of all domestic workers, as set out in this Convention.
2. Each Member shall, in relation to domestic workers, take the measures set out in this Convention to respect, promote and realize the fundamental principles and rights at work, namely: (a) freedom of association and the effective recognition of the right to collective bargaining;

(b) the elimination of all forms of forced or compulsory labour;

(c) the effective abolition of child labour; and

(d) the elimination of discrimination in respect of employment and occupation.
3. In taking measures to ensure that domestic workers and employers of domestic workers enjoy freedom of association and the effective recognition of the right to collective bargaining, Members shall protect the right of domestic workers and employers of domestic workers to establish and, subject to the rules of the organization concerned, to join organizations, federations and confederations of their own choosing.

ARTICLE 4

1. Each Member shall set a minimum age for domestic workers consistent with the provisions of the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182), and not lower than that established by national laws and regulations for workers generally.
2. Each Member shall take measures to ensure that work performed by domestic workers who are under the age of 18 and above the minimum age of employment does not deprive them of compulsory education, or interfere with opportunities to participate in further education or vocational training.

ARTICLE 5

Each Member shall take measures to ensure that domestic workers enjoy effective protection against all forms of abuse, harassment and violence.

ARTICLE 6

Each Member shall take measures to ensure that domestic workers, like workers generally, enjoy fair terms of employment as well as decent working conditions and, if they reside in the household, decent living conditions that respect their privacy.

ARTICLE 7

Each Member shall take measures to ensure that domestic workers are informed of their terms and conditions of employment in an appropriate, verifiable and easily understandable manner and preferably, where possible, through written contracts in accordance with national laws, regulations or collective agreements, in particular:

- (a) the name and address of the employer and of the worker;
- (b) the address of the usual workplace or workplaces;
- (c) the starting date and, where the contract is for a specified period of time, its duration;
- (d) the type of work to be performed;
- (e) the remuneration, method of calculation and periodicity of payments;
- (f) the normal hours of work;
- (g) paid annual leave, and daily and weekly rest periods;
- (h) the provision of food and accommodation, if applicable;
- (i) the period of probation or trial period, if applicable;
- (j) the terms of repatriation, if applicable; and
- (k) terms and conditions relating to the termination of employment, including any period of notice by either the domestic worker or the employer.

ARTICLE 8

1. National laws and regulations shall require that migrant domestic workers who are recruited in one country for domestic work in another receive a written job offer, or contract of employment that is enforceable in the country in which the work is to be performed, addressing the terms and conditions of employment referred to in Article 7, prior to crossing national borders for the purpose of taking up the domestic work to which the offer or contract applies.
2. The preceding paragraph shall not apply to workers who enjoy freedom of movement for the purpose of employment under bilateral, regional or multilateral agreements, or within the framework of regional economic integration areas.
3. Members shall take measures to cooperate with each other to ensure the effective application of the provisions of this Convention to migrant domestic workers.
4. Each Member shall specify, by means of laws, regulations or other measures, the conditions under which migrant domestic workers are entitled to repatriation on the expiry or termination of the employment contract for which they were recruited.

ARTICLE 9

Each Member shall take measures to ensure that domestic workers:

- (a) are free to reach agreement with their employer or potential employer on whether to reside in the household;
- (b) who reside in the household are not obliged to remain in the household or with household members during periods of daily and weekly rest or annual leave; and
- (c) are entitled to keep in their possession their travel and identity documents.

ARTICLE 10

1. Each Member shall take measures towards ensuring equal treatment between domestic workers and workers generally in relation to normal hours of work, overtime compensation, periods of daily and weekly rest and paid annual leave in accordance with national laws, regulations or collective agreements, taking into account the special characteristics of domestic work.
2. Weekly rest shall be at least 24 consecutive hours.

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3. Periods during which domestic workers are not free to dispose of their time as they please and remain at the disposal of the household in order to respond to possible calls shall be regarded as hours of work to the extent determined by national laws, regulations or collective agreements, or any other means consistent with national practice.

ARTICLE 11

Each Member shall take measures to ensure that domestic workers enjoy minimum wage coverage, where such coverage exists, and that remuneration is established without discrimination based on sex.

