Lessons from the West:
Re-Evaluating the Rights and Regulation of Domestic Workers in Hong Kong
by Learning from Canada and the United States
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1. Introduction

Slave labour or domestic help? This article deals with the rights of and regulations governing foreign domestic helpers in Hong Kong. Rights, which are arguably being, violated due to, in part, the pressures of living in an overcrowded, dense city such as Hong Kong. Hong Kong is a city of over 7.2 million people\(^1\) including over 200,000 domestic helpers.\(^2\) Recent demographic surveys indicate that “Hong Kong is one of the most densely populated places in the world”\(^3\) with an average density of “6, 620 persons per square kilometer”\(^4\). In this busy metropolis, many residents have opted to utilize the services of foreign domestic helpers to assist with the household responsibilities. Domestic workers began to be introduced to local families in the 1970s and have since “become a common practice among Hong Kong middle-class families since the late 1980s”.\(^5\) These workers are “hired on a live-in basis to look after children” as well as other household chores.\(^6\) Despite the valuable contributions that these workers make to the region, they do not have some of the most basic rights that are given to other residents. These inadequacies will be discussed in detail in section two.

Workers that live in the home to provide domestic services also exists in the West.

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2 Carole J. Petersen *Dangers in the System that Purports to Protect: The Situation of Sex Workers and Migrant Domestic Workers in Hong Kong 1 VIOLENCE AND VULNERABILITY 1,12(2009)
4 Information Services Department supra note 3
5 Ming-Yan Lai, *Surrogate Mothering and Conjugal Insecurity: Indonesian Domestics Re-envisioning the Family in Hong Kong*, 28 WOMEN’S STUDIES: AN INTER-DISCIPLINARY JOURNAL, 559, 562 (2009)
6 Nicola Yelland, Yarrow Andrew, Mindy Blaise & Yee On Chan *We spend more time with the children than they do ... ’ education, care and the work of foreign domestic workers in Hong Kong*, 11 GLOBALISATION, SOCIETIES AND EDUCATION, 443, 450 (2013)
Western jurisdictions, as will be discussed in this paper, tend to have more favourable rules and regulations for these workers. The purpose of this paper is to explore the ways in which Canada and the United States legislate and regulate domestic labourers and evaluate what important steps Hong Kong can take to improve the rights of this vulnerable class of workers. Following the introduction, section two of the paper will analyse Hong Kong, highlighting the present situation and the issues. Section three considers the Canadian province of Canada and evaluates a number of potential enhancements that could be used by Hong Kong. Similarly, section four highlights the current situation and recent developments in the State of New York and demonstrates a number of potential improvements for Hong Kong. Finally, section five sets out a number of recommendations that can be implemented in Hong Kong.

2.1 Hong Kong: Overview

Hong Kong has a fairly well established system under which migrant workers from countries such as the Philippines and Indonesia are brought into Hong Kong to undertake positions as domestic workers. These two countries represent 96% of all domestic helpers imported into Hong Kong. The foreign domestic helper program in Hong Kong “is administered jointly by the Immigration Department and the Labour Department”. The Immigration Department is responsible for granting visas and the associated conditions of stay for these migrant workers. The requirements for an employer to be qualified to employ a domestic worker from abroad are set at a low threshold. The Labour Department controls the regulation of employment standards, such as public holidays and rest days which are set out in the Employment Ordinance, Cap 57.

Migrant domestic workers in continue to play an important role in Hong Kong’s economy and have grown from “1% of Hong Kong's labor force in 1982 to 7% in 2001”. A 2005 estimate provided that “more than 222,500 migrant domestic workers” were actively working in Hong Kong with about 53% of those workers coming from the Philippines and 43% coming from Indonesia. It has been noted that since the 1997 financial crisis (which coincided

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7 Petersen supra note 2, at 12
8 Id
9 Id
10 Id
11 Id

with the handover of Hong Kong back to China), Hong Kong has become a major ‘importer’ of migrant domestic workers on temporary labour contracts. Two important reasons have been noted for this trend,

(1) economic development and prosperity, which kept unemployment rate low and generated a labor shortage that drew women into the work force; and (2) increased labor force participation among married women, creating a need for domestic help.

In Hong Kong, many of the rules regulating the conditions of the employment of a domestic helper are not set out under an ordinance or regulation. Instead, these conditions are set out under the standard contract conditions developed by the Immigration Department. For example, the standard contract stipulates that “for every Helper to be employed, the employer must have a household income of no less than HK$15,000 per month”. Additionally, the Helper and employer are to enter into the standard employment contract known as ID 407. The conditions of stay and terms of employment are generally that the Helper is to “work and reside in the employer's residence”, be given suitable accommodation, and be paid at least the minimum allowable wage which, for domestic helpers, is currently set at HK$4,010 per month. The standard contract also goes on to specify “the Helper shall be entitled to all rest days, statutory holidays, and paid annual leave as specified in the Employment Ordinance, Chapter 57”. In this regard, the helper is entitled to “at least one rest day in every period of seven days” which is consistent with the general requirement set out in s.17 of the Employment Ordinance. The Employment Ordinance does not specify limits on daily or weekly hours of work.

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13 Lai supra note 5 at 563
14 Immigration Department Form ID 969 para 2(a)
15 Id at 2(b)
16 Id at 2(f)
17 Id at 2(g)
18 Id at 2(e)
20 Immigration Department Standard Contract Form ID 407
or overtime pay. This lapse of legislative requirements on hours of work and overtime is not consistent with the Hong Kong government’s obligations under international law. As a party to the International Covenant on Economic, Social and Cultural Rights (ICESCR), Hong Kong has a duty to “recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure”, among others, “rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays”.22

Another important feature of the system is that the majority of these workers are “initially recruited and placed with an employer by an employment agency”.23 Agencies exist both in the originating country as well as in Hong Kong. The first involvement with an agency would usually occur in the helper’s place of origin. In Hong Kong there are restrictions on these agencies, which provide that

the maximum commission which may be received by an employment agency shall be… an amount not exceeding a sum equal to ten per cent of the first month's wages received by such person after he has been placed in employment by the employment agency.24

2.2 Issues

The operational structure and legislative restrictions present a number of issues for domestic helpers. The first issue concerns the excessive fees that are often charged by employment agencies to these workers. A second issue concerns the different rights and treatment given to this group. Particularly in regard to their exclusion from obtaining permanent residency, the different labour laws and rules and a different experience accessing justice in Hong Kong’s legal system. The following section will examine these issues in depth.

