

# CARE WORKER VOICES FOR LANDED STATUS AND FAIRNESS



## WHO WE ARE

The **Caregivers' Action Centre (CAC)** is a grassroots organization based in Toronto, Ontario, made up of current and former caregivers. Since 2007, we have been advocating and organizing for fair employment, permanent immigration status, and access to settlement services for caregivers through self-organizing, research, and education. We are Caregivers, organizing for our rights!

[caregiversactioncentre.org](http://caregiversactioncentre.org)

The **Vancouver Committee for Domestic Workers and Caregivers Rights**, established in 1992, and is a community-based, non-profit organization that provides assistance to foreign domestic workers and caregivers in seeking improvements to their employment conditions and immigration status. CDWCR's mission is shaped by the belief that foreign domestic workers and caregivers provide valuable service to Canadian families and contribute to the economic, social, cultural and political fiber of the Canadian society. CDWCR membership includes caregivers, former caregivers and domestic workers, and community supporters.

[cdwcr.org](http://cdwcr.org)

**Caregiver Connections, Education and Support Organization (CCESO)** is a group of dedicated and caring volunteers serving caregivers, newcomers, and migrant workers in Toronto since 2007. CCESO provides a range of free programs and activities that help build confidence, self-esteem, and leadership skills. [caregiverconnections.weebly.com](http://caregiverconnections.weebly.com)

The **Migrant Workers Alliance for Change** is Canada's largest migrant worker rights coalition. It includes individuals as well as Alliance for South Asian Aids Prevention, Asian Community Aids Services, Butterfly (Asian and Migrant Sex Workers Support), Caregiver Connections Education and Support Organization, Caregivers Action Centre, Durham Region Migrant Solidarity Network, FCJ Refugee House, GABRIELA Ontario, IAVGO Community Legal Clinic, Income Security Advocacy Centre, Migrante Ontario, No One Is Illegal – Toronto, Northumberland Community Legal Centre, OCASI - Ontario Council of Agencies Serving Immigrants, OHIP For All, PCLS Community Legal Clinic, SALCO Community Legal Clinic, Students Against Migrant Exploitation, Social Planning Toronto, UFCW, UNIFOR, Workers Action Centre and Workers United.

[migrantworkersalliance.org](http://migrantworkersalliance.org)

**PINAY** is a not-for-profit grassroots organization for migrant and immigrant Filipino women that was founded in 1991. Our mission is to empower Filipino women, and in particular domestic workers, to fight for their basic rights and welfare. As an organization, we educate caregivers on their rights, organize migrant and immigrant women workers, provide services to our members and advocate for progressive changes to immigration and labour policy in Quebec. For over two decades, PINAY has brought together caregivers and their supporters in the struggle to improve the working and living conditions of domestic workers.

[pinayquebec.org](http://pinayquebec.org)

**Migrante Alberta** was founded in August 2013 in Edmonton. It is affiliated with Migrante Canada, a national alliance of 20 Filipino migrants organization from BC to the Maritimes. Migrante is a non-profit advocacy and self-help organization. In Alberta, we address the immediate issues facing migrants and our compatriots. We provide assistance through referrals, advocate and campaign on migrants' issues. We work closely with labour unions and community based organizations.

[migrantealberta.ca](http://migrantealberta.ca)

The **Association for the Rights of Household Workers (ADDPD/ARHW)** is a non-profit community organization founded in 1975 and based in Montreal. Its mission is to ensure that the work done in private households is recognized, respected and valued. Through research, political and legal advocacy, the ARHW works for the reform of state policies that violate the fundamental rights of migrant workers in the sector.

[arhw-addpd.org](http://arhw-addpd.org)

**The recommendations in this report were developed by a broad network outside of the authors of this report including Eto Tayong Caregivers (ETC), GABRIELA Ontario, and Migrante Ontario. They are endorsed by Alberta Care Workers Association, Chinese Canadian Nurses Association of Ontario, Filipino Canadian Advocacy Network, Immigrant Workers Centre, InterPares, Kabisig Society of Fort Saskatchewan, Migrant Workers Rights Canada, Migrant Mothers Project, and The Neighbourhood Office.**

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## ACKNOWLEDGEMENTS

We respectfully acknowledge that the Care Workers that participated in this report live and work on Huron-Wendat, Haudenosaunee, Anishinabe, Mississaugas of the New Credit territory; unceded Musqueam, Squamish, Sto:lo and Tsleil-Waututh Indigenous lands and Kanien'kehá:ka Nation territory.

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## Section 1

# INTRODUCTION



## ROSALIE

*I worked over three years for three elderly employers. I worked hard caring for these people at the end of their life. Each job I tried to get the papers. The processing takes too long. Elderly people don't hire workers until they need them, but then it takes almost a year to get the work permits processed. Here I am. I'm almost up to the four-year limit but only have 16 months of employment that will qualify me for permanent residency. It is so frustrating.*

*I came in to Canada on October 9 2015. I was looking forward to working as a caregiver for an elderly woman. But when I landed at the airport, my agent was there. She told me that I didn't have a job. The employer had hired another caregiver. I was shocked.*

*The agent made me pay \$4,000 for her arranging the job and getting the LMIA and work permit. I only found out later that my job was with her mother-in-law. I feel she used me and took my money.*

*I told the agent that I have a work permit. I signed a contract. She told me not to worry. She said she would find me another employer. She did get me job with a 93-year-old woman who had dementia. But I had to start all*

*over again. It took 7 months for my employer to get the LMIA<sup>[1]</sup>. Then I had to get a new work permit. That took another 4 months. Two weeks before I got my work permit, she died. One year of work and no progress getting my service hours under the caregiver program!*

*I found another job with an 83-year-old woman. This employer also applied for an LMIA but she passed away from a medical emergency after only 3 months. I provided care but made no progress toward permanent status. Then I faced two months of job hunting with no income. That was hard.*

*I found a very good job caring for a 90-year-old man. The family was very good to me and they even followed the labour laws. They had an LMIA but it still took 6 months to get my new work permit. I worked there for 16 months before he passed away this July; but only 10 months count to my permanent residency.*

*While I was looking for a new employer under the program, two families said they would "try me out". That means you work with them before they decide if they will hire you. Neither worked out; the last one didn't pay me for the trial period.*

*In September I was hired by a family to care for the elderly parents. They have started the process to get an LMIA but I know it will be months before they get it and then I will have to wait more time to get my work permit.*

*Why do they not give us permanent residency when we come? There is work to care for the elderly. They bring us over -- then they delay delay. We have to work but we don't get closer to PR. By not giving us PR when we come, they tell employers that we are not worth anything. That's why so many employers do not follow the law and pay us properly.*

Care Workers<sup>[2]</sup> do the necessary work that enables our society and economy to function. We feed and care for children so that parents can work. We provide the necessary support for the elderly to live out the last chapter of their lives in their homes. We care for people with disabilities to support their independence. Our domestic work, child rearing, and elderly care are all fundamental needs in the labour market and critical to the well-being of a growing and aging population. Yet we do this work from a position of precariousness that is created by Canada's immigration and labour laws.

The federal government is reviewing the current Caregiver Program, which is set to end in November 2019. No official announcement or timeline has been announced for the replacement of the program. As Rosalie shared

[1] An LMIA is a Labour Market Impact Assessment that employers must apply for to Employment and Social Development Canada once they have contracted a Care Worker, but before the Care Worker can apply for a work permit. Until recently, the LMIA cost employers \$1,000.

[2] Care Workers have provided in-home care for children, family members with disabilities and the elderly since the 1800s. We've been called domestic workers, live-in caregivers, nannies, and caregivers. But these terms underplay the essential care work that we provide when we are employed in family homes. Caring for children so parents can work. Caring for people with disabilities to live independent lives. Caring for the elderly in the last chapters of life. All of this work is not only important for our employers, but it is a permanent feature of our labour force that makes all work in Canada possible. That is why we call ourselves Care Workers.

above, the Caregiver Program is not working for Care Workers and it is not working for people that rely on our care.

Women have been coming to Canada since its earliest days to take care of children, the sick and the elderly. This employment only became temporary later on in the early 19th century when employers seeking low-waged employees were forced to recruit a largely female, racialized workforce from former British colonies in the Caribbean.

