

AGING AND THE LAW SERIES

What Every Professional Needs to Know

FAMILY CAREGIVING

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What is Family Caregiving?



Caring for dependent or vulnerable adult family members, rather than contracting this work out to third parties outside the family

What is Family Caregiving?

Family Caregiving relationships include:

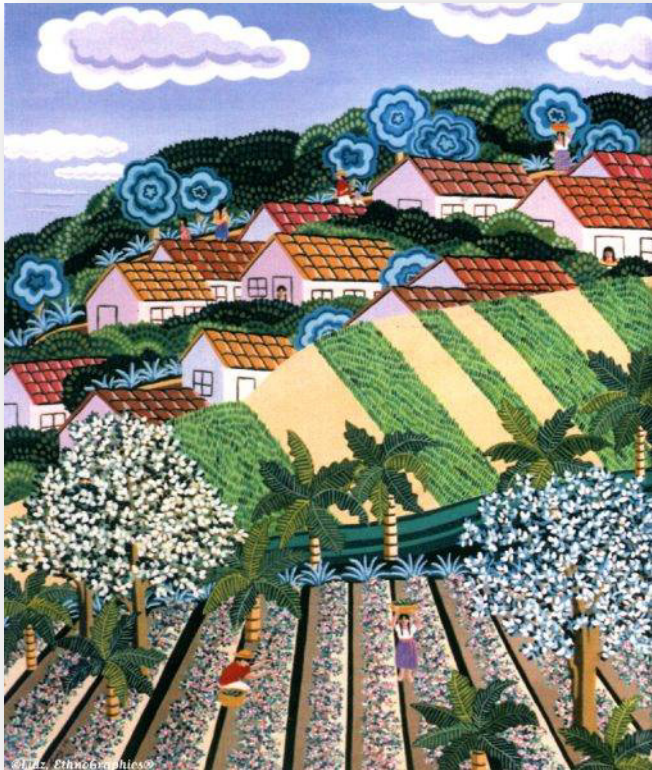
- Short term - weeks or days
- Long term - months and years
- Fluctuating conditions
- Degenerative conditions
- Temporary care e.g., post-surgical
- Episodic care

What is Family Caregiving?



Family caregiving, also known as informal caregiving, is the norm in many cultures around the world.

What is Family Caregiving?



Informal caregiving includes the care of friends and neighbors.

(People who care for friends and neighbors are the second largest group next to those who care for mothers).

What Do Family Caregivers Do?

- Personal care
- Communication with doctors and therapists
- Emotional and social support
- Cooking, shopping and household tasks
- Bathing and dressing
- Mobility assistance
- Operating medical equipment



Statistics



On average,
employed caregivers
report providing
almost **20 hours**
per month



Stobart, S. and K. Cranswick (2004), *"Looking after seniors: Who does what for whom?"*
Canadian Social Trends. No. 74, Statistics Canada Catalogue no. 11-008-XIE

Statistics



More than **1.7 MILLION** adults aged **45-64** provided informal care to almost **2.3 MILLION** seniors with long term disabilities or physical limitations.

Of these care providers, **70%** were employed in 2002.

Stobart, S. and K. Cranswick (2004), *"Looking after seniors: Who does what for whom?"* Canadian Social Trends. No. 74, Statistics Canada Catalogue no. 11-008-XIE

Statistics on Family Caregiving



- The value of the replacement labour of unpaid family caregiving is \$26 billion.
- Over 2 million Canadians over the age of 65 (2002, Stats Can).
- In 2007 Stats Can says 2.7 million.
- 90% of eldercare delivered through unpaid family caregiving.