23 Petersen *supra* note 2 at 13
24 Employment Agency Regulations Cap 57A, Schedule 2
2.2.1 Fees

As noted above, most migrant domestic helpers are recruited through employment agencies located in their country of origin, where

Some recruitment agencies maintain "holding centers" where prospective workers are placed before their deployment abroad (sometimes for several months), at which they are forced to work for minimal (or no) pay and are confined so as to prevent loss on the agencies' investment.\textsuperscript{25}

On the positive side, these agencies are able to give “poor rural women access to the domestic work market”.\textsuperscript{26} The agencies may assist workers by, for example, paying “the initial costs of travel and immigration documents”.\textsuperscript{27} However, the problem occurs when they seek to later “deduct these and (sometimes exorbitant) recruitment fees from the workers”.\textsuperscript{28} In Hong Kong, clause 8 of the standard contract (ID 407) provides that the employer is responsible for the payment of the following fees:

- medical examination fees,
- authentication fees by the relevant consulate,
- visa fee,
- insurance fee,
- administration fee or fee such as the Philippines Overseas Employment Administration fee or other fees of a similar nature imposed by the relevant government authorities and others.\textsuperscript{29}

Under Hong Kong law these agencies are technically restricted to collecting a maximum of 10 percent of the employees first month’s wages once they are placed with an employer.\textsuperscript{30} In theory, this seems straightforward, simple and fair. The reality however is more complicated. Many of these workers have “complained that they are charged illegal placement fees, sometimes in their home country and sometimes after they have arrived in Hong Kong.”\textsuperscript{31}

\textsuperscript{25} Janie A. Chuang \textit{Achieving Accountability for Migrant Domestic Worker Abuse}, 88 NORTH CAROLINA LAW REVIEW, 1627, 1633 (2009)
\textsuperscript{26} Id at 1632
\textsuperscript{27} Chuang \textit{supra} note 25 at 1632
\textsuperscript{28} Id at1632
\textsuperscript{29} Immigration Department Standard Contract ID 407
\textsuperscript{30} Employment Agency Regulations Cap 57A Schedule 2
\textsuperscript{31} Petersen \textit{supra} note 2 at 13
submission by Amnesty International indicates that these employment agencies “circumvent the law by collecting payment through a variety of third party schemes”. One common strategy was for the agencies to

compel migrant domestic workers to sign a document acknowledging receipt for a “loan” and instruct their employer to transfer most of the monthly salary to the finance company that issued the “loan”.

In Amnesty International’s submission to LEGCO they noted that approximately 34 percent of Indonesian migrant domestic workers surveyed “were asked to sign a loan agreement”. Another comprehensive research study by academic Carole Peterson, revealed that her interviewees gave her documents

that clearly directed employers to deduct money from a woman’s salary and send it directly to the employment agency to pay off the alleged "debt" -- which was really just an illegal placement fee.

In her study Peterson contacted officials with the Hong Kong Government who highlighted a complication of the law by suggesting that as the agency used the term ‘debt’, the officials have

no idea how the woman got into debt. It was her word that the "debt" was for an illegal placement fee; the employment agency would claim that she received training or cash in her home country and thus had come to Hong Kong with a debt to be paid off.

At this point it is important to highlight that according to ILO Convention number 29

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32 Amnesty International *supra* note 22 at 6
33 *Id*
34 *Id* at 5
35 Peterson *supra* note 2 at 16
36 *Id* at 16
forced or compulsory labour means “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”\(^{37}\)

In this regard, where a domestic helper is charged excessive fees, involuntarily, the resulting debt serves as a form of forced labour. To be clear, “many victims enter into forced labour through fraud and deception”.\(^{38}\) Lack of education and poverty may make the helpers simultaneously desperate to obtain contracts to work abroad and unaware of the ramifications of signing those papers. The penalty that faces these workers can come in a number of forms, such as contacting immigration officials, threats to family in their place of origin or confiscation of identity papers.\(^{39}\) Generally, in the modern context of ‘forced labour’ the workers’ wages “are usually below market rates and many victims are paid just enough for their subsistence.”\(^{40}\) Creating a situation where the workers must work to make money, but they are never paid enough to escape the situation. The wages of these workers will be discussed further in section 2.2.2. Returning to the topic of excessive fees charged by the recruitment agencies, terming the fees as a debt is not the only strategy that the agencies use to avoid the legislative restrictions. An alternate approach that agencies adopt to circumvent the law is to instruct the Helpers

to make cash payments to the loan company via 7-Eleven stores after they receive their salary from their employers. The 7-Eleven’s receipt only includes an account number and it is not made clear to the migrants who the recipient is.\(^{41}\)

By getting the helpers to send the loan company cash payments with no clear indication of the recipient on the receipt, eliminates potential evidence documenting the collection of these illegal fees. All of this suggests that the current strategies adopted to restrict and regulate the charging of excessive fees to these workers is flawed and in need of desperate improvement. To briefly recap, in theory, employment agencies are restricted to charging a maximum of 10 percent, the reality can be quite different. This is particularly so where fees are charged prior to

\(^{37}\) International Labour Convention no 29 Forced Labour Convention 1930 (Article 2.1)
\(^{39}\) Belser \textit{supra} note 38
\(^{40}\) \textit{Id} at 7
\(^{41}\) Amnesty International \textit{supra} note 22 at 6
arrival in Hong Kong and or phrased as ‘a debt’. The current structure facilitates debt-bondage, a modern form of slavery. Instead of preventing the exploitation of workers, the current legislative and accompanying regulatory regime in Hong Kong only serves to further marginalize and exploit these workers so that local residents are able to have ‘cheap’ domestic labour 24/7.

2.2.2 Unequal Treatment

Another issue facing these workers pertains to the unequal treatment that they receive in Hong Kong. Domestic workers are given different employment rights and residency options. In particular, these workers must leave the region within two weeks after their contract ends. These workers are given a different minimum wage standard, which is set below the minimum wage standard for other workers in the region. They are also excluded from being able to obtain permanent residency, unlike virtually all other migrant worker groups in Hong Kong. This section will provide information on each of the aforementioned issues to highlight the problems.

The so-called ‘two week rule’ is based on the policy, not a law, enacted in 1987 under the title ‘New Conditions of Stay’. Under this ‘rule’, domestic workers “must find new employment and obtain an approved work visa within two weeks of the expiration or premature termination of their employment contract. Failing that, they must leave Hong Kong.”

