isarc FAITH COMMUNITIES IN ACTION AGAINST POVERTY

NEW LEGISLATION AND ENFORCEMENT MUST EFFECTIVELY PROTECT WORKERS RIGHTS

Brief presented to the Changing Workplaces Review

by

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August 2015

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Introduction

The Interfaith Social Assistance Reform Coalition (ISARC) welcomes this opportunity to have a voice in the reform of Ontario's Employment Standards Act and the Labour Relations Act through the Changing Workplaces Review. Our coalition represents Ontario's major faith communities, including the Anglican Diocese of Toronto, the Anglican Diocese of Niagara, the Anglican Provincial Synod of Ontario, the Association of Catholic Bishops of Ontario, the Canadian Unitarian Council, Catholic Charities of the Archdiocese of Toronto, Congregation Darchei Noam, Dicle Islamic Society, the Council of Imams, the Council of Canadian Hindus, the Eastern Synod of the Evangelical Lutheran Church in Canada, the Western Ontario District of the Pentecostal Assemblies of Canada, the Islamic Humanitarian Service, Mennonite Central Committee Ontario, North American Muslim Foundation, the Presbyterian Church in Canada, the Redemptorists in Canada, the Society of St. Vincent de Paul, the Toronto Board of Rabbis, and the United Church of Canada.

We are particularly interested in this issue for three key reasons. First, because as people of faith, we believe that every human being has value and dignity, and thus our public policies and employment/labour relations standards must reflect this belief in the value of every human being. Secondly, for nearly 30 years we have advocated for measures to reduce poverty in Ontario, and we are deeply concerned about current employment practices that are deepening poverty, uncertainty and stress for tens of thousands of Ontario workers and their families. Thirdly, the government has committed itself to poverty reduction, and action to improve the lot of precarious workers must form an important element of this poverty reduction strategy.

The saying that it is better to teach a person to fish instead of just giving a person a fish also inspires our call for stronger measures to protect vulnerable workers. Maimonides, the medieval Jewish philosopher, had a hierarchy of ways of giving charity and at the top is the directive to help make the recipient self-sufficient so that aid would no longer be necessary. We know that a significant segment of the poor are working poor. These are people who already have jobs but are still incapable of supporting themselves and their families. Our goal in this consultation effort is to identify measures that the government can take to strengthen employment standards and to provide meaningful access to collective bargaining so that workers will have the tools to

secure adequate compensation for the work they perform and thus no longer require social assistance or food bank services.

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

The Ontario government's Changing Workplaces Review offers a golden opportunity to review labour laws, identify needed changes, and develop new legislative and administrative standards and policies based on fairness and dignity for all.

Strengthened employment standards are urgently needed in light of today's changing workforce. The growth in precarious employment has been well documented. More than 40 per cent of work in Ontario now involves precarious jobs — temporary, contract and part-time — rather than full-time, permanent work. A recent report from McMaster University and the United Way of Toronto confirmed that 52 percent of workers in the GTA and Hamilton are in precarious jobs.

Exploitation runs rampant in this new economy, with workers often denied overtime pay, sick pay, benefits, regular work schedules, job security and even payment of the minimum wage. On average, temporary workers make 33 percent less per hour than full-time employees. A survey by the Workers Action Centre, which strives to support low-wage workers, found that 22 percent of workers surveyed earned less than the minimum wage, 33 percent were owed unpaid wages, 39 percent did not receive overtime pay, and 36 percent lost their jobs without receiving termination pay or notice.

ISARC is proposing three overarching values that should guide the amendments to the Employment Standards Act and the Labour Relations Act: **equality between workers, equality between employers and workers' representatives, and democracy**. There is no justification for treating workers differently when they are doing the same work merely because they hold different statuses in the workplace. There is no justification for providing weaker rights to workers or their selected representatives than are provided to employers under the legislation. Nor should workers lose their civil rights at the door of the workplace. Workers should not have a tougher hurdle to climb to access representation than citizens have in their municipal, provincial or federal spheres.