Statistics on Family Caregiving

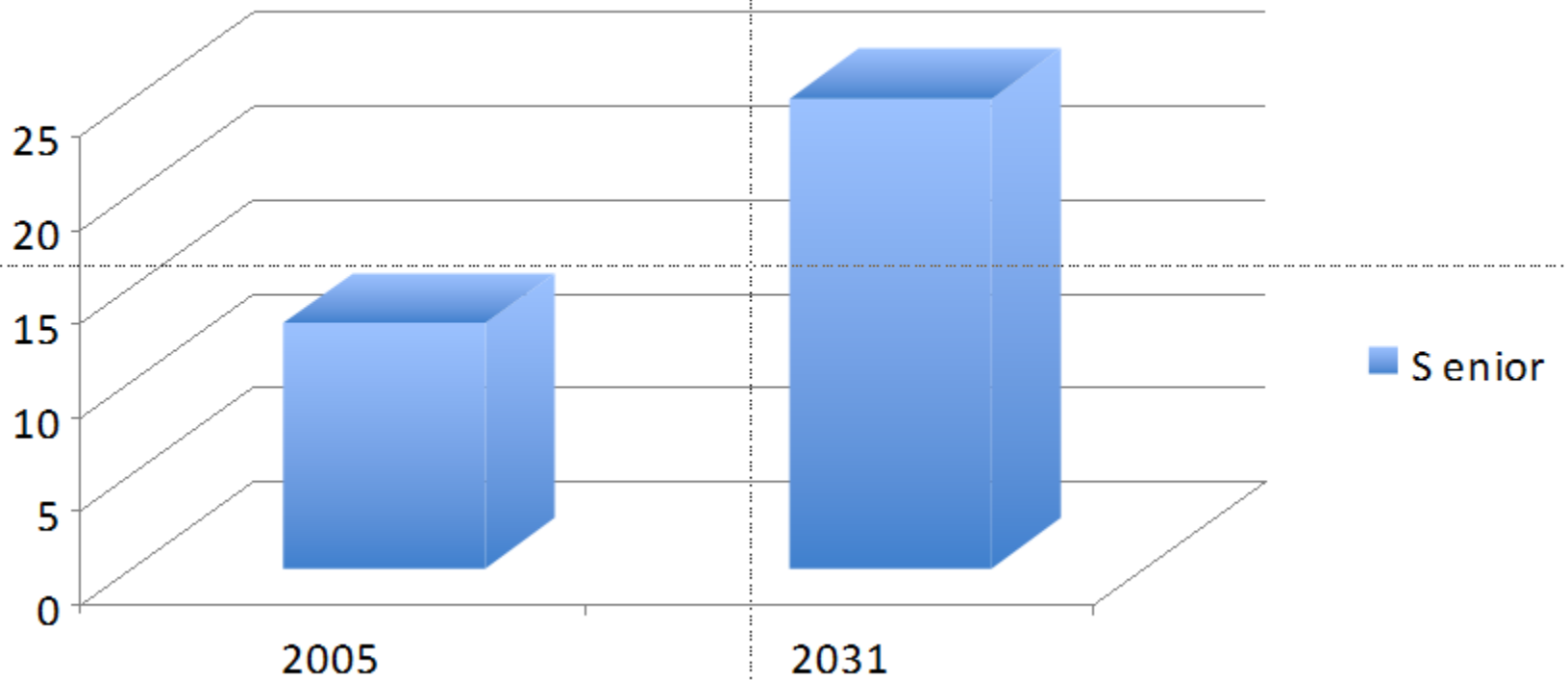


- Over 1 in 4 employed Canadians care for an elderly dependent
- The majority of caregivers work the equivalent of 2 full time jobs
- Absenteeism due to caregiver strain costs Canadian employers over 1 billion dollars

Statistics



Senior Population Growth



Statistics Canada (2005)

Labour and Demographics



People are living longer



and birth rates are declining

Statistics



Current statistics suggest that **80%** of elder care is delivered through informal care arrangements and **over 60%** of adults with disabilities require the assistance of family members to accomplish daily living activities.

The Role of Women



The responsibility to provide care for older adults or persons with disabilities often falls on the women of the family.

(Source: Pyper, W. 2006)

As the primary caregivers of children mothers often assume care for adult children with disabilities, and as the traditional family caregivers they become caregivers of their elders as well.



Labour and Demographics



Women are now just as likely as men to maintain paid employment outside the home, therefore, there are fewer family members able to assume the responsibility of family care.



Labour and Demographics



Many families will opt to continue a family caregiving relationship rather than leave the long-term care of a family member to strangers, despite the strain of Having to juggle work and family responsibilities.



Labour and Demographics



As the population ages, increasingly people will find themselves struggling to provide care simultaneously for children and parents, or for children, parents and grandparents (“sandwich generation”)



Labour and Demographics



Family caregiving is an issue that is likely to impact many of us

Supporting caregivers is becoming an increasingly pressing social issue



The Family Caregiving Legal Research Project

- Employment law
- Pensions
- Tax law
- Health Policy
- Human Rights



The Legal Framework



Existing legal provisions fall into 3 different Categories:

1. Compassionate care or family responsibility leave
2. Workplace flexibility
3. Benefits and other entitlements

Compassionate Care or Family Responsibility Leave

Allows workers to take time off work to focus temporarily on caring for a family member

- Leave may be paid or unpaid
- Right to a leave may arise out of the language of a collective agreement

Compassionate Care or Family Responsibility Leave

Relevant Legislation

- Provincial employment standards legislation
(ex. *BC Employment Standards Act*)
- *Employment Insurance Act of Canada*
- Provincial labour legislation
(ex. *BC Labour Relations Code*)
- *Canada Labour Code*

Workplace Flexibility

Allows workers and employees to find creative solutions to balance workplace and family caregiving responsibilities