A century of experience has demonstrated that caregiving work is an ongoing permanent part of the economy. More than 60 years of our experience with temporary labour migration to Canada has also shown that this ongoing need is consistently accompanied by widespread exploitation and abuse by employers and recruiters. This exploitation is rooted in the vulnerability that is created by the terms of Canada's temporary labour migration programs (see, for example, repeated reviews by Parliamentary Committees,<sup>[3]</sup> academics<sup>[4]</sup>, and community-based researchers<sup>[5]</sup>). Over the past four decades, caregivers have also suffered from "two-step" immigration that requires us to enter Canada with temporary status and without our families. Unlike the European women that came before us, we must finish our employment contracts before being allowed to apply for permanent residency. This temporariness has led to profoundly damaging and lasting impacts on the physical and mental health of caregivers and our families. Years of family separation can cause intergenerational conflicts between Care Workers and our children as well as family breakdown.

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***We should be equally treated and not separated from family. This should be real CANADA spirit! Fairness, justness and respect!***

- Fei, recently arrived in Canada.

We thought we had a promise with Canada. That if we worked hard, even in the face of discrimination and abuse, we would eventually be able to reunite with our families, bring them here and live here safely and with permanent status. Just like countless immigrants before us.

This promise has been broken. We are not asking for special treatment; we are asking for the most basic fundamental human rights: equal treatment, dignity at work, and family unity.

The Caregiver Program was created in 2014 without consultation, input or direction from us Care Workers. It creates huge barriers to permanent residency.

[3] Most recently the 2016 Report of the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities, Temporary Foreign Worker Program. Online:

<https://www.ourcommons.ca/DocumentViewer/en/42-1/HUMA/report-4/page-5>.

[4] See for example, Judy Fudge and Fiona MacPhail (2009) The Temporary Foreign Worker Program in Canada: Low-skilled Workers as an Extreme Form of Flexible Labor. Comparative Labour Law & Policy Journal. Vol 31:5 101-139; Fay Faraday, Made in Canada: How the Law Constructs Migrant Worker Insecurity (Metcalf Foundation, 2012); Fay Faraday, Profiting from the Precarious: How recruitment practices exploit migrant workers (Metcalf Foundation, 2014); and Fay Faraday, Canada's Choice: Entrenched exploitation or decent work for Canada's migrant workers (Metcalf Foundation, 2016). Delphine Nakache and Leanne Dixon-Perera, Temporary or Transitional. IRPP Study No 55, October 2015. Online: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2732661](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2732661).

[5] See for example, West Coast Domestic Workers' Association HUMA Submission. Online: <http://mwcbc.ca/downloads/Brief-respecting-the-TFWP-review-CLAS-May-2016.pdf>, Pinay, Quebec, Online: <http://pinayquebec.org/>.



We don't want an extension of this Caregiver Program. **We want Landed Status Now for us, and our families.**

While many of us are living in difficult conditions and fear the expiry of the program, we also have hope. We believe that people across Canada will join with us to build a better society for everyone.

We want a new Federal Workers Program that treats our work with the dignity and respect that we deserve. We want to be able to come here with our families even as we care for your loved ones.

While this new program is being created, we need reforms for those of us already here. This means:

- » Care Workers should be able to apply for Permanent Residency (PR) after 1 year of work (or 1,950 hours). Currently, we have to work 2 years while 1 year is the standard for most other permanent immigration programs in Canada.
- » All Care Workers must get open work permits and labour mobility. Care Workers currently can only work for the employer listed on our permits, which makes it extremely difficult to leave bad bosses or, in the case of elder care, change employers when they pass away.
- » The new educational requirements should be removed. Care Workers are required to have completed 1-year of Canadian post-secondary equivalent education to apply for PR, but we are not allowed to or able to study while working.
- » The English language test prior to PR should be removed. New English language requirements were introduced in the pilot program, but no free English classes exist.
- » The new caps that allow only 2,750 PR applications each year in each caregiving stream should be removed. There are over 5,500 Care

Workers coming to Canada in the childcare stream each year. The discretionary caps on PR applications mean that at least half of us will not be able to apply even after completing all the requirements.

- » The permanent residency backlog should be resolved. Thousands of Care Workers have been waiting for up to 10 years to reunite with their families because no one's looking at our applications.
- » Spouses and children should be allowed to join us with open work and study permits of their own. Family unity is the norm for many other temporary immigration programs and it results in improved health and stronger families rather than years of forced separation.
- » Remove the second medical that is required when applying for permanent residency. This change was smuggled into the pilot project by the government and adds unnecessary financial barriers and delays.
- » Section 38(1)(c) of the IRPA ("Medical Inadmissibility" rules) should be repealed because it denies PR to an entire family if even one member of the family has a disability.

## Methods

This project was led by the Caregivers' Action Centre (Toronto); Caregiver Connections, Education and Support Organization (Toronto); Vancouver Committee for Domestic Workers and Caregivers Groups (Vancouver); PINAY Quebec (Montreal); The Association for Rights of Household Workers (Montreal); Migrante Alberta; Alberta Care Workers Association and, Migrant Workers' Alliance for Change (Ontario coalition). These organizations support Care Workers' voice at work and in public. Care Workers have the experience and expertise of providing high quality in-home care. We know how government regulation of migrant workers creates precarious work and precarious immigration status.

We developed this report using a variety of methods. In February 2018 we brought together Care Workers and their organizations to identify the key issues to be explored through this research. A focus group was held in the spring of this year to develop a survey. A cross-country survey was conducted from August to October 2018. The survey of 135 Care Workers was completed on-line (32) and in-person (103). Ten in-depth interviews were conducted. A follow-up focus group of 10 Care Workers was held in late October to review findings and recommendations.

Despite long hours of work and precarious immigration status, Care Workers want our voices to be heard so that change can happen. Due to the risks that they may face at work for sharing their experiences and expertise, some workers wanted to remain anonymous. Therefore, we have used pseudonyms for all workers whose voices are presented in this report.

The current Caregiver Program was created in November 2014 by Ministerial Order and without consultations with Care Workers. It is now set to expire in November 2019. This program is fundamentally flawed and extends the legal basis for exploiting Care Workers.



## Section 2

# HOW DOES THE CURRENT PROGRAM WORK?



**The first fundamental failure of the Caregiver Program is that it labels in-home care as a ‘temporary labour market need’.**

Women have been coming to Canada since its earliest days to take care of children, the sick and the elderly. Domestic work, child rearing, and elderly care have always been fundamental needs in the labour market and are even more critical today as Canada’s population ages.

The Canadian Medical Association has called on the government to develop a Seniors Care Strategy noting that those aged 65 and older will continue to rise and, by 2024, will account for 20 percent of the population.<sup>[6]</sup> Ontario’s Auditor General warns that the acuity of care has risen as caregivers are increasingly serving “a patient population with much more chronic and complex health issues.”<sup>[7]</sup>

Over recent years, changes in public funding and health care policies have shifted caregiving labour away from public healthcare institutions. This shift has increased the need for Care Workers in private homes. Yet this

[6] Canadian Medical Association (2016) The State of Seniors Health Care in Canada. Online: <https://www.cma.ca/En/Lists/Medias/the-state-of-seniors-health-care-in-canada-september-2016.pdf>.

[7] Office of the Auditor General of Ontario (2015) Special Report on Community Care Access Centres – Financial Operations and Service Delivery. p. 14. Online: [http://www.homecareontario.ca/docs/default-source/publications-mo/ccacs\\_en.pdf?sfvrsn=2](http://www.homecareontario.ca/docs/default-source/publications-mo/ccacs_en.pdf?sfvrsn=2).



***Working here in Canada as a caregiver isn't easy after all. But we've learned a lot. No matter how hard life being a caregiver may seem to be, life must go on to earn money for our loved ones' back home. We have to deal with the endless "HOMESICKNESS". Being miles away from our FAMILY is the best fight we fought, in order for us to have something to lay on the table. We looked after Canadian children and elderly and others. Should we caregivers have at least proper benefits from the government?***

- Anabelle, mother of 2, who has been away from her family for over 10 years.

permanent labour market need is being met with a temporary labour force brought here under highly restrictive immigration rules that leave workers and our families in precarious conditions for years.

Similarly, with the exception of Quebec, there has been little progress on developing publically funded, regulated childcare. Families across the country face long waiting lists for subsidies and childcare spots. Childcare for two children under five in Toronto currently costs \$27,300, which is well beyond what most families can afford.