The original purpose was to “protect employers from domestic workers who ‘job-hop’ and ‘moonlight’.” As noted, the two-week rule was not passed in any statute at that time and is therefore merely a policy, however “the policy is followed by the Labour and Immigration Departments as though it were law.” This policy has been heavily criticized for a number of reasons. In particular critics have highlighted that the rule “exacerbates the precariousness of their stay and hence the need to be ready for a sudden dispatch home”. Moreover, critics note that the rule effectively restricts “their ability to resist abuse, and serves as a key policy in denying them right of abode in Hong Kong”. Amnesty International has indicated that the two-week rule is insufficient for a variety of reasons. First the “Immigration Department accepts that

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42 Id at 8
43 Nicole Constable, Maid to Order in Hong Kong: Stories of Migrant Workers, 145 (2007)
44 Constable (n 43) 145
46 Constable supra note 43 at 145
it normally takes “about 4-6 weeks” to process an application for change of employer by a migrant domestic worker once “all necessary documents” are received.” 47

In this regard, the two-week period would not even be sufficient for a helper who found a new employer immediately, to be able to get a visa processed in time. Second, the limited period of time given to the Helpers to find new work leaves them “with little choice but to remain in abusive and/or exploitative conditions or accept jobs with unfavourable work conditions in order to maintain their immigration status.” 48 While the Immigration Department does allow these workers to change employers in the case of abuse they would still need to either find a new employer or apply for an extension of stay “at a cost of HK$160 (US$20), which does not allow them to work and is typically valid for one month or less.” 49 At this point it is also important to note that when one of these workers does file a complaint and initiates a case with the Labour Tribunal, the process can take around 2 months. 50 Throughout this period the Helper “will have to renew their visa and pay for their own accommodation, food and other expenses without any income.” 51

With a minimum allowable wage of HK$4,010 per month when working it is clear that these workers would have difficulty being unable to work and forced to find and pay for accommodation and living expenses during this time. The rule therefore in practice serves only to further marginalize and restrict the rights afforded to this particular group of workers. In fact it has been noted that,

The ways that rules and policies are enforced and interpreted reflect deeply ingrained cultural biases that favor the rights of the employer (‘master’) over those of the worker (‘servant’). The New Conditions of Stay and other policies contribute to the vulnerability of foreign domestic workers and place them at a serious disadvantage relative to local workers, local employers, and even ‘skilled’ foreign professionals. 52

47 Amnesty International supra note 22 at 8
48 Id
49 Id at 9
50 Id
51 Id
52 Constable supra 43 at 150
Another issue of inequality concerns the specific exclusion of domestic workers from obtaining permanent residency. In Hong Kong, s. 2(4)(a) of the Immigration Ordinance (Cap 115) excludes certain persons from being considered as ordinarily resident in Hong Kong. As a result these persons are persons entering Hong Kong for employment as a domestic helper are specifically excluded under s(2)(4)(a)(vi) of the Immigration Ordinance, Cap 115. Recently, a domestic worker attempted to challenge the constitutionality of this provision for being contrary to the Basic Law. In this case the domestic helper “first came to Hong Kong to work as a domestic helper in August 1986 and has worked for the same employer since 2 February 1987 under a series of contracts.” As such, she was living and working in Hong Kong for over 20 years, with the exception of short two-week trips home at the conclusion of each contract. The helper’s contention was that she was ordinarily resident in Hong Kong for more than the requisite 7 years set out in the Basic law.

This argument was successful at the Court of First Instance with the court ruling that it was unconstitutional and contrary to the Basic Law. The Government however, successfully challenged the decision at the Court of Appeal where the Court allowed the appeal and set aside the ruling from the lower court. The final decision came in 2013 from the Court of Final Appeal where they determined that “s. 2(4)(a)(vi) was constitutionally valid and dismissing the appeal”. In making this decision the court made reference to the special features connected to their employment. In particular,

each time a FDH was given permission to enter, such permission was tied to employment solely as a domestic helper with a specific employer (in whose home the FDH was obliged to reside), under a specified contract and for the duration of that contract. The FDH was obliged to return to the country of origin at the end of the contract and was told from the outset that admission was not for the purposes of settlement and that dependents could not be brought to reside in Hong Kong.

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53 Vallejos v Commissioner of Registration [2013] 16 HKCFAR 45, 58
54 Vallejos Evangeline Banao v Commissioner of Registration [2011] HKEC 1289, [177]
55 Vallejos Evangeline Banao v Commissioner of Registration [2012] HKEC 433, [159]
56 Vallejos v Commissioner of Registration [2013] 16 HKCFAR 45, 46
57 Vallejos v Commissioner of Registration [2013] 16 HKCFAR 45, 47
These unique characteristics meant that helpers would not be viewed in the same way as other foreign workers in Hong Kong. These workers were to be treated different, in large part, because they had always been treated differently. Thus, despite the fact that many of these Helpers have worked in Hong Kong in excess of 10 years “and, for some, the largest part of their lives as, ironically, ‘temporary’ foreign contract workers.”\(^{58}\) For these workers it seems their only route to permanent residence may come from marrying a local resident and thus changing their visa status from domestic worker to dependant for seven years.\(^{59}\) Excluding this group of workers from ever obtaining permanent residency only serves to further exploit them. Without permanent residency, or other legislative changes, these workers will be forced to work under the restrictions set out by the government. As employees it serves only to undermine any significant bargaining power they may have.

Another area of unequal treatment concerns the special wages that are allowed for domestic helpers. The Labour Department indicates on their website that “in addition to protection offered by labour legislations, FDHs enjoy additional protection such as free medical care by employers”.\(^{60}\) Additionally, the Labour Department notes that the Statutory Minimum wage “applies to all employees, whether they are monthly-rated, daily-rated, hourly-rated, permanent, casual, full-time, part-time or other employees, and regardless of whether or not they are employed under a continuous contract”.\(^{61}\) However, an exception is made for employees employed as domestic helpers. Thus, while virtually all other workers in Hong Kong are entitled to a minimum wage of HK$30 per hour, domestic helpers have a special wage rate currently set at HK$4010 per month.

Assuming a helper works a modest 8-hour work day, 6 days a week the total number of hours per week would equal 48 hours. With a minimum wage of $30 an hour, these workers would earn $1440, or assuming a 4-week month, would earn around $5760 per month. Even assuming a relatively short 8-hour workday, the minimum allowable wage provided for these helpers falls below what almost all other workers would earn for the same hours of work. Yet

\(^{58}\) Lai *supra* note 45 at 569

\(^{59}\) *Id*


these workers often do not work the modest amount of hours set out in the above calculation. A study by Amnesty International indicated that in Hong Kong

migrant domestic workers endure excessive working hours. Interviews conducted by Amnesty International indicate that on average they worked 17 hours per day with respondents frequently noting that they were “on call 24 hours.”