1. Equality between Workers

Employees doing similar work should be paid the same compensation irregardless of their employment status. Employers may have valid organizational reasons for structuring their workforce in different ways. Those decisions, however, should not be based on securing cheaper labour. Part XII of the Employment Standards Act already requires equal compensation regardless of gender. This Part can be expanded to require equal compensation regardless of employment status. Here are a few examples:

a. Misclassification of workers as independent contractors

Marty delivers parcels all day for a business in Peterborough. He earns $12 per hour for this hard work. He receives no paid holidays and no sick days. Why? Because he's considered to be an "independent contractor." As a middle-aged worker living in a city where jobs are tough to find, he's afraid to challenge his employer about this unfair situation.

More and more employees are caught in the same plight as Marty, unfairly deemed to be contractors. Many employers classify their staff as independent contractors so that they can avoid paying them benefits, paid vacations and sick days, pensions and overtime pay. Employers are provided a similar escape from employment standards and labour relations obligations by labeling some employees as managers.

Recommendation:

Revise the Employment Standards Act to affirm that a worker is presumed to be an employee unless the employer can demonstrate otherwise. The Ministry of Labour could also step up its inspections of workplaces, especially in industries where misclassification of staff as "contractors" has increased, and impose severe penalties on those violating the law.

b. Regulating temporary agencies:

Temporary staffing agencies have mushroomed in recent years, to become an $11-billion industry in Canada, with over half of these revenues based in Ontario. In Toronto alone, the number of temp workers has soared from 256,000 workers in 2004 to over 340,000 in 2014, reports Statistics Canada. Temp workers can be badly exploited in our province, because the Employment Standards Act does not limit how long a company can employ a temporary worker before giving them a permanent job. Nor do employers have to pay temp workers the same wage as their permanent counterparts, even when they do the same work. Nearly 75 per cent of 50 temp agencies audited by the Ministry of Labour early in 2015 broke the law through excess hours of work, nonpayment of wages, and other infractions.

The highly publicized case of Angel Reyes outlines the terrible treatment of many temp workers. Mr. Reyes worked at the same Toronto area recycling plant for over five years, without a raise, benefits or security, because he was technically hired through a temp agency. After telling his story to the Toronto Star, he was let go a week later.

Temp workers are treated more fairly in other jurisdictions and even in Ontario in some economic sectors, and we urge Ontario to follow their example for all economic sectors. In the UK, for example, after three months on the job temp workers receive the same pay as permanent workers. In Australia, employers must pay temp workers a 15 to 25 percent premium on their wages, to compensate them for the fact that these workers rarely receive benefits. Health care sector workers in Ontario are paid the same hourly rate irrespective of whether they are full-time, part-time, casual or temporary. Similarly they receive the same premiums. As well they receive the same enhanced vacation and holiday entitlements, prorated based upon their

hours. Finally employees who do not qualify to receive benefits such as drugs and dental care receive an hourly supplement in place of those benefits.

Finally, a new type of brokerage scheme has become popular as a result of smart phones and social media. Its most prominent proponent is Uber, which links passengers with drivers. This scheme has the potential of moving jobs away from even temporary employment agencies and further exacerbating the situation of precarious employment.

Recommendations:

1. Require companies to pay temp workers the same wages and benefits as permanent staff doing the same work. Require the same hourly total compensation be paid to non full-time workers as is paid to full-time workers. Where the temporary assignment is too short to implement insurance benefits such as dental care and drugs for temporary full-time workers and for those non full-time workers for whom the employer chooses not to provide full benefits, the equivalent in compensation needs to be provided.
2. Prohibit long-term temporary assignments by requiring that the company must hire workers hired through an agency after six months of temporary work with carryover of service and seniority.
3. Provide employees who work for subcontractors the right to continued employment with the same minimum terms and conditions as they previously had when the employer transferred the contract from one subcontractor to another.
4. The Advisors should engage in a second round of consultations to receive submissions on whether the current legislation is sufficient to cover these types of brokerage situations, and should it be necessary, submit to the Government a second set of amendments to the legislation to provide protection to the front line personnel actually delivering services.

c. Opposite ends of the demographic breakdown of the workforce

The Consultation Guide notes that youth and seniors are more likely to be employed in non-standard work. Even when they are employed in standard work situations they are discriminated against through “student” classifications and in benefits in relation to employees over age 65.