Despite greying populations and demand for childcare, provincial and federal governments have failed to develop a care strategy that encompasses accessible and affordable public childcare, elder care, and care for people with disabilities.

*"The best part about working in Canada is helping other people specifically parents and family of persons who needs care"* (Monique, who has been working in Canada since July 2014). Many Care Workers are proud of the work we do. We know that that we are responsible for ensuring dignity and decency for many in our communities. We are aware that our work ensures a healthy population. Our work is permanent.

**Second, by maintaining that Care Work is temporary, the immigration system also separates us from our families.**

Most immigrants come with their families to work and live in Canada. But Care Workers cannot bring their families when they come to Canada. We are brought here by the government to do the hard work of caring for Canadian families, their children and elderly family members. But the government's program forces us to leave our own children and families behind, often for many years. Unlike other immigrants to Canada, we must separate from our families and work for a minimum of two years as in-home care workers. For many of us, the family separation is much longer.

**Third, the current program makes it impossible for most of us to leave bad jobs.**

We are required to work under temporary work permits that tie us to one employer. That means we must work with the employer named on our work permit. But as Rosalie's experience demonstrates, Canada's work permit processing system forces us to work six months to a year without proper work permits when we change jobs. This processing delay impacts our progress in accumulating the employment service required to apply for PR and family reunification.

Tied work permits give employers too much power in our employment, which creates conditions that are ripe for abuse. As our experience demonstrates, employers feel confident in violating provincial labour laws (discussed below).

Tied work permits and the two-year service requirement create an employment relationship where our futures are in the hands of employers. A family must obtain a Labour Market Impact Assessment (LMIA) that is



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***I've only been with the family for 8 months and I have come to realize how tough of a job it is to be a caregiver. Despite the hardships I've been through, I think it is still rewarding in some way. Not only that I learned a lot from their culture, I also learned to be more patient. It helped me grow as a better person, in my opinion. The best thing as a Caregiver for me is to work here in Canada and to have Permanent Residency eventually and be with my family.***

- Ysabel, who has been in Canada since 2008 but still does not have her permanent residency.

tied to one employee. As Rosalie and others' experience demonstrates, the family employer is primarily interested in addressing their family needs for care. *"My employer released me when I only had 6 months left in my two-year contract. The worst thing is the difficulty in getting a new LMIA and work permit."* (Lennie, separated from her two children for 3 years and 8 months). The only party that bears the cost of this is the Care Worker. It is our future permanent residency and family reunification that is put in jeopardy. This contradiction in the Caregiver Program increases the power imbalance in employment and vulnerability of Care Workers.

The tied work permit model creates substantial problems for workers when we must change employers. There are many reasons why workers must find new employers while under the Caregiver Program. Children under care may enter school full time or become old enough that an in-home care worker is no longer needed. Elderly employers may pass on or be moved permanently into a long term care facility. Employers terminate employees for a whole host of reasons: they lose a job themselves and can't afford it; another family member steps in to provide care; or, the family and care worker are not a good fit. For employers, these events are often transition points in their family life.

Changing employers while under the Caregivers Program puts our future at risk. *"I lost a job after one-year of service. It's very difficult to find a new employer. Which means I will have a longer time to reunite with my family. This prospect makes me miserable."* (Liesel – here since 2016).

The process for changing employment is lengthy and full of uncertainty and insecurity. Two out of three workers surveyed had difficulty when they changed employers. New employment requires that the employer obtains a LMIA with each new employee and the Care Worker must obtain a work permit for each new employer. In addition to the substantial time delays caused by this requirement, the LMIAs and work permits are processed by

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***It is so hard transferring from one client to another due to the death of my client. I care for people with high medical needs. It is expected that some of them get weaker and die naturally but then I end up being jobless. The immigration department must have some exemption or way of transferring us from one employer to another that doesn't make us wait for so long and have to start over again and again.***

- Lisa, a mother of 3 who has been separated from her family for 5 years.

different federal government departments (ESDC and IRCC respectively). The federal government does not cross reference these separate process to either expedite the process or offer a service to match employers with migrant Care Workers who are already in Canada seeking work.

*“Maintaining status is really hard because my employer doesn't want to provide 2nd LMIA for another contract. Finishing 2 years will be quite hard before applying for PR.”* (Miriam supports 4 family members; she has been here since 2016). Other workers find that employers are less willing to hire a Care Worker who has less than a year of service required under the CP. Employers don't want to go through the process of getting a new LMIA if a potential employee may be in a position to apply for permanent residency and family reunification. They may be concerned that the employee would want a live-out position and be less available for on-call work.

The Caregiver Program offers cost-effective solutions to families with care needs. We fill gaps in Canada's in-home care sector. The hidden costs of this work must no longer be shouldered by racialized migrant women workers and our families. Low-wage, often sub-standard, employment with limited access to permanent residency can no longer be the government's default strategy for care work in Canada.

**THE CHANGE WE NEED: Care Workers already in Canada must get open work permits. their spouses and children should get open work permits and study permits.**

**Fourth, the so-called “Pathway to Permanent Residence” is really a “Pathway to despair”.**

The Live-in Caregiver Program (LCP) was established under the *Immigration and Refugee Protection Act* (IRPA). The LCP ran from 1992 to 2014, bringing workers to Canada to work in private homes providing live-in care to children, elderly, and people with disabilities. While the program ended in 2014, many workers are still in Canada without permanent residency with work permits issued under the LCP that are still governed by its rules.

The program provided a two-step process for permanent residency. Care Workers were hired by an employer to work in Canada with a temporary status on time-limited work permits. The second step of applying for permanent residency only came after completing two years or 3,900 hours of full-time work as a live-in caregiver within four years of arrival. In exchange for two years of labour providing in-home care, workers received the commitment that they would be given permanent residency (as long as they met standard health, financial, and security requirements). There were many problems with the LCP; however, it did guarantee PR after two

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***They need to give PR first. I am still no PR. I came in November 2009.***

- Wilma

years of service. This guarantee was a direct result of migrant Care Workers' organizing, speaking out, protesting and lobbying<sup>[8]</sup>.

In 2014, the decades-long commitment to provide Care Workers with PR was replaced by the creation of a new stream under the Temporary Foreign Worker Program. Rather than regulating worker numbers and entry (as the LCP did), the temporary Caregiver Program controls and limits which employers can hire foreign national Care Workers and, then, which workers can access permanent residency after the 2-year service requirement.

**THE CHANGE WE NEED: Care Workers already in Canada that have completed over one year of service should be able to get permanent residency**

## Two separate streams under the Caregiver Program

The **Caring for Children Class** allows employers to hire a foreign national as in-home child care provider for children under 18 years of age. Employers cannot require workers to live-in the home, but, if both the employer and employee agree to a live-in arrangement, the employer cannot charge room and board.

The **Caring for People with High Medical Needs Class** allows employers to hire a foreign national as a care provider to people with high medical needs. This includes registered nurse, psychiatric nurse, licensed practical nurse, nurses aid, orderly or patient service, and, home support workers. The care can be provided in a private home or in a healthcare facility.

To be eligible to apply for PR, a Care Worker must still accumulate the 24-month service requirement; however, it can only be accumulated in one of the streams. Jasmine works in a house with 3 families. "I've been working from 6 am to 11:30 pm. So much laundry, ironing and cooking for my employer, the grandparents and her sister with her kids. I didn't expect this." As Jasmine demonstrates, actual care work in Canada does not fit nicely into two discrete streams. A family employer may require both in-home childcare and high medical needs (children living with disabilities; parents with high medical needs).

Employers may not care which stream they use for an LMIA, but it is critically important for the Care Worker. In the case of Jeannie, her elderly employer died, but the family of her employer wanted to her hire her to take care of their children. Under the rules of the program, the Care Worker would not be able to change from the elder care to the child care stream because she would not be able to combine the service from two separate streams towards her PR application. This arbitrary rule separates the streams for service accumulation and contributes to poor public policy and continuity of care. Separating the streams has resulted in many Care Workers working longer to fulfill the requirements of any one stream.

[8] See: Abigail B. Bakan and Daiva Stasiulis, eds., *Not One Of The Family: Foreign Domestic Workers In Canada* (1997).