If one does a calculation of 17 hours day 6 days a week they work 102 hours a week. Assuming a modest 4 weeks a month they would work a total amount of 408 hours. If these workers were entitled to minimum wage, as virtually all other workers in Hong Kong are, they should be getting paid HK$12,240 per month. Also recall that unlike most other developed countries Hong Kong lacks any legislative restrictions on hours of work and also lack any provisions that most other jurisdictions have for overtime pay. Despite being given a very modest wage for their work, the situation in Hong Kong continues to echo far too many similarities of slave and master, not employer and employee. In an effort to understand how to rectify this issue, sections 3 and 4 will give consideration to the ways in which Ontario, Canada and New York, USA regulate the hours of work and wages of this group of workers.

Finally, a weak regulatory regime and an inappropriate or ineffective resolution process as well as a knowledge gap compound the problems facing these workers in Hong Kong. To be clear, theoretically, domestic helpers in Hong Kong have legal rights and if they are subject to unlawful actions and behaviours by their employer and or employment agency they are entitled to file a complaint. Publicly the Hong Kong government maintains a strong stance towards comprehensive enforcement measures. In fact, in 2005, the Permanent Secretary for Economic Development and Labour further stated that:

‘We will leave no stone unturned in protecting the rights and benefits of FDHs by stepping up prosecution, enforcement and publicity efforts. The Labour Department takes a very serious view of wage underpayment and employers’

failure to grant rest days and holidays. We do not, and will not, tolerate any abuse. We will investigate promptly any complaints lodged by FDHs directly or by FDH groups and NGOs.  

What is seen then is that domestic helpers on paper, “have open access to the courts for proactive and efficient redress”. The reality however, once again, is not quite that simple. There are serious inadequacies in the present legal system that have operated to effectively inhibit “judicial enforcement of their statutory rights”. Recall, that these workers are tied to a single employer and are required to leave the country within 2 weeks of the end of their contracts. The complaint process with the Labour Tribunal can take approximately two months and throughout this period the Helper “will have to renew their visa and pay for their own accommodation, food and other expenses without any income”. Thus, there is a clear impediment obstructing these workers from easy access to initiate and effectively support their claim. Even if the Helpers are able to file the complaint, the power falls heavily on the side of the employer throughout the judicial process. For example, “employers are able to adjourn court proceedings at whim if, for example, they are busy with work commitments.” This delay tactic only serves to pressure the Helpers to settle as early as possible or even withdraw their claim completely as they are facing the financial pressures mentioned earlier. Perhaps a more fundamental issue concerns a general lack of knowledge of rights. A knowledge gap was highlighted by a study conducted by Harvard University. The study demonstrated a significant knowledge gap between domestic helpers from the Philippines and domestic helpers from Indonesia. The paper noted the gap was likely a direct result of a pre-departure information session conducted in the Philippines.

An additional issue pertains to the difficulties associated with the work performed in the home. Due to the nature of this work and a reluctance of government to intervene in a residents

63 Ronald Mok, Foreign Domestic Helpers in Hong Kong: Towards Equality of Rights, 1 Queensland Law Student Review 102, 109 (2008)
64 Mok supra note 63 at 109
65 Id
66 Amnesty International supra note 22 at 9
67 Id
68 Mok supra 63 at 110
70 Id at 22
home, investigations are primarily complaint based. However, the underlying obstacles
preventing Helpers from making claims makes it important “for the government to be seen as
proactively pursuing and prosecuting employers and agencies in breach of the law, and enforcing
heavier penalties as a deterrent against future wrongdoing.”\textsuperscript{71} It has been suggested that

the government also needs to allow a right to work and implement temporary
shelter arrangements during the court process. This would further prevent FDHs
from turning to illegal prostitution and other exploitative activities to support
themselves in Hong Kong.\textsuperscript{72}

Investigators should also be taught to look beyond the terms that employment agencies
and or employers use and look at the reality of the situation. As noted earlier, many employment
agencies are able to circumvent the restriction on charging fees by terming them ‘a debt’. If
investigators dig further they would likely uncover the truth. Overall, the current situation
demonstrates that there are a number of underlying barriers preventing domestic helpers “from
bringing valid complaints through the judicial process.”\textsuperscript{73} Moreover, delay tactics and a lack of
knowledge by many groups of these workers mean that despite illegal actions and behaviours,
claims may either be dropped, settled for far less than they should or not be brought forth at all.

2.3 Conclusions

Overall, the current status quo for these workers in Hong Kong is inadequate and falls
below the standards given to other worker groups. The unequal treatment contributes to the
further marginalization of a very vulnerable group of workers. Analyses of two alternative
jurisdictions can help determine what strategies may assist Hong Kong in improving the rules
and regulations pertaining to this group.

\textsuperscript{71} Mok \textit{supra} 63 at 114
\textsuperscript{72} \textit{Id}
\textsuperscript{73} \textit{Id} at 110
3.1 Ontario, Canada: Overview

Foreign migrant domestic workers are able to come and work in Canada under a federal program called the Live-In Caregiver program. The program is a special stream of the larger temporary foreign worker program.\textsuperscript{74} The Live-In Caregivers Program was created in 1992 in order “to fill a specific labour shortage in the country”.\textsuperscript{75} Citizenship and Immigration Canada describe a live-in caregiver as “individuals who are qualified to provide care for children, elderly persons or persons with disabilities in private homes without supervision”.\textsuperscript{76} Under the Live-In Caregiver program, “caregivers must live in the private home where they work in Canada.”\textsuperscript{77} Unlike Hong Kong however, this program provides the workers with a route to permanent residence in Canada if they meet certain requirements.\textsuperscript{78} As of “1 December 2011, 8.2% of all temporary foreign workers were participants in the Live-In Caregiver program”.\textsuperscript{79}

A number of government agencies both at the federal and provincial level are involved in the operation of the program. To be clear,

three federal government departments are involved in its administration:
Citizenship and Immigration (CIC), the officials of which issue work permits from Canada and temporary resident visas at offshore offices; Human Resources and Skills Development Canada/Service Canada (HRSDC), which is responsible for issuing labour market opinions regarding potential employers' job offers to live-in caregivers; and Canada Border Services Agency (CBSA), whose officers have the final decision about whether or not to admit the applicant at the Canadian border.\textsuperscript{80}

