

EXECUTIVE SUMMARY

Care/Work examines to what extent the laws of British Columbia support caregivers of adult family members to balance paid work and unpaid caregiving, and considers whether BC laws recognize the social value of unpaid caregiving labour. This study paper is primarily a research paper; however, it also concludes with an array of suggestions for law reform that would both render the law more responsive to the needs of caregivers and enhance the value public policy attaches to the unpaid labour of BC family caregivers.

This paper takes a comparative approach. *Care/Work* compares BC to the rest of Canada, as well as other key countries, in order to mine international innovations for creative options for reform. Our research and suggestions for reform are also informed by consultation with caregivers and employers.

What is family caregiving? Family caregivers look after aging parents, children with disabilities, people coping with mental health issues, addictions and chronic illnesses, cancer survivors, and individuals in post-surgical recovery. Family caregivers care for biological family, as well as friends and neighbours, delivering a variety of services including managing medication and appointments, assisting with personal care, providing emotional support, assisting with mobility and conducting household activities like meal preparation, shopping and housework, on a short-term, long-term, or episodic basis.

The timing of this research paper reflects a preoccupation with the impact of specific social, demographic and health policy trends on the capacity of families to manage care. These changes include: an aging population, characterized by greater life expectancy, declining birth rates and older adults making up a larger proportion of the general population; smaller, fragmented families, as a function of delayed child-bearing, fewer children per family, and increasing rates of divorce and separation; greater participation of women in the labour force; and de-institutionalization of aspects of health care, such that more aspects of caregiving are being left to families and volunteers. Longevity, technology and family shifts mean that more people are surviving into lengthy periods of disability, and care is concentrated on fewer people, many of whom must maintain employment and face significant work, health and financial consequences in order to sustain caregiving.

The work of this project is informed by an advisory committee of professionals who work with caregivers in diverse capacities and whose expertise collectively encompasses employment and labour law, human rights, immigration, social work, elder law, pensions and social welfare law. As part of this project we also conducted two small surveys: an electronic survey of BC caregivers and a very select telephone survey of Vancouver area employers. These surveys served to both direct research by highlighting the unmet needs of caregivers and inform our thinking about potential options for reform.

Care/Work includes a number of resources including comparative tables, profiles for countries that formed part of our international research, educational tools that may be used to structure presentations on the research findings, and an annotated bibliography. These documents are included as electronic appendices to this paper.

What we found was that existing law and policy directly supports caregivers only minimally and in broadly three areas: employment leave provisions; human rights law and the duty to accommodate family responsibilities; and measures to address income loss, largely through tax credits. We also found that each of these areas is deficient in a number of respects that seriously undermine the effectiveness of social policy in the area of supporting family caregivers. In terms of short and long-term income security, both the pension regime and BC health policy regarding payments to people with disabilities also addresses adult caregivers indirectly and only in a very limited sense. All five of these areas – employment law, human rights, tax policy, health policy and pensions – present territory for reform.

By way of conclusion, this paper highlights the following six problems and options for reform:

1. Employment Leave

The existing provincial employment standards law [the *Employment Standards Act*] does not provide any job protection to workers requiring leave for greater than five days to address care other than end-of-life and infant care. Moreover, the federal employment insurance regime only provides income replacement for end-of-life care. To remedy this problem, consideration should be given to revising employment standards legislation to provide for job protection for periods of caregiving for adult family members in the event of a serious illness or injury, and amending employment insurance benefits to provide for income replacement for part of the period of protected leave. The length of the protected leave period should also be increased to more accurately reflect the demands of caregiving, which are rarely fleeting.

2. Workplace Accommodation of Family Responsibilities

In BC, like other Canadian jurisdictions, employment relationships are governed by both human rights and employment standards legislation, subject to regulations regarding excluded employees, which vary from province to province. Subject to the limited leave provisions described above, the *Employment Standards Act* is silent on the issue of accommodation of family responsibilities. Therefore, aside from the prohibitions against discrimination in the terms and conditions of employment contained in the *Human Rights Code*, workplace accommodation of family responsibilities is at the discretion of BC employers. In terms of human rights, the law in relation to accommodation of family responsibilities is in its infancy, and current human rights cases have interpreted the prohibition against discrimination on the ground of family status in a very limited manner in relation to caregiving responsibilities. Consequently, it is very challenging to successfully mount an argument that an employer's inflexibility amounts to discrimination.