ARTICLE 12

1. Domestic workers shall be paid directly in cash at regular intervals at least once a month. Unless provided for by national laws, regulations or collective agreements, payment may be made by bank transfer, bank cheque, postal cheque, money order or other lawful means of monetary payment, with the consent of the worker concerned.
2. National laws, regulations, collective agreements or arbitration awards may provide for the payment of a limited proportion of the remuneration of domestic workers in the form of payments in kind that are not less favourable than those generally applicable to other categories of workers, provided that measures are taken to ensure that such payments in kind are agreed to by the worker, are for the personal use and benefit of the worker, and that the monetary value attributed to them is fair and reasonable.

ARTICLE 13

1. Every domestic worker has the right to a safe and healthy working environment. Each Member shall take, in accordance with national laws, regulations and practice, effective measures, with due regard for the specific characteristics of domestic work, to ensure the occupational safety and health of domestic workers.
2. The measures referred to in the preceding paragraph may be applied progressively, in consultation with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers.

ARTICLE 14

1. Each Member shall take appropriate measures, in accordance with national laws and regulations and with due regard for the specific characteristics of domestic work, to ensure that domestic workers enjoy conditions that are not less favourable than those applicable to workers generally in respect of social security protection, including with respect to maternity.
2. The measures referred to in the preceding paragraph may be applied progressively, in consultation with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers.

ARTICLE 15

1. To effectively protect domestic workers, including migrant domestic workers, recruited or placed by private employment agencies, against abusive practices, each Member shall:
 - (a) determine the conditions governing the operation of private employment agencies recruiting or placing domestic workers, in accordance with national laws, regulations and practice;
 - (b) ensure that adequate machinery and procedures exist for the investigation of complaints, alleged abuses and fraudulent practices concerning the activities of private employment agencies in relation to domestic workers;
 - (c) adopt all necessary and appropriate measures, within its jurisdiction and, where appropriate, in collaboration with other Members, to provide adequate protection for and prevent abuses of domestic workers recruited or placed in its territory by private employment agencies. These shall include laws or regulations that specify the respective obligations of the private employment agency and the household towards the domestic worker and provide for penalties, including prohibition of those private employment agencies that engage in fraudulent practices and abuses;
 - (d) consider, where domestic workers are recruited in one country for work in another, concluding bilateral, regional or multilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment; and
 - (e) take measures to ensure that fees charged by private employment agencies are not deducted from the remuneration of domestic workers.
2. In giving effect to each of the provisions of this Article, each Member shall consult with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers.

ARTICLE 16

Each Member shall take measures to ensure, in accordance with national laws, regulations and practice, that all domestic workers, either by themselves or through a representative, have effective access to courts, tribunals or other dispute resolution mechanisms under conditions that are not less favourable than those available to workers generally.

ARTICLE 17

1. Each Member shall establish effective and accessible complaint mechanisms and means of ensuring compliance with national laws and regulations for the protection of domestic workers.
2. Each Member shall develop and implement measures for labour inspection, enforcement and penalties with due regard for the special characteristics of domestic work, in accordance with national laws and regulations.
3. In so far as compatible with national laws and regulations, such measures shall specify the conditions under which access to household premises may be granted, having due respect for privacy.

ARTICLE 18

Each Member shall implement the provisions of this Convention, in consultation with the most representative employers and workers organizations, through laws and regulations, as well as through collective agreements or additional measures consistent with national practice, by extending or adapting existing measures to cover domestic workers or by developing specific measures for them, as appropriate.

ARTICLE 19

This Convention does not affect more favourable provisions applicable to domestic workers under other international labour Conventions.

APPENDIX 4

The English and French versions of the text of this Convention are equally authoritative.

R201 - Domestic Workers Recommendation, 2011 (No. 201)

Recommendation concerning Decent Work for Domestic Workers

Adoption: Geneva, 100th ILC session (16 Jun 2011) - Status: Up-to-date instrument.

Display in: French - Spanish - Arabic - German - Russian - Chinese

PREAMBLE

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 100th Session on 1 June 2011, and

Having adopted the Domestic Workers Convention, 2011, and

Having decided upon the adoption of certain proposals with regard to decent work for domestic workers, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Domestic Workers Convention, 2011;

adopts this sixteenth day of June of the year two thousand and eleven the following Recommendation, which may be cited as the Domestic Workers Recommendation, 2011.