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***So many uncertainties. What if I lose my job and can't find a new employer who is willing to sponsor within 4 years? Therefore, I have to accept unfair treatment from my existing employer in order to finish 24 months ASAP. If there are above 2750 applications that year, I have to wait for another year to get my PR approved even if I have met all the requirements, which I am worried about getting. That means another year of family separation. This is NOT Canadian spirit!***

- Fei, recently arrived from China.



“

***I'm worried about getting my PR application accepted. The government's caps on new streams makes it harder. And then we have to pass the new language and education tests; I'm worried. I am here since April 2015 and I am still completing my 24 months of work. I have been separated from my family for 10 years already.***

- Maribeth is responsible for 14 family members in the Philippines.

## Limits on permanent residency applications each year

A big factor creating precariousness in the Caregiver Program is that the path to PR is no longer guaranteed. The government introduced hard caps on the number of Care Workers who can apply for permanent residency under the CP in any given year.

There is a hard cap of 2,750 Care Workers who can apply for PR under the Childcare Class and 2,750 who can apply under the High Medical Needs Class. This cap is fixed and cannot be increased to meet needs during the pilot project.

This cap on PR applications has created a huge burden on Care Workers. The longstanding promise of Canada's caregivers' programs – labour exchanged for permanent residency - has been broken.

There is a disconnect between the number of workers who may receive work permits to provide caregiving work on a temporary basis and the number of PR applications that can be made in any year. The number of work permits granted by IRCC depends on employer demand and their ability to get approval from ESDC under an LMIA. In the last two years, there were more migrant Care Workers granted temporary tied work permits than will be eligible to apply for PR. In 2016, 4,861 migrant Care Workers were issued a new permit in the Childcare Stream and 5,335 in 2017.<sup>[9]</sup> This means that nearly half of us that came to Canada in 2017 will be rejected on the basis of the annual quota, despite the promise that if we worked for two years we could apply for permanent residency.

If the cap has been met, then eligible workers must wait until the program

[9] Employment and Social Development Canada's (ESDC) Foreign Worker System (FWS).

re-opens the following year.<sup>[10]</sup> The hard cap puts pressure on Care Workers to stay with a given employer, regardless of mistreatment or substandard working conditions. Staying with these employers lets us complete the two-year work term as quickly as possible before the annual cap is filled. The hard cap can also add another year of stressful family separation and work under a tied work permit.

**THE CHANGE WE NEED: The caps of 2,750 Care Worker applicants each year for care workers already in Canada should be removed.**

## New exclusionary language and educational requirements

Under the old LCP, language ability and education were assessed **before** the worker came to Canada, as part of the hiring and work permit process. We knew before we came here that we would be eligible to apply for PR if we completed the 24-month service requirement. But this process changed radically under the Caregiver Program. Language and education are now assessed only **after** we have completed our service requirement at the time we apply for PR.

Under the LCP program, we were required to speak, read, and listen to English or French at a level sufficient to communicate in an unsupervised setting. While we still need this level of English or French to temporarily work in Canada under the Caregiver Program, we need much higher language and education levels to be able to apply for permanent residency.

Under the High-Medical Needs Stream, care workers have to pass Canadian Language Benchmark (CLB) 5 or 7, depending on which job we are applying from. Under the Childcare Stream, caregivers have to pass CLB 5.<sup>[11]</sup>

Neither the federal government nor provincial governments subsidize ESL classes for us to improve our English language ability while we work. Apart from cost, our schedules are such that it is impossible for most of us to find the time for English classes. Most of us end up scrambling to complete the language requirement after we have finished our service requirement.

The government added an additional requirement that Care Workers must complete the equivalent of one year of Canadian post-secondary education. When workers' credentials acquired outside Canada are

[10] The Citizen and Immigration website advises that "If the application limit has been reached when you are ready to apply, you can either wait until the programs re-open or find out if you are eligible for another program." Online: <http://www.cic.gc.ca/english/helpcentre/answer.asp?qnum=963&top=28>.

[11] The government requires specific language tests be taken under the Canadian English Language Proficiency Index Program, International English Language Testing System or Test d'évaluation de français at an average cost of \$300 per test.

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***Taking the English test is not easy; not only for me but to all who arrived here in Canada after November 2014. We need a lot of time to study but because we need to prioritize our work we don't have enough time to study. The cost for the test is so expensive.***

- Sari



***I don't understand the reason from the government. Why do caregivers have to take more education for the PR application? The government lets us come to work here with only our high school education. Imagine how hard our life will be. We will need a place to stay while we are studying. There will be less work but we need to support our family while we pay tuition.***

- Maryah supports her 3 children in Indonesia.

not recognized, Care Workers are required to enroll in post-secondary education in Canada. This enrollment means that workers, who typically earn minimum wage, must pay foreign student fees. Also, the work we do while enrolled in full-time post-secondary studies is not counted towards our eligibility to apply for permanent residence. To qualify for a study permit to get this post-secondary education, workers must prove that they have the financial resources to live in Canada without needing to work. The bizarre thing is that we do not require this post-secondary education to apply to work in Canada as a Care Worker on a so-called 'temporary' basis.

This requirement places many Care Workers in an impossible situation. We must either:

- » Have completed post-secondary education prior to applying to work in Canada - even though having this education is not a requirement to come work in the country.
- » And, in that case, translate our documents and pay fees that can go up to \$2,000 to private agencies to have them 'accredited' in Canada for the purposes of an immigration application.
- » Or somehow get a study permit after we have finished our work experience, but before our time runs out, and find the money to pay international student fees (often as high as \$20,000 for one year).

As a result, most Care Workers have had difficulty applying for Permanent Residency due to the high benchmarks for language qualification, Canadian post-secondary education equivalency and the quota system that was put into place under each stream.

Between November 2014 and February 2018, only 1,955 caregivers and dependents have been granted permanent residency. Under the LCP, approximately 10,740 caregivers and their dependants received permanent resident status every year between 2006 and 2014.<sup>[12]</sup>

**THE CHANGE WE NEED: The new English language and post secondary educational requirements for Care Workers already in Canada must be removed.**

## **Backlog in Permanent Residency Applications**

The government promised to process applications for permanent residency under the Caregiver Program within six months. But this is not the reality for most Care Workers.

A Freedom of Information request in 2014 confirmed a backlog of 60,000

[12] Nicholas Keung (February 3, 2018) Number of migrant caregivers becoming permanent residents plunge after federal changes. Toronto Star. Online: <https://www.thestar.com/news/immigration/2018/02/03/number-of-migrant-caregivers-becoming-permanent-residents-plummet-after-federal-changes.html>.



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**Over 30,000 Care Workers who have applied for PR are stuck in backlog**

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**Being separated from your family as a caregiver adds to the burden that cause depression and guilty feelings of taking care of other people.**

- Rose

Care Workers waiting for PR on outstanding applications under the LCP.<sup>[13]</sup> At the end of 2017, over 30,000 Caregiver primary applicants were backlogged in the immigration system.<sup>[14]</sup> These applicants had completed all the requirements of the Live-in Caregiver Program and had applied for permanent residency, but were still awaiting a decision.

During this waiting time, it is impossible for most of us to visit our families back home, to further education,<sup>[15]</sup> or to reunite with our families in Canada. In mid-2017, the average processing time for Caregiver applications was 53 months, nearly four and a half years.<sup>[16]</sup> This delay is added on top of the two to four years spent working to earn eligibility to apply for permanent residence in the first place.

*“It’s really hard to be separated from family, especially to be separated from your kids. It is also a risk to our relationship with our husband and children.” (Martha, 9 years in Canada and still waiting for PR so she can bring her husband and 3 children here).*

Most of the Care Workers caught in the LCP backlog have waited 8 to 10 years to be reunited with family. The long wait time causes immense suffering, creating a state of perpetual and endless limbo. Care Workers speak about family breakdowns. As Alma said, *“the waiting is too long. In spite of proving and working already in Canada, also contributing the economy, being separated with family was difficult and devastating. Even until now that we are together, that separation has put multiple damages in our relationship.”*

The long separation from families create stress, anxiety and health problems. As Martha said, *“there are lots of moments of no sleep because we are missing our family; tears because of homesickness.”*

The long delays in processing can also have consequences on workers’ chances of permanent residency and family reunification. This can happen when there are changes in health status of dependents, or dependents turning older than 21 (the sponsorship age cut off), or changes in family circumstances (divorce).