Relevant Legislation:

- Some workers fall under the jurisdiction of federal law (telecommunications employees), while many workers are subject to provincial human rights legislation
- Provincial human rights legislation (ex. *BC Human Rights Code*)
- *Canadian Human Rights Act*



Benefits and Other Entitlements

A number of laws create benefits that aim to offset the loss of income associated with assuming family caregiving responsibilities.
(ex. Caregiver Tax Credit, Dependent Tax Credit)

Relevant Legislation:

- Provincial Income Tax Legislation
- Federal *Income Tax Act (Canada)*



BC Example : Employment Leave

- *Employment Standards Act, R.S.B.C.*
- Limited support for family care
- Compassionate Care Leave : 8 weeks unpaid leave for end-of-life care (s. 52.1)
- Family Responsibility Leave: 5 days unpaid leave (s.52)
- Excluded employees



Income Tax Measures

- Caregiver Tax Credit
- Non-refundable
- Currently valued just over \$600
- Eligibility linked to financial dependency, disability and co-residency
- No link to caregiver labour



Payments to Caregivers

- Choice in Support for Independent Living (CSIL)
- Ministry of Health
- Self-managed care program
- Payments to family members only by way of exceptions to policy



Workplace Accommodation of Family Responsibilities



- Workplace flexibility
- Hours, location, tele-working
- Currently at the employer's discretion

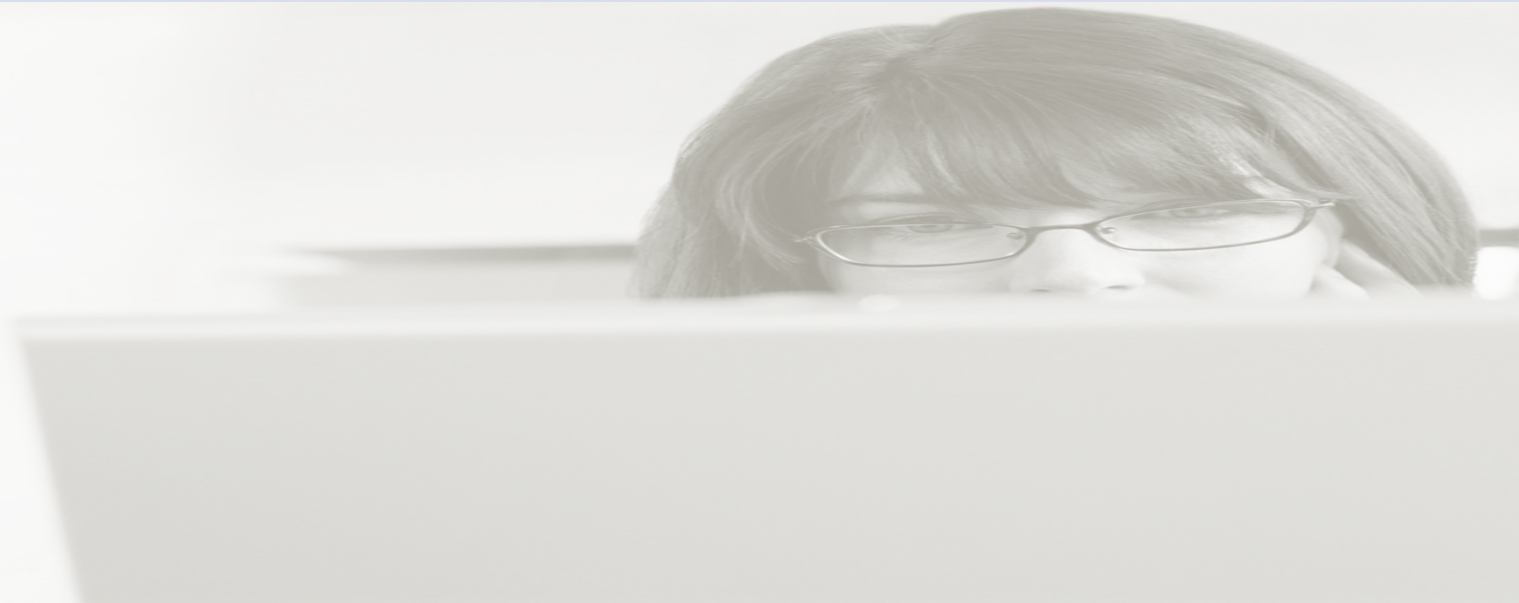
Workplace Accommodation of Family Responsibilities



Human Rights Code prohibits discrimination on the ground of family status

- Must establish that a facially-neutral rule preventing adaptations to meet family care obligations amounts to discrimination

Workplace Accommodation of Family Responsibilities



Test: whether “a change in a term, or condition of employment, imposed by the employer results in serious interference with a substantial parental or other family duty”

Grace's Story

- Divorced woman caring for both school-aged children and aging mother
- Long-term caregiving required for her mother
- Works part-time due to caregiving responsibilities



- Short-term work history: out of the paid work force until her divorce

Sunita's Story

- Caring for her father-in-law following a stroke
- Likely long-term care
- Unionized employee working a full-time rotation that includes nights.
- Requires schedule changes to maintain caregiving.