This paper highlights two potential solutions to this problem for further consideration. One option is to insert into the *Employment Standards Act* a provision that grants employees a right to request flexibility in relation to the scheduling of hours, days and location of work around the demands imposed by family caregiving. This is an approach that has been explored by a number of Commonwealth countries that have created work flexibility laws. Such a change would require employers to accommodate a request unless prevented by legitimate business reasons. An employee would retain the right to argue discrimination contrary to the *Human*

Rights Code where an employer denied a request and this inflexibility appeared to be discriminatory; however, the employee would not be limited to the more time-consuming, complex and costly human rights route. Provincial legislation would thus also contain a clearer message regarding the right to work flexibility and the duty of employers to accommodate family responsibilities in BC.

Another option is to amend human rights legislation. Although the meaning of the family status ground is not self-evident, currently the BC Code, unlike the human rights legislation of a number of other Canadian jurisdictions, does not contain a definition of “family status”. We encourage the government to consider amending the *Human Rights Code* by inserting a definition of family status, and that this definition state that “family status” includes the care of family members including children of any age, parents, persons related by biology, adoption, marriage or common law partnership, and anyone else a claimant considers to be like a close relation. The purpose of such an amendment would be to clarify that family responsibilities discrimination may arise in the context of caregiving relationships, and to provide protection to a diversity of relationships. One of the rationales for this amendment is that human rights remains the only route for addressing work flexibility available to those employees excluded from coverage under the *Employment Standards Act*. In addition to expanding the net of protection to a broader category of workers, this reform would also reconcile the *Human Rights Code* with the expansive language of the BC *Employment Standards Act* and the federal *Employment Insurance Act*, both of which acknowledge caregiving between friends.

3. The Caregiver Tax Credit

The federal caregiver tax credit and its provincial equivalent allow taxpayers to deduct a small amount from their tax payable in respect of financially dependent family members who meet various eligibility criteria. A caregiver tax credit that determined eligibility based on caregiving labour, rather than financial dependency, would be more successful in reaching existing caregivers. Making the credit a refundable credit would enable low-income caregivers to access it. Consideration must also be given to the value of the credit – currently very low in relation to the social and economic worth of caregiving labour – if this credit is to continue to be viewed as a measure, let alone the primary measure, to recognize the value of caregiving labour in this province.

4. Direct Income Support

Nova Scotia is the only Canadian jurisdiction that provides a direct monthly government subsidy to family caregivers. We encourage the governments of BC and Canada to similarly explore income replacement measures for low-income family caregivers through the creation of a caregiver allowance payable into retirement and during the years of the life course when a caregiver maintains paid employment. The determination of the amount of this allowance requires study. This paper provides a summary of the value of caregiver allowances in select countries.

5. The Caregiver Drop-out Provision

There is no provision in the *Canada Pension Plan Act* that responds to the impact of adult caregiving on pension security, aside from the general drop-out provisions. These provisions allow for the exclusion of 15% of the lowest income-earning years from the calculation of entitlement to Canada Pension Plan Benefits, in recognition of lower income-earning potential during the early working years. By way of reform to address this problem, we encourage consideration of amending the *Canada Pension Plan Act* to include a drop-out provision parallel to the Child-Rearing Provision, applicable to all years of full-time family caregiving. This would allow a person to reduce paid labour force participation with fewer consequences for pension security, and recognize caregiving labour as a socially valuable form of work.

6. Caregiver Pension Plan Contributions

The above proposed caregiver drop-out provision would not address the income security of caregivers for whom caregiving has taken them out of full-time employment to such a degree, and for such a lengthy period of time, that they do not have the years of adequate paid employment required to qualify for Canada Pension Plan benefits. For these caregivers, their labour is essentially accorded no value under the current pension regime, and unless they possess independent wealth, they are consigned to poverty during the typical years of retirement. One solution to this problem would be for the federal government to top-up the contributions made on behalf of family caregivers where reduced hours of employment would otherwise result in a reduction in contributions and consequent pension entitlement. Under this proposal unpaid family caregivers would be treated like government employees with respect to the accumulation of public pension benefits. This raises the question of what dollar value to attach to this unpaid labour – a matter that requires further study.

7. Valorization of Caregiving Labour

A number of the reforms described above – the Caregiver Tax Credit, direct income support for caregivers, government pension contributions payable on behalf of unpaid caregivers – require further consideration of the value attached to caregiving labour. The question of what dollar amount to attach to each of these reform options is a complex question requiring further study.

The topic of caregiver support is vast, encompassing a number of complex areas of law, and so to some degree, although this study paper is lengthy, it remains but an early step in the law reform process. Greater research and analysis will be required to explore how to put the content of this study's suggestions and conclusions into practice. *Care/Work* should provide a foundation of research to direct this next phase in the process and indicate other areas where amendments to legislation should be developed without delay.