1. The provisions of this Recommendation supplement those of the Domestic Workers Convention, 2011 ("the Convention"), and should be considered in conjunction with them.
2. In taking measures to ensure that domestic workers enjoy freedom of association and the effective recognition of the right to collective bargaining, Members should:
 - (a) identify and eliminate any legislative or administrative restrictions or other obstacles to the right of domestic workers to establish their own organizations or to join the workers' organizations of their own choosing and to the right of organizations of domestic workers to join workers' organizations, federations and confederations;

(b) give consideration to taking or supporting measures to strengthen the capacity of workers' and employers' organizations, organizations representing domestic workers and those of employers of domestic workers, to promote effectively the interests of their members, provided that at all times the independence and autonomy, within the law, of such organizations are protected.

3. In taking measures for the elimination of discrimination in respect of employment and occupation, Members should, consistent with international labour standards, among other things:

(a) make sure that arrangements for work-related medical testing respect the principle of the confidentiality of personal data and the privacy of domestic workers, and are consistent with the ILO code of practice "Protection of workers' personal data" (1997), and other relevant international data protection standards;

(b) prevent any discrimination related to such testing; and

(c) ensure that no domestic worker is required to undertake HIV or pregnancy testing, or to disclose HIV or pregnancy status.

4. Members giving consideration to medical testing for domestic workers should consider:

(a) making public health information available to members of the households and domestic workers on the primary health and disease concerns that give rise to any needs for medical testing in each national context;

(b) making information available to members of the households and domestic workers on voluntary medical testing, medical treatment, and good health and hygiene practices, consistent with public health initiatives for the community generally; and

(c) distributing information on best practices for work-related medical testing, appropriately adapted to reflect the special nature of domestic work.

5. (1) Taking into account the provisions of the Worst Forms of Child Labour Convention, 1999 (No. 182), and Recommendation (No. 190), Members should identify types of domestic work that, by their nature or the circumstances in which they are carried out, are likely to harm the health, safety or morals of children, and should also prohibit and eliminate such child labour.

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- (2) When regulating the working and living conditions of domestic workers, Members should give special attention to the needs of domestic workers who are under the age of 18 and above the minimum age of employment as defined by national laws and regulations, and take measures to protect them, including by:
- (a) strictly limiting their hours of work to ensure adequate time for rest, education and training, leisure activities and family contacts;
 - (b) prohibiting night work;
 - (c) placing restrictions on work that is excessively demanding, whether physically or psychologically; and
 - (d) establishing or strengthening mechanisms to monitor their working and living conditions.
6. (1) Members should provide appropriate assistance, when necessary, to ensure that domestic workers understand their terms and conditions of employment.
- (2) Further to the particulars listed in Article 7 of the Convention, the terms and conditions of employment should also include:
- (a) a job description;
 - (b) sick leave and, if applicable, any other personal leave;
 - (c) the rate of pay or compensation for overtime and standby consistent with Article 10(3) of the Convention;
 - (d) any other payments to which the domestic worker is entitled;
 - (e) any payments in kind and their monetary value;
 - (f) details of any accommodation provided; and
 - (g) any authorized deductions from the worker's remuneration.
- (3) Members should consider establishing a model contract of employment for domestic work, in consultation with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers.
- (4) The model contract should at all times be made available free of charge to domestic workers, employers, representative organizations and the general public.