\textsuperscript{74} Judy Fudge, \textit{Global Care Chains, Employment Agencies, and the Conundrum of Jurisdiction: Decent Work for Domestic Workers in Canada}, 23 CANADIAN JOURNAL OF WOMEN AND LAW 235, 245(2011)
\textsuperscript{75} Fudge supra note 74 at 245
\textsuperscript{77} Citizenship and Immigration Canada supra note 76
\textsuperscript{78} Citizenship and Immigration Canada, \textit{Become a Permanent Resident: Live-In Caregivers}, CIC.GC.CA <http://www.cic.gc.ca/english/work/caregiver/permanent_resident.asp>
\textsuperscript{80} Fudge supra note 74 at 245
On the provincial level, the Ministry of Labour for each province and or territory are responsible for the labour laws and regulation of those laws for this type of work. For the purposes of this paper the focus will be given to the Province of Ontario. There are two major pieces of labour related legislation that govern the work of these workers. The Employment Standards Act, 2000 and its associated regulations outline requirements on things such as hours of work, payment of wages, overtime, public holiday pay and leaves of absence. The Employment Protection for Foreign Nationals (Live-In Caregivers and Others), 2009 is a piece of legislation that covers matters such as the payment of fees to recruitment agencies and places restrictions on taking property.

The operation of the program requires that a prospective employer must first “obtain a labour market opinion (LMO) from the HRSDC, which assesses the impact that hiring a foreign worker would have on Canada’s labour market”.\(^{81}\) Favourable LMOs would be made if the employer was able to show that they had attempted to recruit from the current labour market in Canada and met the “minimum advertising requirements”.\(^{82}\) As the worker is required to live in the same residence as the employer the Government of Canada has established some basic requirements for suitable accommodation. Employment and Social Development Canada, a federal agency, outlines what is generally considered suitable accommodation as

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\text{a private and furnished bedroom that has a door with a lock and safety bolt. The bedroom must also meet the municipal building requirements and the provincial/territorial health standards.}\(^{83}\)
\]

On the other end, the workers must have a job offer prior to being admitted into Canada to “to work as live-in caregivers”.\(^{84}\) Under this program workers are able to “change employers after arrival, but they must continue to work as live-in caregivers”.\(^{85}\)

\(^{81}\) Id at 246
\(^{82}\) Id
\(^{83}\) Employment and Social Development Canada, Hiring Live-In Caregivers and Nannies, ESDC.GC.CA (26 May 2014), <http://www.esdc.gc.ca/eng/jobs/foreign_workers/caregiver/index.shtml#Housing>
\(^{85}\) Id
Approximately, 1500 to 2000 migrants each year are able to “come to Canada if they agree to work for 2 years as domestic caregivers”. Most of those persons who use this program to come to Canada are “female and come primarily from the Philippines”.

3.2 Residency

An important feature of the program is that these workers are able to apply for permanent residence in Canada after meeting certain requirements. Specifically, a caregiver under the program can apply for permanent residence after either “24 months of authorized full-time employment, or 3,900 hours of authorized full-time employment”. A caveat to this requires that “the work experience must be acquired within four years” of the date of arrival. There is no guarantee that a caregivers application will be accepted and Citizenship and Immigration Canada notes that an application can be negatively affected if the applicants “spouse or common-law partner” or other “family members have a criminal record or serious medical problem”. If an application is successful they become “entitled to transfer their status to that of a normal permanent resident with rights of access to the general labour market and rights of family reunification”.

3.3 Legal Rights under ESA and EPFNA

In Canada, the regulation of the employment rights of these groups of workers falls to the province or territory that the worker is working in. While domestic workers are afforded legal protection it has been noted that “these migrants experience higher levels of occupational abuse, as the live-in requirement is known to significantly increase an employee’s vulnerability to diverse forms of exploitation.” Despite these criticisms it is important to evaluate the specific legal rights that are afforded to this particular group of workers in Canada.

86 Carens supra note 84 at 433
87 Id
88 Citizenship and Immigration Canada supra note 78
89 Id
90 Id
91 Carens supra note 84 at 433
3.3.1 ESA

An important piece of legislation that governs the work of live-in caregivers in Ontario is the Employment Standards Act, 2000 (ESA). This sets the minimum standards for many important aspects of the caregivers work. To be clear, the act places restrictions on the hours of work and wages that the worker is able to receive. Under the Act, “no employer shall require or permit an employee to work more than eight hours in a work day or, if the employer establishes a regular work day of more than eight hours for the employee, the number of hours in his or her regular work day; and 48 hours in a work week”.93 To work in excess of the maximum 48 hours special permission is required from the Director of Employment Standards.94 In addition, unlike in Hong Kong, Ontario and all other provinces in Canada have overtime provisions. The Ontario ESA notes that “an employer shall pay an employee overtime pay of at least one and one half times his or her regular rate for each hour of work in excess of 44 hours in each work week”.95

In Ontario, these workers are also entitled to the general minimum wage established in the province, which is currently set at $11CAD per hour.96 However, as room and board is provided to these workers the employer is allowed to deduct up to $31.70 per week if the employee is given and private room and up to $53.55 a week for meals, but only if they are actually eaten, otherwise it is $2.55 per meal that the caregiver actually had.97 To ensure that disputes can be easily resolved, the ESA also requires employers to keep detailed records of the employee’s hours of work.98 Similarly, the ESA requires employers to provide employees with a wages statement setting out the pay period, wage rate, gross wages and how the amount was calculated, and the amount and purpose of any deduction.99 The employer is also prevented from intimidating, penalizing or otherwise punishing an employee for asking about their rights, filing a complaint, exercising or attempting to exercise a right among other things.100

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93 Employment Standards Act, 2000 § 17(1)
94 Employment Standards Act, 2000 § 17(4)
95 Employment Standards Act, 2000 § 22(1)
97 Id
98 Employment Standards Act, 2000 § 15(1)
99 Employment Standards Act, 2000 § 12(1)
100 Employment Standards Act, 2000 § 74(1)
3.3.2 EPFNA

The province of Ontario recently enacted the Employment Protection for Foreign Nationals Act (Live-In Caregivers and Others), 2009 (EPFNA). The EPFNA provides various protections for caregivers and attempts to fill in the gaps that were found between previously existing pieces of legislation. To be clear, the EPFNA prohibits recruiters and persons connected to recruits from charging “the foreign national or such other persons as may be prescribed a fee for any service, good or benefit provided to the foreign national”.101 Similarly, employers are prevented from directly or indirectly recovering fees such as “any cost incurred by the employer in the course of arranging to become or attempting to become an employer of the foreign national as a live-in caregiver or in other prescribed employment”.102 Another important provision prohibits employers and or recruiters from taking “possession of, or retaining, “property that the foreign national is entitled to possess”.”103 This provision is targeted at preventing employers from holding onto passports or the work permits of the worker. In relation to all these provisions s.10 of the EPFNA prevents an employer or recruiter from intimidating, penalizing or otherwise punishing a foreign national for asking about their rights, filing a complaint, exercising or attempting to exercise a right among other things.104 An important corollary to this provision is section 10(3) of the EPFNA which places the “the burden of proof that a person did not contravene this section lies on that person.”105 In this way, a lack of evidence would only support the claim of the employee, the employer or recruiter, have the onus to prove that they in fact complied with the provisions of the act.