In 2017, Canada granted permanent residency to 22,253 people in the Caregiver class. However, this number includes primary applications and their dependents. Therefore, it is unclear how many Care Workers remain in the backlog. The federal government aims to bring in 18,000 Caregivers and their dependents in 2018, 14,000 in 2019 and just 5,000 in 2020.

[13] Fay Faraday (2016) Canada’s Choice: Decent work or entrenched exploitation for Canada’s migrant workers? Metcalf Foundation.

[14] Brendan Kennedy (December 3, 2017) Liberals plan to reduce permanent resident backlog for caregivers. Toronto Star. Online: <https://www.thestar.com/news/gta/2017/12/03/liberals-plan-to-reduce-permanent-resident-backlog-for-caregivers.html>.

[15] Due to exceedingly high foreign international student fees.

[16] Nicholas Keung (July 20, 2017) Immigration backlog keeps live-in caregivers from their families back home. Toronto Star. Online: <https://www.thestar.com/news/immigration/2017/07/20/immigration-backlog-keeps-live-in-caregivers-from-their-families-back-home.html>.

## Unfair medical exclusions

In March of 2009, migrant worker organizations across Canada mourned the loss of Juana Tejada. A visionary leader and Caregiver, Juana Tejada burst into the national spotlight after she launched a campaign against the second medical exam that Care Workers were forced to complete after they had completed years of service.



Juana Tejada

Juana Tejada had come to Canada in 2003, and applied for permanent residency in 2006. During her second medical exam, she was diagnosed with colon cancer and was denied her PR. She later won an appeal, got her status and lobbied to change the two-step medical exam required for caregivers. She continued to lead the work until her death in 2009, as a leader in an Independent Workers Association for Caregivers. On April 1, 2010, the “Juana Tejada Law” removed the requirement for a second medical exam.

However, when the new Caregiver Program was created in November 2014, the exemption that applied to the LCP no longer applied to Care Workers even though we continued to come to Canada in the exact same fashion.

Many of our members are unable to apply for permanent residency because of this second medical examination, which excludes them from living here permanently because of contracting an ailment while living here. We are excluded for medical reasons even though we have already completed our 24 months of service at that point.

An average of 1,000 applicants and their families are rejected each year under the medical inadmissibility provisions of the Immigration and Refugee Protection Act, which denies permanent residency to an entire family even if only one member of the family is disabled. Many more never apply. This number includes the rejection of Care Workers or other migrant workers who include family members who are deemed disabled in their application.

A member of the Caregivers Action Centre (CAC), Josarie , was denied permanent residency because her daughter, who lives with developmental disabilities, was deemed “medically inadmissible.” This decision by IRCC disqualified Josarie and the rest of her family from permanent residency. In another case, Amalia, a mother of three, was separated from her children for almost 11 years. Her application for permanent residency was delayed by IRPA because her daughter lives with autism.

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*I felt like I am dying when I was denied. I don't know what to do and where to go. I felt so hopeless. I wanted to scream. My family has been waiting for years, and we can't wait any longer, we need to be reunited now.*

- Josarie



Josarie

Care Workers and disability advocates challenged the medical inadmissibility provision as it discriminates against people with disabilities and denies permanent residency to those who have become ill or disabled while working under the Temporary Foreign Workers Program in Canada. It shuts out migrants and immigrants who have lived and worked in Canada for many years if they or one of their dependents are disabled.

The government responded in April, 2018 by amending Section 38(1)(c) of the IRPA.

Under the previous regime, immigration applicants whose annual medical costs would exceed \$6,655 — the average annual cost for a Canadian — were excluded. The changes tripled the threshold, to \$19,965 (effective June 1, 2018). While this change aided people like Josarie and Amalia, it did not bring Canada in line with its human rights obligations under the 2006 Convention on the Rights of Persons with Disabilities. Medical inadmissibility should be removed from Canada's immigration law altogether.

**THE CHANGE WE NEED: The second medical exam for Care Workers already in Canada should be removed. Section 38(1)(c) of IRPA should be repealed.**

## Section 3

# FAMILY SEPARATION

A Caregiver Program that forces women from the global South to leave their families behind in order to show care for Canadian families is a cruel one. Ninety-five percent of Care Workers surveyed reported family separation as one of the biggest problems with the program.

Family separation is not good for the well-being of Care Workers. As Marisol said, *"Family is very important in our ability to work better as caregivers. Our family is our energy, strength and vigor."* Families provide Care Workers with emotional support when they face difficulties in the work.

It is stressful for Care Workers to try to maintain emotional care and parenting of their children from afar. *"Being separated from my family is the worst a mother could imagine."* (Catherine) Care Workers are often in conflict. As Celia says, *"children should always be with their parents while growing up to guide them and to show their love by protecting them."*

Family separation is not good for children. Delays in family reunification can lead to difficulties for children to integrate into Canadian schools, leading to higher dropout rates.<sup>[17]</sup>

Family separation can also strain relationships. *"Being away from your loved ones is very difficult. The closeness and bond of a family can be severed if a person is away for a long time. Distance is a very big factor in loosening the bond of a relationship."* (Fitri) In some cases, this separation leads to divorce, which can also create problems with the Care Workers' PR application. As Maria says, *"in my case, I came here as a married woman but during the span of time problems arise from the family. So I need to make a decision and divorced my husband. But due to that action I can't get my minor daughter because my ex-husband doesn't want to sign the consent form. It also means my application for residency would not be approved because I am now missing some documents."*

**THE CHANGE WE NEED: Care Workers deserve to come to Canada with permanent resident status upon arrival and with our families intact.**

[17] Kazue Takamura (2013) Path toward Family Reunification: Structural Constraints on Filipina Live-in Caregivers in Montreal. Canadian Council for Southeast Asian Studies Conference. Online: <https://www.mcgill.ca/crcf/files/crcf/takamura.pptx>.

## Section 4

# WHAT IS IT LIKE TO WORK HERE?



Our experience demonstrates that the rules governing migrant care work create precarious work and living conditions in which we are made vulnerable to abuse and exploitation. Tied work permits and barriers to changing jobs make it difficult to escape abusive or substandard employment. The 24-month service requirement prior to applying for permanent residency creates a massive power imbalance that other workers in Canada do not face. Employers know that we are dependent on them not only for our wages but also for our future lives in Canada and the lives of our families.

Employers are put in a unique position under the program. Their actions and decisions as employers have huge ramifications on the residency and future of their employees. They are required to make multiple applications to comply with the program which, quite frankly, many employers would rather not do. As Josephine observes, *“Every time when I contacted a new potential employer, I was asked how long I have been here as a caregiver, how far to go to that 24 months. Employers need to consider cost for both time and money to apply for LMIA. This is a very big obstacle. It’s understandable that if I only have less than one year to go, employers wouldn’t be willing to hire me.”* Employers needs often do not correspond to the PR service requirement needs of employees. But employers have the power and employees pay the costs -- periods of unemployment, being in and out of status, delayed permanent residency and family reunification.

The majority of care workers under the program are university graduates; many have years of experience providing care services in other countries prior to coming to Canada. Employing an in-home care worker for a family of four with two small children is about the same cost as paying for regulated childcare programs for each child (about \$27,300<sup>[18]</sup> for non-profit childcare in Toronto). In-home care workers provide more services than a child-care program including preparing meals; doing laundry; housekeeping; and transporting children to school, extra-curricular activities and medical appointments. Contracted separately, these services would cost much more than the salary of a Care Worker.

Similarly, the scope of elder care services provided by in-home Care Workers is much greater and cheaper than paying separately for housecleaning, shopping, cooking, personal support work (showers, toileting, transfers, medication), and transporting to medical appointments. There are specific vulnerabilities facing workers providing elder care under the CP. The often chronic and acute health care challenges facing employers require Care Workers to be available around the clock, even when they are only compensated for eight hours of work<sup>[19]</sup>. The fact that their employers are at the end of life or terminally ill creates stress for care workers, particularly because it thrusts them into the maze of finding a new employer, obtaining a new LMIA and a new work permit. This process can take 6 to 12 months, causing income insecurity and delays in residency and family reunification.