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7. Members should consider establishing mechanisms to protect domestic workers from abuse, harassment and violence, such as:
- (a) establishing accessible complaint mechanisms for domestic workers to report cases of abuse, harassment and violence;
 - (b) ensuring that all complaints of abuse, harassment and violence are investigated, and prosecuted, as appropriate; and
 - (c) establishing programmes for the relocation from the household and rehabilitation of domestic workers subjected to abuse, harassment and violence, including the provision of temporary accommodation and health care.
8. (1) Hours of work, including overtime and periods of standby consistent with Article 10(3) of the Convention, should be accurately recorded, and this information should be freely accessible to the domestic worker.
- (2) Members should consider developing practical guidance in this respect, in consultation with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers.
9. (1) With respect to periods during which domestic workers are not free to dispose of their time as they please and remain at the disposal of the household in order to respond to possible calls (standby or on-call periods), Members, to the extent determined by national laws, regulations or collective agreements, should regulate:
- (a) the maximum number of hours per week, month or year that a domestic worker may be required to be on standby, and the ways they might be measured;
 - (b) the compensatory rest period to which a domestic worker is entitled if the normal period of rest is interrupted by standby; and
 - (c) the rate at which standby hours should be remunerated.
10. Members should take measures to ensure that domestic workers are entitled to suitable periods of rest during the working day, which allow for meals and breaks to be taken.

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11. (1) Weekly rest should be at least 24 consecutive hours.
- (2) The fixed day of weekly rest should be determined by agreement of the parties, in accordance with national laws, regulations or collective agreements, taking into account work exigencies and the cultural, religious and social requirements of the domestic worker.
- (3) Where national laws, regulations or collective agreements provide for weekly rest to be accumulated over a period longer than seven days for workers generally, such a period should not exceed 14 days for domestic workers.
12. National laws, regulations or collective agreements should define the grounds on which domestic workers may be required to work during the period of daily or weekly rest and provide for adequate compensatory rest, irrespective of any financial compensation.
13. Time spent by domestic workers accompanying the household members on holiday should not be counted as part of their paid annual leave.
14. When provision is made for the payment in kind of a limited proportion of remuneration, Members should consider:
- (a) establishing an overall limit on the proportion of the remuneration that may be paid in kind so as not to diminish unduly the remuneration necessary for the maintenance of domestic workers and their families;
 - (b) calculating the monetary value of payments in kind by reference to objective criteria such as market value, cost price or prices fixed by public authorities, as appropriate;
 - (c) limiting payments in kind to those clearly appropriate for the personal use and benefit of the domestic worker, such as food and accommodation;
 - (d) ensuring that, when a domestic worker is required to live in accommodation provided by the household, no deduction may be made from the remuneration with respect to that accommodation, unless otherwise agreed to by the worker; and
 - (e) ensuring that items directly related to the performance of domestic work, such as uniforms, tools or protective equipment, and their cleaning and maintenance, are not considered as payment in kind and their cost is not deducted from the remuneration of the domestic worker.

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15. (1) Domestic workers should be given at the time of each payment an easily understandable written account of the total remuneration due to them and the specific amount and purpose of any deductions which may have been made.
- (2) Upon termination of employment, any outstanding payments should be made promptly.
16. Members should take measures to ensure that domestic workers enjoy conditions not less favourable than those of workers generally in respect of the protection of workers' claims in the event of the employer's insolvency or death.
17. When provided, accommodation and food should include, taking into account national conditions, the following:
- (a) a separate, private room that is suitably furnished, adequately ventilated and equipped with a lock, the key to which should be provided to the domestic worker;
 - (b) access to suitable sanitary facilities, shared or private;
 - (c) adequate lighting and, as appropriate, heating and air conditioning in keeping with prevailing conditions within the household; and
 - (d) meals of good quality and sufficient quantity, adapted to the extent reasonable to the cultural and religious requirements, if any, of the domestic worker concerned.
18. In the event of termination of employment at the initiative of the employer, for reasons other than serious misconduct, live-in domestic workers should be given a reasonable period of notice and time off during that period to enable them to seek new employment and accommodation.
19. Members, in consultation with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers, should take measures, such as to:
- (a) protect domestic workers by eliminating or minimizing, so far as is reasonably practicable, work-related hazards and risks, in order to prevent injuries, diseases and deaths and promote occupational safety and health in the household workplace;

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- (b) provide an adequate and appropriate system of inspection, consistent with Article 17 of the Convention, and adequate penalties for violation of occupational safety and health laws and regulations;
 - (c) establish procedures for collecting and publishing statistics on accidents and diseases related to domestic work, and other statistics considered to contribute to the prevention of occupational safety and health related risks and injuries;
 - (d) advise on occupational safety and health, including on ergonomic aspects and protective equipment; and
 - (e) develop training programmes and disseminate guidelines on occupational safety and health requirements specific to domestic work.

