



Employment Standards Code

... merits are in the enforcement

**Presentation to
Minister of Labour
Government of Manitoba**

**by the
Canadian Union of Public Employees
(CUPE) Manitoba**

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(Kevin Rebeck) Good afternoon. I want to thank you for the opportunity to address you on the review and updating of the Provincial Employment Standards Code. I am Kevin Rebeck President of CUPE Manitoba. The Canadian Union of Public Employees is Canada's largest union representing more than a half-million women and men. In Manitoba, we represent 24,000 members working in health care facilities, school divisions, municipal services, social service agencies, child care centres, public utilities, libraries and family emergency services.

We are not going to make a long presentation with numerous recommendations for revision to the Employment Standards Code. CUPE has worked with the Manitoba Federation of Labour on their Brief, and we support the recommendations they are putting forward.

What we want to do today, is to speak on behalf of better enforcement of the Code. For the legislation to play its role of balancing the rights and obligations of both employees and employers, it is important for the Code to be enforced effectively. In particular we believe that the Code must reach out to working people who are more vulnerable or disadvantaged.

Therefore, we think it important that the Department of Labour should;

- Vigorously promote and raise awareness of the Code among workers who may otherwise not know of or understand their rights under the Code - immigrants young people, those with limited education, workers who are functionally illiterate and those with mental disabilities.

- Adequately support the enforcement requirements of the Code, in particular;
 - allow for anonymous reporting of infractions or suspected infractions,
 - provide resources and additional help to those workers who need to use the protection of the Code, but who have special needs, due to disability, language, education, family or religious requirements, and
 - publish the Code in plain, clear language in English and French.

As a footnote, I would like to point out that as members of the Canadian Union of Public Employees, we have contractual protections that mean we do not depend on the Code in the same way as non-unionized workers do. However, we believe that the benefits of the Code for non-unionized workers are significant and we feel strongly that all workers should have and use the protection of the law.

Now I would like to introduce Barbara Guia, who is a CUPE member and a Social Worker at the Immigrant Women's Counselling Services in Winnipeg. She has first hand experience with immigrants working in Manitoba, people who need and do use the Code, that she will share with you.

(Barbara Guia) Thank you.

I am working with many people who could benefit from the Code but who are unaware of its protection. At the Immigrant Women's Counselling Services we regularly meet people who are working in Canada and are unfamiliar with how the relationship between employers and employees is regulated. I should add also, that I have been an immigrant and some of what I will tell you about is similar to my personal experience.

I worked with one woman who held down two jobs while trying to adjust to a new life in Canada. She worked overtime but was not paid accordingly. Because she did not know about the requirement to pay time and a half after eight hours of work, she never questioned her pay cheque. She was too afraid to challenge her employer.

Another woman worked seven hours a day but was only paid for five, because her employer said that was the way it was done in Canada, that her work should be completed in the time she was given. She thought she was making more money than she would make in her home country and she therefore felt she was doing well in

comparison. Through a friend she heard there was “some law” about working overtime and she came to us at the Immigrant Women’s Counselling Services. We were able to help her by lodging an complaint under the Code and she received payment from the employer to compensate for the overtime she worked.

On a broader scale, I know there are many women who have been brought to Manitoba to work as nannies, who do not have legal protection. The women often do not read or speak English. They are isolated as they work for one family and may spend the personal time, one day a week, with family or close friends. Their employer will never mention their rights or the Employment Standards Code. Often the employer will ask them to work on their day off as well. They are often paid a flat rate of pay, and in some cases have living expenses deducted from their wages. Because their work is so irregular and unregulated, they work long hours. If we calculate their wages per hour, we would find that they are not paid anything close to the provincial minimum wage.

In a similar way, immigrant men and women have been brought to Canada to be domestic servants, or to work on family farms. They are also vulnerable because of their limited language skills, lack of knowledge and isolation. Their work is hard and they spend long hours at it, often thinking they have no other choice. I have also heard of cases where women from other countries have married men from Manitoba. They came here and were essentially put to work looking after their husbands, their extended

families and often doing other labour in family businesses or farms. They trust their partners and never think they have the right to be protected and paid fairly.

What also underlies some of these situations, are subtle forms of psychological intimidation or harassment. Employers are often aware of what they are doing, and will not directly deny an employee their rights, but will take advantage of unsophisticated workers. The workers may not understand what is being implied by their employers, but rather than ask for clarification they will bear the confusion and anxiety silently.

A common feature of these stories, of the people I try to help with their work related conditions, is that they are being exploited because of their lack of knowledge. They may not speak English or it is their second language. They have not had the opportunity to learn to read and write well, and they are denied access to many public services.

As a worker who is educated and literate, I find the language used in the Code very difficult to read. I could not give a copy of the Code to any worker or person who comes to me and expect them to learn about their rights from the Code itself. For example, part of the code says;

No application to independent contractor or others exempted by regulation .

2(3) This Code does not apply to

(a) an independent contractor; or

(b) an employer, employee, employment or business, or a group or class of employers, employees, employments or businesses, that is exempted by regulation.

What exactly does this mean? Who is and who is not covered by the Code?

Workers who are poor or are struggling financially are also disadvantaged. They are reluctant to challenge their employers because they are worried about keeping their jobs. I can relate directly to this. When I came to Canada I was afraid to raise issues with my employer because I was afraid I would lose my job. I did not know I had rights and that I could rely on the law to defend my rights.

This is why we think it important to have a reporting process within the Code that protects the anonymity of workers. They will come forward if they know their identity is protected.

For many immigrants, we also come from countries that are in desperate economic conditions. If we do not know what the employment standards are in Canada we may think we are getting a great wage even when we are not getting the wage that should be paid to us. We are trusting, sometimes too trusting.

(Kevin Rebeck) In conclusion we want to repeat that we endorse the recommendations of the MFL in their brief. We strongly believe that the Code becomes meaningful and is an asset to society only when it is enforced and fully accessible to all parties involved. As the Government reviews the content of the Code, it should constantly keep in mind the importance of promoting an understanding and application of the legislation, so that resources can be allocated and appropriate mechanisms can be applied.

Thank you.

In Manitoba, CUPE represents 24,000 members working in health care facilities, school divisions, municipal services, social service agencies, child care centres, public utilities, libraries and family emergency services. CUPE Members work in numerous agencies that help immigrants, young people and others working in non-unionized situations; Welcome Place, Immigrants Women's Counselling Centre, Unemployed Workers Centre, Mount Carmel Clinic, Klinik and John Howard Society.