## Wages and working conditions

### Long hours, unpaid wages

Long hours, many unpaid hours of work and no overtime pay are what face the majority of Care Workers. As one worker said, “they own our time.”

Working in the private sphere of a family home creates a unique context for paid employment. There is often no clear boundary between being ‘on-duty’ and ‘off-duty’. This is especially the case for live-in care workers. “My worst thing that I have experienced working in Canada is working overtime and without pay. During my live-in caregiver program, my employer abused me to work long hours without pay.” (Tam, came in 2009 from China).

As Maiko explains, unpaid wages are common. “According to the contract, I work 37.5 hrs per week at \$11.40 an hour (back in 2016). But I worked 50 hrs and no pay for the extra 12.5 hours. I get \$1, 275/per month (net).” She worked 12.5 hours per week without pay. That amounts to \$815 per month in unpaid wages and overtime premium pay (\$9,781 per year). This is indicative of the scope of wage theft that many of us face.

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**That amounts to \$815 per month in unpaid wages and overtime premium pay (\$9,781 per year).**

[18] As of November 2018.

[19] Ethel Tungohan et al (2015) After the Live-In Caregiver Program: Filipina Caregivers' Experiences of Graduated and Uneven Citizenship. Canadian Ethnic Studies, Vol 47, No 1 pp 87-105.

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**Even though I am already sleeping at night they will message me to say that something I did doesn't look good enough for them.**

- Connie

Rather than hire two caregivers to cover 12 or 24 hour shifts, employers try a variety of strategies to meet their care needs. *"I worked very long hours. They give me very interrupted hours; for example, 8am-10am then 1-3pm, then 6-8pm, and 11pm-12 midnight or 1am."* (Ana)

Long hours and unpaid wages is not just a feature of live-in employment. Live-out workers also face long hours, unpaid wages and isolation on the job. *"I work for another family as part-time. They were mostly abusive when it comes to work hours (they made me work more than I am supposed to do). If I'm not done on time because of more work, they added hours but didn't pay. They will not let me go home. But if I finished work early, they will complain and said I didn't do my job properly even if I know it's spotless."* (Alicia)

## Low wages

Under the Caregiver Program, employers are required to pay the prevailing wage rates in the region for in-home care. This is set out in an employment contract. The prevailing rates are generally just above the minimum wage in each province.

Some employers under the program pay extraordinarily sub-minimum wages. For example, Phyllis earned just \$100 a month when she began working in Ontario. Amabel earned a little more; she was paid only \$300 each month for her live-in position. The lack of enforcement of provincial labour standards and federal CP rules allow these types of egregious employers to exploit workers new to Canada. These employers rely on their employees' precarious immigration status to flout the law.

In general, most employers under the CP pay around the minimum wage. As discussed above, however, most workers do not get paid for all their hours worked. This leaves all too many Care Workers with inadequate incomes. *"My employer told my mother, who used to be their caregiver, that she can only pay for 6 hours per day. So yes, I'm working at least 8 hours or more everyday and just get paid for 6 hours of work. Yes, they are good family but for me the wage is not enough."* (Amelyn supports her 2-year-old son in the Philippines).

As Emma said, *"it is a very low salary wage; not enough to support my family back home."* Care Workers are often the primary breadwinner for their families (due to high unemployment and higher rates of divorce due to family separation). When employed on a live-out basis, Care Workers find it harder to meet all their obligations. *"The wages are too low that it is hard to survive. Not enough to pay my personal needs as well as support my family overseas"* (Amelyn). That is one reason that Care Workers want to bring their families when they come to work in Canada. Rather than maintaining two households, they would only have to provide for one. *"If the family can be permanent resident right away while we are working, the husband can work too to help with the expenses and lessen the burden on the family."* (Emma).

## Enforcement of minimum labour standards

Despite the increased risk for abuse, the separation between public and private workplaces makes it difficult, if not impossible, for provincial governments to proactively enforce employment standards in private homes. Coupled with tied work permits and service requirements, the private home setting creates conditions that are ripe for exploitation.

In a survey of 132 caregivers conducted by the Caregivers' Action Centre (CAC) in Ontario, 42 percent of caregivers reported working 11 hours a day or more. Of those working overtime, 74 percent did not get overtime pay. One in five workers did not even get one day off a week. Other problems cited by Care Workers include: inadequate rest periods; poor or unhealthy accommodation; a lack of food or restrictions on the type of food they can eat in their employers' households; a lack of privacy; the inability to take sick leave; and, the inability to have a personal life. Further, many Care Workers face a huge debt burden to recruitment agencies. Of those Care Workers surveyed, 65 percent report paying fees to recruitment agencies for employment under the Live-in Caregiver Program in Ontario.<sup>[20]</sup>

Similar results on hours of work were found in a study of Care Workers in Fort McMurray, Alberta. In a survey of 56 local caregivers, 46 percent reported working on weekends; and the average work hours were 10 hours per day and 54 hours per week.<sup>[21]</sup>

The Care Worker' surveyed and interviewed for this project confirm that there are widespread violations in hours of work, unpaid wages, overtime and public holiday pay. Some workers report trying to negotiate with employers for their legal rights, but the majority feel the price is too high. The view among Care Workers is that you just need to "do your time" until you get your two-year service requirement done and apply for PR.<sup>[22]</sup>

Care Workers can file claims under provincial employment standards for unpaid wages, termination and other basic entitlements. Few do. In the province with the highest number of care workers (Ontario), an average of 25 Care Workers per year filed employment standards claims over five years from 2012/13 to 2016/17. Eighty-eight percent of claims resulted in violations being confirmed and employers were ordered to pay workers \$348,230 (almost \$4,000 on average).<sup>[23]</sup>

As most Care Workers wait until they have left their employer or finished their two-year service requirement to complain, the time limits on when claims must be filed are important. Ontario gives workers up to 2 years to file employment standards claims. Unfortunately, other provinces are much more limited. For example, British Columbia and Alberta require claims to be filed within 6 months of the unpaid wages being due or date of termination. Such short time limits create substantial barriers to Care

[20] On file at Caregivers' Action Centre.

[21] Sara Dorow et al (2015) Live-in Caregivers in Fort McMurray: a Socioeconomic Footprint. On the Move Partnership. Online: <http://www.onthemovepartnership.ca/wp-content/uploads/2015/01/Live-in-Caregivers-in-Fort-McMurray-Dorow-et-al.-January-2015.pdf>.

[22] Tungohan, p 95.

[23] Freedom of Information Request, December 1, 2017, Ontario Ministry of Labour.



**Average Care Workers' hours were 10 hours a day and 54 hours per week.**





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***The worst thing I have experienced working as Caregiver in Canada is that every day was a challenge. The kids I took care of have so many issues, and they pay low wage, no overtime pay and I have to constantly endure my employer's complaints about how expensive everything was. It felt like they were talking about me.***

- Miriam supports 4 family members; she has been here since 2016.

Workers recovering unpaid wages. But it is not only wages. As Phyllis and Amibel experienced, employers may lie on the record of employment. This may be done to hide improper remittances by the employer or to penalize former employees. Both Phyllis and Amibel had completed the full 24 months of service requirement but their employers said they had only worked for one year. In these cases, employment standards claims that set out the actual term of work done helps with permanent residency applications.

The federal Caregiver Program establishes the immigration rules that prevent most care workers from enforcing their rights prior to permanent residency. However, it does not provide much protection from employers that violate their rights. The main focus of ESDC enforcement is on employers' compliance with the terms of the Caregiver Program: has the employer complied with LMIA requirements to adequately search for employees in Canada? Is the employer employing workers that have proper work permit authorization? The government does provide a hotline for people to report non-compliant employers. However, as there is only one worker per household, employers would know who made the complaint. There is little consequence to employers other than they may not be able to employ workers through the Caregiver Program.

The consequences for Care Workers are much graver. When a worker receives wages and working conditions that fall short of the terms set out in her employment contract or the ESA, it is the worker's participation in the Caregiver Program – and thus access to future citizenship - that is put in jeopardy. With so much at stake, workers fear trying to enforce our employment standards rights before the two-year service requirement has been completed.

## Housing conditions

The 2014 Caregiver Program removed the requirement that employees live in our employers' homes. This was a huge relief to Care Workers. The live-in employment arrangement gives employers substantial control over caregivers' food, space, sleep and social networks. This leaves many open to intimidation and reinforces the inequality of power between the employer and employee.