A final noteworthy provision is that employers and recruiters are, by virtue of this act required to give their live-in caregiver “a copy of the documents published by the Director of Employment Standards”.106 These documents are essentially an overview of the rights of this group of worker under the ESA and the EPFNA. This ensures that both parties are aware of their respective rights and responsibilities.

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101 Employment Protection for Foreign Nationals Act (Live-In Caregivers and Others), 2009, § 7(1)
102 Id at § 8(1)(a)
103 Id at § 9
104 Id at § 10
105 Id at § 10(3)
106 Id at § 11
3.3.3 Enforcement

Ontario’s Ministry of Labour adopts a proactive approach to investigations. First by providing easy to access information on their website, having a toll free hotline that all employees can call to obtain information, as well as by conducting seminars to various interests groups. Second, by conducting “proactive inspections of payroll records and workplace practices”. The Ministry of Labour also conducts targeted enforcement strategies where persons either directly file a claim or in some cases where persons leave a tip, directing the Ministry to a possible breach of either the requirements set out under the ESA or the EPFNA. As noted on their website, officers “focus particularly on sectors where there is a history of employment standards violations and where vulnerable workers are employed”. The tip option is particularly important for vulnerable employees such as live-in caregivers or domestic workers. Moreover, the toll-free hotline and publications easily accessible on their website mean that employees are able to identify with ease, what their rights are and how they can be enforced. Where an employee wants to file a complaint directly it can be done via an online form, fax, by phone or by mail and officers will follow-up with them.

An important strategy that the Ministry uses is a method of public shaming so to speak. To be clear, employers who are found to have violated the ESA or EPFNA may have their convictions posted online. This can be easily accessed at the following website: http://www.labour.gov.on.ca/english/es/pubs/enforcement/convictions.php. In this way employers risk both future employees and the public seeing their non-compliance. It acts as a form of deterrence. It also gives potential employees an opportunity to investigate a potential employer to determine whether or not they wish to work for them.

107 Ontario Ministry of Labour, Enforcement Activities, labour.gov.on.ca (January 2014)  
108 Ontario Ministry of Labour, Inspection Blitzes and Initiatives, labour.gov.on.ca (June 2014)  
109 Ontario Ministry of Labour, Form: Employment Standards Claim, labour.gov.on.ca (June 2014)
3.4 Lessons for Hong Kong

Ontario provides a number of important considerations for Hong Kong. Perhaps the most controversial of these considerations, for Hong Kong, concerns permanent residency. As noted, the live-in caregiver program in Canada provides the opportunity for these migrant domestic workers to gain permanent residency after approximately two years assuming they satisfy all the other requirements.\footnote{Citizenship and Immigration Canada supra note 78} While Canada does have a significantly less dense population, it is not unfathomable that a similar policy be adopted in Hong Kong. However, to be consistent with the requirements set out for other migrant workers the period of time working could be set at seven years. As this question has already been determined by the Court of Final Appeal in Hong Kong, to implement it would require repealing the provisions in the Immigration Ordinance that currently exclude permanent residency to domestic workers.

Another important consideration for Hong Kong is to provide more easily accessible information as well as providing proactive and perhaps compulsory education for employers and employees. Doing so may help both the employer and employee to understand their respective rights and responsibilities. Also it would provide the employees with the education they may need to know when and how to file a complaint when their employer is non-compliant. Similarly, Ontario has an easily accessible way to send in a ‘tip’ about potential non-compliant employers. This helps the investigative units to target their enforcement. It also provides an opportunity for persons, who may notice an employer is non-compliant to inform the respective departments. Moreover, for many of the requirements set out under both the EPFNA and the ESA, the onus is on the employers to show that they complied with all the obligations.\footnote{Employment Protection for Foreign Nationals Act (Live-In Caregivers and Others), 2009, §10(3)} This requires, by law, for the employers to keep comprehensive records for all employees’ hours of work, overtime et cetera.

Another consideration concerns the establishment of hours of work legislation and overtime provisions in Hong Kong. It is surprising that a developed region such as Hong Kong continues to lack these basic provisions. As noted, the absence of them is in breach of Hong Kong’s international obligations under the International Covenant on Economic, Social and
Cultural Rights. Domestic workers, or as they are called in Canada, live-in caregivers, are entitled, to the general minimum wage established by the province in which they work. As such they are afforded virtually the same labour rights as other workers. Such a position should also be adopted in Hong Kong. While employers may object at the increased price, it is important to note that these women are providing a valuable service and should be compensated appropriately. A live-in helper is a luxury not a right and these individuals are employees, not personal property or slaves.

Canada also provides clear information on what is acceptable accommodation. Employment and Social Development Canada notes that a furnished private bedroom with a lock is required for persons obtaining live-in caregivers via the live-in caregiver program. As Canada is more spacious and affordable country for housing, it is perhaps too much to suggest that helpers in Hong Kong be able to get the same sort of accommodation provided to helpers in Canada. However, it is important that more detailed standards for accommodation be outlined, and more importantly actually enforced. Without ‘site inspections’ either random or targeted, it is far too easy for potential employers to simply lie about the accommodation they are supposedly providing their helpers.

A final point to note is that while under the live-in caregiver program there is no option to live-out, once the helper obtains residency they are able to work on a live out basis. If the restrictions in the Immigration Ordinance were repealed a similar position could be adopted in Hong Kong. While some may object saying housing is too expensive, if these helpers were provided with minimum wage for the hours they work and perhaps even overtime where required they would be able to afford to at least rent modest accommodation for themselves.