20. (1) Members should consider, in accordance with national laws and regulations, means to facilitate the payment of social security contributions, including in respect of domestic workers working for multiple employers, for instance through a system of simplified payment.

(2) Members should consider concluding bilateral, regional or multilateral agreements to provide, for migrant domestic workers covered by such agreements, equality of treatment in respect of social security, as well as access to and preservation or portability of social security entitlements.

(3) The monetary value of payments in kind should be duly considered for social security purposes, including in respect of the contribution by the employers and the entitlements of the domestic workers.

21. (1) Members should consider additional measures to ensure the effective protection of domestic workers and, in particular, migrant domestic workers, such as:

(a) establishing a national hotline with interpretation services for domestic workers who need assistance;

(b) consistent with Article 17 of the Convention, providing for a system of pre-placement visits to households in which migrant domestic workers are to be employed;

(c) developing a network of emergency housing;

(d) raising employers' awareness of their obligations by providing information on good practices in the employment of domestic workers, employment and immigration law obligations regarding migrant domestic workers, enforcement arrangements and sanctions in cases of violation, and assistance services available to domestic workers and their employers;

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- (e) securing access of domestic workers to complaint mechanisms and their ability to pursue legal civil and criminal remedies, both during and after employment, irrespective of departure from the country concerned; and
 - (f) providing for a public outreach service to inform domestic workers, in languages understood by them, of their rights, relevant laws and regulations, available complaint mechanisms and legal remedies, concerning both employment and immigration law, and legal protection against crimes such as violence, trafficking in persons and deprivation of liberty, and to provide any other pertinent information they may require.
- (2) Members that are countries of origin of migrant domestic workers should assist in the effective protection of the rights of these workers, by informing them of their rights before departure, establishing legal assistance funds, social services and specialized consular services and through any other appropriate measures.
22. Members should, after consulting with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers, consider specifying by means of laws, regulations or other measures, the conditions under which migrant domestic workers are entitled to repatriation at no cost to themselves on the expiry or termination of the employment contract for which they were recruited.
23. Members should promote good practices by private employment agencies in relation to domestic workers, including migrant domestic workers, taking into account the principles and approaches in the Private Employment Agencies Convention, 1997 (No. 181), and the Private Employment Agencies Recommendation, 1997 (No. 188).
24. In so far as compatible with national law and practice concerning respect for privacy, Members may consider conditions under which labour inspectors or other officials entrusted with enforcing provisions applicable to domestic work should be allowed to enter the premises in which the work is carried out.
25. (1) Members should, in consultation with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers, establish policies and programmes, so as to:
- (a) encourage the continuing development of the competencies and qualifications of domestic workers, including literacy training as appropriate, in order to enhance their professional development and employment opportunities;

(b) address the work–life balance needs of domestic workers; and

(c) ensure that the concerns and rights of domestic workers are taken into account in the context of more general efforts to reconcile work and family responsibilities.

(2) Members should, after consulting with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers, develop appropriate indicators and measurement systems in order to strengthen the capacity of national statistical offices to effectively collect data necessary to support effective policymaking regarding domestic work.

26. (1) Members should consider cooperating with each other to ensure the effective application of the Domestic Workers Convention, 2011, and this Recommendation, to migrant domestic workers.

(2) Members should cooperate at bilateral, regional and global levels for the purpose of enhancing the protection of domestic workers, especially in matters concerning the prevention of forced labour and trafficking in persons, the access to social security, the monitoring of the activities of private employment agencies recruiting persons to work as domestic workers in another country, the dissemination of good practices and the collection of statistics on domestic work.

(3) Members should take appropriate steps to assist one another in giving effect to the provisions of the Convention through enhanced international cooperation or assistance, or both, including support for social and economic development, poverty eradication programmes and universal education.

(4) In the context of diplomatic immunity, Members should consider:

(a) adopting policies and codes of conduct for diplomatic personnel aimed at preventing violations of domestic workers' rights; and

(b) cooperating with each other at bilateral, regional and multilateral levels to address and prevent abusive practices towards domestic workers.