But many Care Workers are still being employed on a live-in basis. In some cases, workers want to live-in because it is very expensive to rent accommodations in Canada, particularly in larger cities. A minimum wage salary is not sufficient to cover most rental accommodations, particularly when workers are responsible for maintaining our families back home. In other cases, employers want their employees to live-in. This may be to ensure their employees are available to meet their on-call care needs.

When employers apply for a LMIA to hire a live-in employee, they provide information about the room and amenities provided at no cost to the employee. In some cases, however, the housing actually provided is sub-standard.

*"I slept in the stinky basement with a cat litter next room." (Catherine).*

*"My worst experience was to share washroom with employers. I had to the wash and clean in full before you used it every time. My room had no inside lock." (Miriam).*

*"I don't have my own key to access my employer's house so I need to wait for them if they're not home yet." (Martha).*

Phyllis' room also did not have a lock. "It was a tiny room" she said. "It had the baby's crib in it because sometimes he would sleep with me and sometimes with his mom."

*"My employers lived in a condominium. They were an elderly couple who needed a lot of help to move around and eat. They told me I was not allowed to shower in the apartment, but I had to go to the gym downstairs and use the showers there. It was hard to organize my breaks so that I could take a shower when it was not too busy. One winter, the condo gym had no hot water for weeks, and I was forced to shower in icy water." (Mary).*

*"I have a dementia patient and she is not accepting me. She sends me out of the house even when it's raining outside. I cannot go wash my clothes. I cannot go to the bath. I cannot even go to the fridge and cook my meal." (Josephine).*

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***With my first employers, there are cameras all over the place except bathrooms and my room. Every end of the day, they always had complaints. Even you do it according to their instructions.***

- Grace

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***I wasn't safe. Because first of all my door did not have a lock. And then my employer, sometimes when he gets drunk, is like he wanted to use me sexually. And then the wife is treating me like garbage. I wasn't safe at all in this house.***

- Phyllis

There is no mechanism for the ESDC to investigate accommodations to assess if they meet basic standards. For Care Workers, the income, job and permanent residency costs are too high to make complaints about substandard accommodation.

Another feature of live-in employment under the Caregiver Program is that the home is both a place of work and housing for the worker. When workers are suddenly terminated, we lose our housing as well. A number of Care Workers have reported that they have to leave the house immediately when the job ends. For example, Phyllis was put out with all her belongings in garbage bags and she ended up in shelters for a couple of months. "When my first employer terminated me without a notice. It's on the spot on that day when she terminated me at 7:00 in the morning she asked me to leave the house on the same day before 12 noon. I had nowhere to go. I stood on the street with all my stuff" (Lennie).

## Sexual violence and harassment

In-home care work creates the conditions in which sexual violence and harassment can take place. The tied work permits and service requirement for PR, however, make it particularly difficult for Care workers to leave abusive situations.

*"I experienced sexual harassment by my employer. I couldn't leave them immediately because of the time frame that was given by the government about the 24 months of work and the need to be completed before the end of 2019 of November to apply for the Permanent residence." (Ceilia).*

*"My first Canadian employer (the male) used to expose himself to me and sometimes even to his kids." (Lorraine).*

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***In the beginning when you are working under permits you are not protected. We are taken advantage of; long hours of work with no benefits, not covered under WCB nor sick time. I was crying of pain and working while having a fever of 42 degrees. There are mental hardships being away with your family.***

- Anabelle

## Health and Safety

Missing from Canadian discussions on senior care is the health and safety protections needed for in-home care workers. Increased chronic conditions and acute conditions present substantial health risks for employees. Heavy lifting and patient transfers, harmful behaviour by employers with dementia; these are just some of the risks that migrant Care Workers face. But they have the least power among all care workers to address these risks and health impacts.

Being a caregiver on tied work permits away from families takes a toll. Many workers reported that they suffered from being "homesick". As Martha said, "It's so hard to be away with your family. It makes it so sometimes you can't work well and it just makes you sick." Fitri also reported, "I got sick because of working so many hours and on many things that were not required duties under my LMIA." In some cases, employers want you to work even though you are sick because they can't, or won't, take time off work themselves to give you a break.

## Section 5

# RECRUITMENT AGENCIES



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***I spent \$7,000 CDN just to get here. Agencies are taking advantage of us. They used trainings, etc., just to get more money from us.***

- Pamela

The TFWP provides a process for employers to hire foreign national workers on a temporary basis if workers cannot be found in Canada to do the job. What the program does not provide is a clear and transparent process for employers to connect with potential employees and vice versa. In the absence of a regulated process to connect potential employers and employees, there has been a rapid growth of recruitment agencies.

In order apply for a work permit to come to Canada under the Caregiver Program, Care Workers must secure a job offer and employment contract with an authorized Canadian employer. To be matched with an employer, migrant Care Workers commonly use the services of third party recruiters.

Families that seek in-home Care Workers may not have experience as an employer, applying for LMIA, and finding and hiring a Care Worker from outside of Canada. In these cases, employers often hire agencies to do this for them.

Under the TFWP, employers are allowed to contract recruitment agencies to process LMIA and Work Permit applications and to recruit potential employees. Similarly, recruitment agencies are allowed to charge workers fees for “non-recruitment” services such as resume preparation, interview preparation and first aid training.

Internationally, recruitment agencies have been found to use abusive practices including charging workers exorbitant fees, misrepresenting the type and terms and conditions of employment to workers, withholding passports and travel documents and human trafficking.<sup>[24]</sup>

Without regulation of the recruitment process under the TFWP and tracking of fees charged to workers, it is hard to assess the scope of illegal fees charged to workers under the program. Our recent survey found that more than 50 percent of Care Workers said that the fees paid to recruitment agencies was too high.

In a study of recruiters under the TFWP, Fay Faraday found that fees frequently range between \$4,000 and \$10,000, although some may pay up to \$15,000 for jobs that pay at or near the minimum wage.<sup>[25]</sup>

In some cases, once fees are paid abroad or in Canada, recruiters disappear and the Care Workers don't get work permits. In other cases, Care Workers may get their Work Permit only to arrive at an airport in Canada and no recruiter or employer meets them. In such cases, immigration officials at the border may deny entry to the worker. As Rosalie experienced, workers may come, believing that they have a job only to be "released on arrival" by the agency. In these cases, there is no job with the employer who signed their contract. *"My first experience was from the agency. I paid a lot of money in coming here. But when I arrived I don't have work. I demanded and told the agency that I will go to the police if they won't give me a job as it was stated on my contract."* (Lorraine). In order to pay their fees, some Care Workers may be pushed by recruiters into unauthorized work that jeopardizes their status in Canada and makes them further dependent on recruiters.

While the fees are expensive for minimum wage earners in Canada, they are even more so for workers coming from impoverished countries such as the Philippines or Indonesia. In some cases the recruiters want all or part of the fees up front. When you convert that fee into a workers' home currency, the challenge is clear. These fees can represent between six months to two years' earnings in a worker's home currency.<sup>[26]</sup> To pay these fees, entire families can go into debt. With families back home in debt, workers are afraid to complain about ill treatment by agencies or employers here.

Care Worker organizations across the country have asked provincial and federal governments to better protect workers from exploitative recruitment practice. Ontario adopted a reactive complaint-based system in 2010 for Care Workers. It was expanded in 2013 to include all migrant workers under the TFWP. The Employment Protection for Foreign Nationals Act, 2010 makes it illegal for employers and agencies to charge workers fees for recruitment. This reactive enforcement tool relies on workers to file complaints with the Ministry of Labour. In a 2014 survey of Care Workers,

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[24] Judy Fudge and Fiona MacPhail (2009) The Temporary Foreign Worker Program in Canada: Low-skilled Workers as an Extreme Form of Flexible Labor. *Comparative Labour Law & Policy Journal*. Vol 31:5 101-139.

[25] Fay Faraday (2014) Profiting from the Precarious. Metcalf Foundation. Online: <https://metcalfoundation.com/wp-content/uploads/2014/04/Profiting-from-the-Precarious.pdf>.

[26] Fay Faraday (2014) p 33.