4.1 New York, USA: Overview

The next jurisdiction to consider is the United States. In a place such as New York, much like in Hong Kong, domestic workers “provide the lifeline of care that makes all other work possible”. Like Canada, the US is a federalist country where some laws are made a federal

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112 Amnesty International supra note 22 at 5
113 Employment and Social Development Canada supra note 83
level whilst others are made by the state. Unlike Hong Kong and Canada it is much more difficult for an American to hire a migrant domestic worker to work on a live-in basis. It is important to first consider the socio-historical background of the region in order to understand the context of the matter in question. Domestic labour evolved in the United States after the abolishment of slavery. Those households that were “able to afford domestic continued the roles of master and slave” however, these roles transitioned in to “boss and maid with the racial and economic status remaining the same”. Thus, despite the important role they play “domestic workers work in precarious environments and are highly vulnerable to exploitation”. In a fairly recent survey of the domestic worker industry in New York, it was highlighted that the wages earned by this group of workers varies drastically from about “$1.43 to $40.00 per hour, which shows the lack of industry standards”. The same study however showed a “median hourly wage for domestic workers was $10.00 per hour, which does not constitute a living wage in New York City”. The survey also indicated that approximately “8% of workers reported earnings below minimum wage, with 21% of live-in workers earning below minimum wage and an additional 35% earning below the poverty line”. In terms of hours of work a report of the industry determined that “63% of these workers work overtime, often up to 100 hours a week, without usually receiving overtime pay.” It was in light of these issues that comprehensive legislative change came to New York State in 2010 by way of the Domestic Workers Bill of Rights. The specific legislative developments will be discussed in a later section. Before this it is important to consider the ways in which domestic workers are able to find work in America.

4.2 Program

Unlike Hong Kong and Canada there is no general employment program that allows an average American to hire a migrant domestic worker on a live-in basis. However, there are a few avenues by which these individuals are able to come to America to work as a domestic worker.

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116 Hobden supra note 11 at 8
117 Id
118 Id
119 Id
120 Id
First, an American employer could “obtain a labor certification from the” Department of Labour, and then apply for the H2B Visa which is for “non-agricultural, non-skilled work”.\textsuperscript{121} The problem however is that US Department of Labor has failed “to recognize the shortage of local or state workers in this sector”.\textsuperscript{122} For this reason few visas for domestic workers are granted under this method.\textsuperscript{123} A study of Filipino workers in the US elucidated four of the most common ways in which migrant domestic workers are able to enter into the US: fraudulent use of the H2B visa, fraudulent use of a tourist visa, family reunification and the diplomatic and overseas American domestic help visa program.\textsuperscript{124} The so called diplomatic program allows “diplomats from other countries, officers and employees in international organizations, and US citizens who reside abroad to bring their domestic helpers with them when visiting or temporarily residing in the US” under the B1, A3 or G5 visas.\textsuperscript{125} These visas are “usually valid for two years and binds the legal status of the workers to their employment at their sponsor’s household”.\textsuperscript{126} It seems that this avenue represents only a small amount of the actual domestic worker population as the programs scope is limited in nature. The other methods essentially provide that the workers are in the country as residents (for example via family reunification) or are working in breach of their visa conditions. While there is no suggestion that Hong Kong should adopt practices whereby workers enter illegally it is important to consider the ways in which the so-called diplomatic program as well as the workers already in the US are accommodated into the legal system. Particularly important is the way in which these arrangements are regulated in densely populated areas such as the state of New York. New York City alone has “over 200,000 domestic workers”.\textsuperscript{127} Therefore this section will be focused on the way in which domestic helper arrangements operate in New York, USA. In regards to the diplomatic program, there are a few issues, “first, the domestic worker is considered private staff and is therefore under the jurisdiction of her employer.”\textsuperscript{128} Second, as the worker is tied to her employer, any decision to change workplaces means the worker “is automatically considered undocumented and thus

\begin{itemize}
\item \textsuperscript{121} Sandra Ezquerra, \textit{Gender, Migration, and the State: Filipino women and Reproductive Labor in the United States}, 22 \textit{KASARINLAN: PHILIPPINE JOURNAL OF THIRD WORLD STUDIES} 117, 125 (2007)
\item \textsuperscript{122} \textit{Id}
\item \textsuperscript{123} \textit{Id} at 127
\item \textsuperscript{124} \textit{Id} at 127-128
\item \textsuperscript{125} \textit{Id} at 130
\item \textsuperscript{126} \textit{Id} at 131
\item \textsuperscript{127} Tahirah \textit{supra} note 115 at 5
\item \textsuperscript{128} Ezquerra \textit{supra} note 121 at 131
\end{itemize}
required to leave the US”.

Third, the status of many of these employers as ‘diplomats’ render them immune from prosecution should they be found to have violated state or federal laws.

Another important dimension worthy of study is the way in which documented and undocumented live-in domestic workers in the state of New York are incorporated into the legal framework. As noted, the limited modes of entry into the US means, many live-in domestic workers are not sponsored by their employer. Some may be in the US as a result of the aforementioned ‘family reunification’ option whereby members of the family of a US citizen are able to apply to come to the US as well, some may be undocumented workers who have overstayed visas for example, or others may have migrated to the US under other immigrations options. What is clear however is that the live-in domestic workforce is primarily a ‘new immigrant’ population with many hailing from the “Caribbean, West Africa, and South America”, as well as East Asian countries such as the Philippines.

In 2006 The DataCenter, Domestic Workers United “surveyed 547 New York City domestic workers between the years of 2003 and 2004 and found that 99 percent of them were foreign-born”. A commendable strategy to deal with the dilemma of regulating documented and undocumented workers is that in the United States, labor law “technically applies to all workers, regardless of immigration status”. In the US, while “some domestic workers travel to and from work every day, there are others who live within the households where they work”. These agreements usually require that “the domestic worker is situated within the employer’s home and given her own living quarters—usually a private room”.

4.3 Legal Rights

Much like in other jurisdictions, the unique nature of the home as a workplace “creates difficulties with enforcing” the legal rights of domestic workers. However, it is important to reiterate that that under this law “domestic workers, regardless of immigration status in the

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129 Id
130 Tahirah supra note 115 at 27
131 Ezquerra supra note 121 at 117
132 Tahirah supra note 115 at 31
133 Hobden supra note 114 at 10
134 Tahirah supra note 115 at 26
135 Id
136 Id at 43
United States, are protected” by the law. After recognizing a demand for a more comprehensive legal framework to regulate the work and rights of these workers, New York State implemented the landmark Domestic Worker Bill of Rights in 2010. Under the Domestic Worker Bill of Rights law in New York State,

No person or corporation employing a domestic worker …shall require any domestic worker to work more than forty hours in a week, or forty-four hours in a week for domestic workers who reside in the home of their employer; unless they receive compensation for overtime work at a rate which is at least one and one-half times the worker's normal wage rate. 