Unfortunately, the elimination of mandatory retirement left in place the right to discriminate in benefits in Section 44 if the discrimination is authorized by regulation.

Recommendations

1. Repeal any provisions providing lesser entitlements to “students”
2. Restrict Section 44 age exemptions to situations truly necessary by insurance principles and where the differential is no more onerous than differentials based on age under 65 years.

d Small businesses and family life balance

The Consultation Guide notes on page 14 the availability of different leaves of absence to facilitate family-work life balance but acknowledges that the legislation restricts one of these leaves (Personal Emergency Leave – Section 50) to workplaces of 50 or more. Many new employers are smaller sized businesses and they too are likely to want to employ workers in non-standard ways. These employers should want to employ the most qualified and efficient workers. From the workers’ perspective, however, if family-work life balance is important, the non-availability of this leave of absence acts as a disincentive to accept employment at smaller employers.

Recommendation

Given that all the other leaves of absence in Part XIV are available to all employees irrespective of the size of the employer, the restriction on access to Personal Emergency Leave should be repealed.

e Access to workplace representation

The Consultation Guide notes that domestics are excluded from the Labour Relations Act. This group of employees is subject to greater likelihood of exploitation. They are likely receiving compensation close to the minimum wage. The exclusion may be based upon the requirement that bargaining units have more than one member and the reality that many domestics are sole

employees. That reality, however, can be changed through a change in bargaining unit descriptions (See part 3 below).

Recommendation

The Labour Relations Act should be amended to cover all employees except those covered by a separate piece of collective bargaining legislation.

2. Equality between Employers and the Representatives of Workers

Our coalition supports measures to encourage union organizing. With inequality and precarious work steadily increasing in our society, the ability to join a union is a key way for workers in Ontario to advance out of poverty. Unions can help reduce our society's growing inequality and turn poorly paid jobs into decent jobs. The Canadian Labour Congress reports that union members in Ontario earn almost $7.00 more per hour than non-union workers.

While popular belief has it that the law is tilted in favour of unions, the opposite is in fact the case. One obvious example is found in Sections 79, 81, 82 and 83 of the Labour Relations Act prohibiting unlawful strikes and lockouts. On their face these provisions appear neutral. However if one goes back to the definitions in Section 1, a lockout is restricted to action by the Employer intended to restrict employees' rights under the Act in relation to dealings with the Employer, while a strike covers any collective action by workers, including ones not aimed at the Employer such as political strikes. Thus the law over-reaches and impairs what would otherwise be included in workers' Charter Rights of freedom of expression and freedom of association.

Recommendation

The Special Advisors should engage in a second round of consultations to receive submissions on areas of the Labour Relations Act that are not balanced as between employers and workers and their representatives, and submit to the Government a second set of amendments to the legislation to redress such imbalances.

3. Democracy

The Special Advisors in their open letter to the public quote the statement of former Chief Justice Brian Dickson of the Supreme Court of Canada on the central importance of work in our society. That importance goes beyond financial to dignity and self-respect and a contributory role in society.

In public life we decry the low level of voter turnout and this problem is especially evident amongst younger voters. One reason for this alienation amongst the young is their questioning of how the political system affects them. The crucial area of their lives is their desire to find rewarding work. In the workplace, if their experience is that they are shut out from decision-making, it is no wonder that they choose not to participate in more distant political jurisdictions. In light of the recognition that local government is the one closest to the governed, for workers that closest level of government is the government in their workplaces.

In terms of the population that ISARC is mandated to represent, they are alienated from most societal institutions. Opening up access to participation in workplace governance will help dissolve that alienation and serve as a means to facilitate their participation in the broader society. As well, this population's members, when they are successful in securing employment, are generally employed in low-wage, insecure positions. Referring back to Maimonides, the best way to help this population is to give them access to the collective bargaining tools to enable them to improve their economic position and security of employment.

On page 12 of the consultation paper the Special Advisors note that aside from the objective of equity there are the objectives of efficiency (of interest to employers) and voice (of interest to workers). These objectives are not in conflict with one another. When workers are provided a voice, morale and efficiency generally improve.

a. Representation Elections

Currently, except for the construction industry, access to union representation in the workplace is subject to a majority outcome through a secret ballot election. However in order for such an election to take place, the organizers need to get the support of at least 40% of the electorate. Moreover the solicitation of this support must occur without any access to the voters list. The

bottom line is that supporters need to have virtually won the election, in terms of the degree of "voter" support, in order to become entitled to an election in the first place.