Ingrid's Story

- Single, low-income parent of an adult child with a disability
- Long-term caregiving needs
- Income is a mix of welfare and occasional part-time work in childcare and housecleaning



How Do These Caregivers Fare Under Existing Laws?



Sunita cannot get leave because not end-of-life care

Cannot get accommodation of caregiving without a human rights complaint

Ingrid is periodically and precariously employed



How Do These Caregivers Fare Under Existing Laws?



Ingrid faces lifelong poverty.

Grace faces pension insecurity.



Tax measures are inaccessible.

Law Reform Problem

The caregiving labour
of all three women
is uncompensated, unrecognized
and indispensable.



Canadian Comparisons

Saskatchewan

- *Labour Standards Act, R.S.S., 1978, c. L-1, s. 44.2(1)(b).*
- Serious Illness or Injury Leave
- 12 weeks unpaid leave
- 16 weeks compassionate care leave



Canadian Comparisons

Manitoba

- *Income Tax Act*, S.M. 1998, c. 110, s. 511(1).
- Primary Caregiver Tax Credit.
- Refundable tax credit for caregivers who provide significant care.
- Amount : up to 1,020 per care recipient.
- Can receive for up to 3 care recipients.



Canadian Comparisons

Nova Scotia

- Allowance to Aid Caregivers
- \$400 monthly benefit for caregivers who provide 20 hours or more of care per week.



International Approaches



United Kingdom and New Zealand



- Work flexibility employment legislation
- Requires employer to consider requests to modify terms of employment (hours of work, location) where change is required for caregiving.
- Employer discretion.
- Act sets out broad business grounds for refusal and there is no right of appeal.

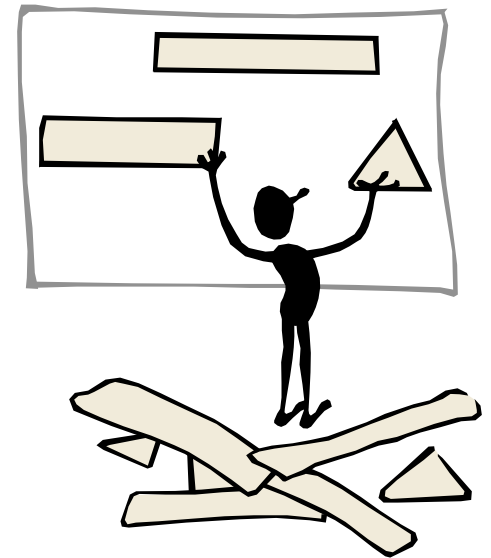
Social Policy Question

There was a time when a matter, such as work-life balance, would have been considered a private concern for families to work out. But when the economy, as well as families' ability to live at prevailing community standards, depends on the supply of two workers per family, and when the fertility rate continues to drop, private risks tend to be defined as public crisis.

Terrance Hunsley, "Informal Caregivers : Balancing Work and Life Responsibilities"

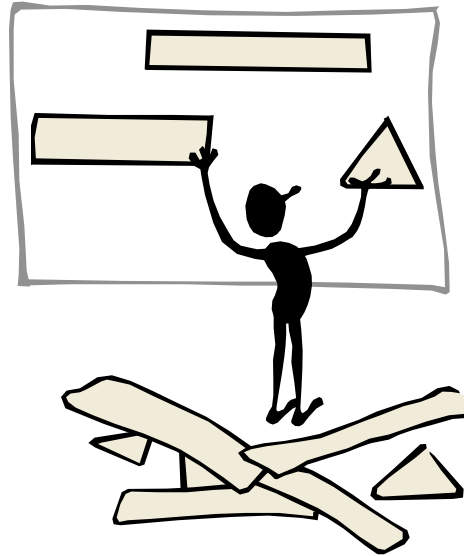
Options for Reform

- Employment leave protection for non end-of-life care
- Greater income replacement under EI
- Work flexibility legislation
- Caregiver allowance
- Refundable tax credit
- Adult caregiving drop-out provision



Summary

Options for Reform



Send your comments to familycare@bcli.org

Additional Resources

For information about how you can become a Certified Professional Consultant on Aging (CPCA) visit us at our website www.agefriendlybusiness.com

For information about the Canadian Centre for Elder Law visit us at our website www.bcli.org

THANK YOU!

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