They are also entitled to “a day of rest (24 hours) every seven days, or overtime pay if they agree to work on that day”. Additionally, most domestic workers will now be covered by the minimum wage provisions, which requires employers to pay to each of its employees a wage of not less than $8.00 an hour. There is also a requirement for employers to provide employees with a wage statement. These statements must include among other things the amount of wages being paid, the rate of pay and or basis by which the amount was calculated, the number of regular hours worked, the a number of overtime hours worked if any, amount of any deductions, dates for which the payment is for as well as the amount of any overtime pay. Beyond this, the Domestic Worker Bill of Rights also created “a special cause of action for domestic workers who suffer sexual or racial harassment”. The Domestic Worker Bill of Rights has, thus, effectively amended the previously archaic provisions that exempted domestic workers from the labor standards that applied to virtually all other workers.

Despite these legislative developments in the State of New York, it is important to recognize that “a new law does not mean anything if no one complies with it”. Thus, it is vital

138 International Labour Organization supra note 137
139 Laws of New York, Labor, § 170
140 Tahirah supra note 115 at 12
141 Laws of New York, Labor, § 652
142 Laws of New York, Labor, § 195(3)
143 Tahirah supra note 115 at 12
144 Tahirah supra note 115 at 78
for there to be a strong regulatory framework to ensure compliance. One important mechanism comes from dialogues between workers and employers.\textsuperscript{145} This is particularly important because, 

Homes are not factories through which an inspector can easily walk in order to ensure standards are being kept, and even with protections in place domestic workers may choose not to raise their voices for fear of losing their jobs.\textsuperscript{146} This fact has been highlighted points out in the “two years after the DWBR passed, only five complaint filed by domestic workers under the New York statute had been brought to resolution.”\textsuperscript{147} However, in one of these complaints to the Department of Labor a domestic worker was able to successfully receive an award of $100,000US “in back-wages and penalties.”\textsuperscript{148}

4.4 Lessons for Hong Kong

While there are a number of significant differences between the jurisdictions there are a number of important considerations and revelations that can be taken away from a consideration of domestic workers in New York State. First, in light of concerns that this group of workers continued to face inequality and exploitation, legislative changes were enacted. This legislative change was known as the Domestic Worker Bill of Rights. It has recognized that these workers contribute in a way that deserves at the very least equal protection to that of other workers in the State. As such, minimum wage, hours of work and overtime provisions now, generally, apply to these workers. This is similar to the position adopted in Canada. It seems only logical and appropriate that these workers be entitled to the same sorts of labour rights as all other workers when their contribution is so important to the economy. This jurisdiction has also, once again highlighted the demand for effective regulation strategies in order to ensure that legislative enhancements make an actual impact. A corollary to effective regulation strategies is the importance of information dissemination. In this regard, the jurisdiction of New York State has

\textsuperscript{145} Id
\textsuperscript{146} Id
\textsuperscript{147} Id
\textsuperscript{148} Id
highlighted the important role activist organizations provide in disseminating information to these workers. A final point highlighted by the jurisdiction of New York is that many of these workers, have the option to live-out. This is in many ways connected to the fact that New York, unlike Hong Kong does not have a general domestic helper program for the average American to hire a helper from abroad. However, the fact that a high-density area such as New York is able to effectively operate with live-out caregivers suggests that it would be possible in other jurisdictions such as Hong Kong, provided that these workers are given a fair wage.

5. Conclusions

In conclusion, a number of important changes can be implemented to the existing foreign domestic helper program in Hong Kong. The first and most important change would require the government to repeal the provisions in the Immigration Ordinance that prevent domestic helpers from obtaining permanent residency. If this option is considered for Hong Kong, it is important to reiterate that the limit would need to be extended to 7 years in order to be consistent with the right of abode requirements set out in the Basic Law. This repeal would give long-term domestic workers an opportunity to live-out (if they choose) and as a live-out worker with no visa restrictions they could potentially work for multiple employers (if they choose). Such a suggestion could mean that persons who want only a part-time helper would be able to utilize these workers giving both employers and the employees more flexibility with their arrangements and also more privacy.

As education regarding the rights and responsibilities of employers and employees is vital, it is suggested that Hong Kong require employers to undergo a compulsory education seminar when they apply for a domestic helper. Similarly, employees should be provided with information about their rights. As is the case in both New York and Ontario, employers should be required to keep records of the hours of work, wage rates and rest days of their employees. This sort of requirement is consistent with the responsibilities of most other employers. A related point is that the government needs to clarify the accommodation requirements. Perhaps more importantly, they need to implement some enforcement measures to ensure that the requirements

149 Basic Law, Article 24
set out are adhered to. This involves perhaps random ‘site inspections’ when persons apply for a helper.

The issue of remuneration is important. While Hong Kong has recently implemented minimum wage provisions, as discussed earlier, they do not apply to domestic helpers. Repealing this exclusion is an important step. Assuming these workers were given an opportunity for permanent residency, they could develop their own arrangements, possibly having multiple employers whom they work for on a part time basis. A higher wage rate for these workers would also, likely, reduce their excessive working hours. Minimum wage is a basic right that both Ontario, Canada and New York, USA have adopted for live-in caregivers.

Similarly, another recommendation is for Hong Kong to finally implement provisions regulating the hours of work of its workers, not just for domestic workers but all workers in the region. Overtime thresholds should also be established. Such a legislative change is consistent with both the jurisdictions of New York, USA and Ontario, Canada. Moreover, the government should abolish the provision that excludes domestic workers from minimum wage. As these workers are providing a valuable service, they should be entitled to the same wages as other workers in the region. It is also recommended that the ‘2 week rule’ be amended. It is important to increase the 2 week rule to a more appropriate duration such as 6-8 weeks and to waive visa fees when litigation is pending.

In terms of enforcement procedures, it is important that the government not wait until claims are filed, but rather random inspections and investigations should be undertaken. Additionally, the jurisdiction of Ontario, Canada utilizes an easily accessible ‘tip’ method on their website. This provides workers or even neighbours who are aware of non-compliance to notify the government. Based on these tips target enforcement can be undertaken. It is suggested that, similar to the province of Ontario, prosecution and conviction statistics and information be posted publicly on the Government website so that an element of public shaming can be implemented to deter non-compliant employers.

Finally, instead of allowing agencies to obtain 10% of the employee’s wages, the fees should be charged to the employer, not the employee, as is seen in the province of Ontario. In connection to this, more comprehensive regulatory strategies should be adopted. Investigating officers need to be trained to look beyond the terms used by the agencies, workers and employers. They must not stop at the first obstacle and be trained to dig for the truth. As
mentioned earlier, education is once again an important element. Encouraging employees to take their own records, particularly in relation to any alleged ‘loan agreements’, hours of work, rest days and actual wages received.