In public elections, whether at the municipal, provincial or federal levels, candidates only need to have a very low level of support on their nomination papers (usually less than 1%) in order to appear on the ballot. Moreover these candidates have access to the voters list in order to assist them in knowing whom to approach and where they are located in order to seek support on their nomination papers.

At present there is a parallel system between certification elections and decertification elections in the workplace. It is important to note that in public life there is no process for citizens to remove the existence of that level of government (as distinct from who the governors will be). This submission is not seeking the repeal of the decertification process, but submits that there is no justification for linking the reforms for access to workplace representation to decertifications.

Another problem with the current system is the opportunity for the employer to interfere in the election process of workers as long as the employer does not engage in coercive action. This kind of outside intervention is decried in public elections. Given the freedom of expression in the Charter and its extension from human beings to corporations, it is not feasible to prevent this kind of intervention. However, it is possible to ameliorate the prejudice created by it.

Recommendations

1 Amend the Labour Relations Act to make the certification process for worker organizations no more severe than the requirements that must be met by candidates for public office.
2 Amend the Labour Relations Act to extend to applicant unions the same access to workers that the employer takes for itself in certification applications.

b. Successor Rights

As discussed in the narrative leading to recommendation section 1b3 above, some employers choose to contract out parts of their operations to subcontractors. They then transfer the contract from time to time to other subcontractors. We recognize that the employer may want to

make their operations more efficient and that using and changing subcontractors can bring new administrative or managerial expertise to achieve this objective. This objective, however, should not be achieved through downward pressure on employee compensation. The following are some examples of subcontracting that involve workers in very low paid and insecure sectors of the economy: security guards, food service operations and home care. The experience of public support workers employed by home care operators under contract with CCACs is endemic of the contribution to a low wage economy by subcontracting operations.

Recommendation

Amend the Labour Relations to enact successor rights whenever a contract moves from one subcontractor to another.

c. Bargaining Unit descriptions for spread-out occupations

Earlier in this brief we identified domestics as a category of employees who are denied coverage under the Labour Relations Act. One of the barriers is that they work in small workplaces, usually alone. At present the law requires that bargaining units have at least two employees in order to be certified. Even if a workplace had two such employees, they would have very limited bargaining power so as to make achieving a collective agreement virtually impossible. In the United States some low classified occupations have secured meaningful collective bargaining outcomes by organizing on a geographic basis instead of certifying individual workplaces.

Recommendation

The Special Advisors should engage in a second round of consultations to receive submissions on :

- which categories of workers should have access to collective bargaining on a geographic basis
- how to design those geographic bargaining units
- how to form employer bargaining agencies for these bargaining units.

and submit to the Government another set of amendments to the legislation for enactment.

d Access to First Contract Arbitration

At present the Labour Relations Act provides access to interest arbitration when employees in a newly certified unit and their employer cannot reach a first collective agreement. Not every inability to reach such an agreement triggers access to interest arbitration. The law requires what has been colloquially called “semi fault”. This requirement is detrimental to the effective relationship between the parties by forcing one side to blame the other side for inappropriate conduct. It also prolongs the labour dispute and thus interferes in the efficient operation of the workplace. Generally failures by employees to secure a first collective agreement involve workers who are easily replaceable, possess few special skills and represent the vulnerable workers included in the population served by our advocacy.

Recommendation

Amend the Labour Relations Act to provide automatic access to first contract arbitration when parties have failed to reach a first collective agreement 6 months following certification.

Conclusion

The plight of Ontario’s contract, temporary and part-time workers cries out for action. We are encouraged that the government decided to hold this review and that it has promised to complete this review within 18 months. The government of Ontario took bold action by passing Bill 18 in November 2014, which strengthens protections for temporary workers and others in terms of ensuring that employees receives wages owed to them, as well as overtime pay. We urge that the government show similar boldness by strengthening the rights of Ontario’s precarious workers.