

ADDITIONAL SUBMISSIONS TO THE MINISTRY OF LABOUR'S CHANGING WORKPLACES REVIEW

by

METRO TORONTO CHINESE & SOUTHEAST ASIAN LEGAL CLINIC

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INTRODUCTION

The **Metro Toronto Chinese & Southeast Asian Legal Clinic (MTCSALC)** is a community based legal clinic which provides free legal services to the low income Chinese, Vietnamese, Cambodian and Laotian communities in Toronto. Established in 1987, MTCSALC has become an important advocate for many immigrant workers and workers from racialized communities who find themselves ghettoized in low waged, non-unionized jobs, and who face exploitation by employers who have little regard for their rights. The vast majority of the clients of MTCSALC are newcomers and immigrants who have arrived in Canada within the last 10 years. While some of them may have professional training background and a high level of education, almost all of them are working in non-unionized and low-waged jobs. This is so in part due to their lack of proficiency in the English language, the lack of recognition for their credentials, and systemic discrimination they face in accessing good jobs in the labour market.

In June, 2015, MTCSALC made a written submission on the Changing Workplaces Review (the "Review") and the Clinic Director of MTCSALC also made a deputation during the Review's consultation session in Toronto.

In August, 2015, MTCSALC hosted a consultation session with community members within the Chinese Canadian community, including many service providers working with low income immigrant workers in Toronto, to gather input on issues affecting vulnerable workers in our community.

In addition, MTCSALC sent out a press release to the Chinese media, and conducted many interviews with Chinese print media as well as with OMNI.TV (Mandarin and Cantonese news programs) about the consultation process. Through the Chinese language media, MTCSALC invited members of the Chinese Canadian community to contact our clinic should they wish to provide input on the Review through our clinic.

Through these consultation processes, MTCSALC has identified additional issues and developed additional recommendations which we would like to submit to the Review.

ISSUES AFFECTING VULNERABLE WORKERS IN THE CHINESE CANADIAN COMMUNITY AND RECOMMENDATIONS FOR CHANGE

The following provides an overview of the type of issues MTCSALC heard from our community partners and other individuals who participated in our consultation, and their recommendations on how to address these issues:

Vulnerable workers

Live-in caregivers and migrant workers are particularly vulnerable to exploitation by their employers. One service provider discussed a client of their agency who was a caregiver who used to work for an employer. When the employer's parents needed help, the caregiver would be sent over to work at her employer's parents' home. After the employer's mother passed away, the employer terminated the caregiver, but insisted that the caregiver had quit herself, and refused to give her termination pay.

Recommendation: There should be more protection for live-in-caregivers and tougher penalty for employer who disrespects their rights.

Temporary help agency

Many service providers talked about the problems faced by individuals hired through temporary employment agencies. Very often when the company stopped giving them work, these workers have no other assignment from the Temp Agency and they would stop getting paid, even though the Temp agency is technically still their employer.

Recommendation: If an employee gets paid by the Temp agency and the Temp Agency is considered the employer, then the Temp Agency should be required to give work to the employee if an assignment company doesn't have work for employee, and to continue to pay the employee.

Payment delay

Currently there is no rule regulating how often an employer should pay an employee. Casual on-call workers often experience payment delay because of irregular work schedules. One agency staff related a case about an employee who had worked for 2.5 months, but had received only one paycheque during that time period. The employee eventually had no choice but to quit because he ran out of money to even pay for public transit.

Recommendation: There should be regulations governing payment schedule and the regulations should stipulate that any delay in payment should not exceed 7 days from the day the payment is due.

Education for Employer

Pursuing one's employment rights does not always need to result in the severing of one's employment relation. Some settlement workers mentioned that their clients got paid after informing their employer of the latter's obligation under the *Employment Standards Act (ESA)*. Some service providers said they have received phone calls from employers inquiring about their *ESA* obligations.

Recommendation: the Ministry of Labour should provide more education to employers. For instance, there should be educational materials provided to every newly registered business in Ontario about their ESA obligations.

Misclassification of Employees

Employees are very often misclassified as self-employed by their employer. A service provider talked about her experience working in a not-for-profit organization and was being forced to label herself as self-employed. As a result, she lost access to EI, CPP and other statutory benefits. Additionally some employees are threatened with termination if they refuse to apply for a business licence. Some service providers want to know the specific criteria in determining whether a person is an employee or self-employed. Service providers want the onus to prove whether a person is an employee or self-employed shift to the employer such that everyone is deemed as an employee unless the employer proves otherwise, and that all employees should have the minimum protection from *ESA*. Some also suggest that there should be a clearer definition of an employee.

Recommendation: Clarify and expand the definition of an employee, and add a reverse onus clause in the ESA so that every worker is deemed to be an employee unless proven otherwise by the employer.

OTHER RECOMMENDATIONS FOR CHANGE

In addition to the above, service providers also recommend the following changes to the *ESA* and the enforcement mechanism by the Ministry of Labour:

- Create a tip hotline such that a third party can report an *ESA* violation about a company and that the Ministry of Labour should follow up with proactive inspection of the workplace in question
- Increase the administrative charge from the current 10% to 100% of the total amount owed to an employee
- Interest to be added to owed wages when the Ministry of Labour has ordered an employer to pay and the employer has delayed in the repayment. The interest should be applied retroactively to the date of the claim and the rate charged should be the same interest rate applied by CRA to late income tax filing
- Hold owners and directors of businesses accountable for unpaid wages by granting the Ministry of Labour the power to put a lien on the owner's or director's private property or asset

- Eliminate the over 50 employees requirement for the Personal Emergency Leave provision
- Increase minimum wage to \$15/hour
- Employee should get 30 minutes meal break without pay for every 4 hours of work and 15 minutes of coffee break for every 2 hours of work
- Reduce the number of hours required for over time pay, from the current 44 hours to 40 hours as workers should be compensated for taking valuable time away from family for work
- All employees should be entitled to 6 paid sick days every year
- Remove the 2.5 million payroll (and 50 employees) requirement for severance pay entitlement

CONCLUSION

We appreciate having the opportunity to share our thoughts and experiences with respect to the issues facing immigrant and racialized workers in Ontario in this Review.

We ask the Review to consider our previous submissions as well as our updated submissions when considering options for modernizing the *ESA*, and to ensure that the principles of fairness, equity and respect will be adopted in every workplace in Ontario.