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**Recruitment fees frequently range between \$4,000 and \$10,000..**



we found two-thirds of caregivers arriving after the Act came into effect had paid recruitment fees averaging \$3,275.<sup>[27]</sup>

Other provinces have developed more proactive enforcement of recruiters. Manitoba's Worker Recruitment and Protection Act requires recruiters and employers to register with the provincial government before being allowed to hire workers through the TFWP. Nova Scotia and Saskatchewan also prohibit recruiters from being charged fees and goes further than Ontario by enabling illegal fees to be recovered from the employer when an unlicensed recruiter has been used. The patchwork regulation of recruiters creates an uneven terrain that Care Workers under the CP have to navigate when charged illegal fees.

A coordinated strategy is needed that removes recruiters from the TFWP and migration of workers into Canada. As Maiko says, "Get rid of the agencies. If there is a valid website in immigration, workers can go right away there for transparency. Regulated." There is a built-in solution. In order to apply for a Labour Market Impact Assessments (LMIA), employers must show that they advertised in the Canada Job Bank. The system could be streamlined so that Care Workers could be allowed to apply for jobs through the Canada Job Bank. This change could remove the need for third party recruitment agencies and form part of a broader reform to create a Federal Workers Program which guarantees permanent status on arrival.

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[27] On file at Caregivers' Action Centre.

## Section 6

# WHAT DO WE WANT? THE FUTURE OF CARE WORK IN CANADA

Care work is without a doubt a core and growing part of Canada's labour market and social infrastructure. Without care work, the Canadian economy and society cannot function.

Instead of creating another pilot project that treats the need for care work as a private ad hoc individual need, it is time to create a National Care Strategy that addresses the broad, public and enduring need for quality care for children, the elderly and people with disabilities. Decent work and permanent status for the workers providing that care labour must be the foundation for that Care Strategy.

Migrant Care Workers need stable, permanent immigration status in order to properly carry out the vital work of caring for the next generation, for the elderly and for people with disabilities, and to do so with the same dignity and access to rights as other workers. Care Workers must also be recognized as whole human and social beings who contribute to communities beyond our labour. Family unity is a guiding principle in Canada's permanent immigration system. Care Workers should not be forced to endure years of family separation before we can be reunited with our own families in Canada. To provide care to other people's families, while being denied access to our own, imposes a cruel and damaging hardship on Care Workers and our children. Care Workers should be able to arrive in Canada with permanent resident status and with their families intact.

### **Elements of the proposed Federal Worker Program – Care Worker Stream (FWP-CW)**

To replace the Caregiver Program "pilot project", we propose the creation of a Federal Workers Program – Care Worker Stream (FWP-CW) as an Economic Class for permanent immigration as specified in the *Immigration and Refugee Protection Act*. Using the criteria of education, work experience and language ability that are currently used in Canada's permanent immigration system (Express Entry), the proposed FWP has been designed to reflect the actual skills needed to deliver the care work that migrant Care Workers are currently providing.

The FWP Care Worker stream would support a proactive, systemic approach to delivering quality care through a new National Care Strategy developed by all levels of government to deliver public, universal, accessible, licensed, dignified child care, elder care and care for people with disabilities through Care Workers' decent work in Canada. This new permanent immigration stream will be factored into annual and multi-year immigration levels and planning and will require modifications to Express Entry to reflect the real work requirements in the sector. Such a program should be organized as follows:

## New Federal Workers Program – Care Worker Stream (FWP-CW) proposed through modifications to existing Express Entry System

Criteria	Proposed Details	Reasoning
<b>Modifying the Common Minimum requirements</b>	<p>Common minimum requirements are education, work experience, and language ability. The FWP-CW would maintain these categories but adjust the criteria to reflect the actual skills required to deliver care work in Canada and to establish a points threshold that is reflective of the actual requirements for care work.</p> <p>The federal government should guarantee processing of FWP-CW applications for permanent residency as part of developing a national care strategy for children, the elderly and people with disabilities which connects workers to a public, universal, accessible, licensed system of child care, elder care and care for people with disabilities that values care work as decent work.</p>	<p>Canada has a mixed economy and requires workers of all skill levels. It is important that workers of all skill levels can enter Canada with permanent residency status.</p> <p>At the same time, caregiving is skilled work requiring years of practice and constant learning. The skills that workers bring to this work must be recognized and rewarded with appropriate points for the purposes of immigration and in order to develop a national care strategy for Canada.</p> <p>The Federal Skilled Trades program is a precedent that shows that the permanent immigration system can be tailored to recognize the value and contribution of work in a mixed economy with jobs at various NOC levels.</p>
<b>Modifying Education and Work Experience</b>	<p>Foreign nationals with high school education and either work experience or training in Care Work should be able to apply for the FWP-CW stream under a modified Express Entry program. High school education need not be equivalent to completion of secondary school in Canada. Work experience need not be paid work experience but can include practical experience, too.</p> <p>FWP-CW applicants should receive a set number of points if they meet these threshold requirements. Achieving these points will then translate to guaranteed processing of applications in line with developing a national care strategy that recognizes the labour market gap in this sector. This process will also remove the need for individual LMIA's.</p>	<p>The FWP-CW stream will provide permanent residency in Canada for low-waged, racialized workers and their families from the Global South. It is critical that a permanent program continue to provide access to permanent residency to these workers. Despite the current structure of Express Entry, this new stream should not be skewed towards the exclusion of these workers, largely women, and their families. In providing such a program in the context of a national care strategy, Canada would lead the world in both immigration policy and in recognizing the value of decent care work.</p>
<b>Modifying Language Ability</b>	<p>Foreign nationals applying in the FWP-CW stream with a score of CLB Level 3 should be able to qualify under the modified Express Entry Program.</p> <p>Applicants meeting this threshold should receive a set level of points towards the guaranteed processing of their applications in line with developing the national care strategy.</p>	<p>Language ability should be assessed on a functional basis that is relevant to the work done by Care Workers. Migrant Care Workers currently in Canada – and who have worked for years in Canada – have been working successfully without meeting the elevated standards. Imposing a higher standard for permanent immigration does not correspond to the need for care work in Canada or workers' actual abilities to provide care.</p>



Criteria	Proposed Details	Reasoning
<b>Modifying Age</b>	The age requirement should be eliminated.	The age requirement is discriminatory and does not reflect the level of expertise in a field or the future contributions of the primary applicant's family members.
<b>Modifying the Job Bank</b>	Once FWP-CW applicants have created their profiles in the Express Entry system, they should be able to seek employment as Care Workers in Canada via a national job bank tied to the development of Canada's care strategy.	Developing a national care strategy will utilize the job bank as part of a public, universal, accessible, licensed system of care. The job bank will remove the power of recruitment agents who are a significant source of exploitation. This job bank will give more bargaining power to workers.
<b>Potential employers</b>	Potential employers seeking Care Workers can use the job bank to find Care Workers employees.  Employers must pay processing fees (equivalent to current LMIA fees) when they register for the job bank, and when they hire a migrant worker.	Using the job bank ensures that employers are registered for program integrity purposes, that employers can be charged relevant processing fees, and that compliance with decent work standards and contracts can be more effectively subject to proactive oversight. Currently, only childcare employers with incomes over \$150,000 are charged processing fees.  As employers have to be registered, additional requirements can be integrated (such as advertising the job first for Canadian citizens or permanent residents). These requirements may be less relevant in the context of developing a national child and elder care strategy that recognizes the labour shortage in this sector on a default or ongoing basis.
<b>Modifying the Labour market impact assessment</b>	The FWP-CW would eliminate the need for individual LMIAs. As part of its national care strategy, the federal government should conduct a regional and sectoral labour market assessment that recognizes current and future labour shortages with respect to care work in Canada. On the basis of this analysis, the government would identify the overall numbers of Care Workers who are needed in the labour market. This system-wide analysis would remove the need for LMIAs on an individual basis for employers in the FWP-CW stream.	In response to the Auditor General's Spring 2017 report on Temporary Foreign Workers, ESDC committed to utilizing Statistics Canada and other sources to produce better regional labour market assessments, including projecting future shortages.  Quarterly re-assessments allow for adjustment if employers continue to be unable to find Care Worker employees.
<b>Modifying the Points Calculation</b>	Once workers in the FWP-CW stream meet the adjusted minimum point threshold, their applications for permanent residency must be processed. In order to develop the national care strategy, these applications will be processed separately from the current Express Entry pool. This processing should not be dependent on an immediate job offer.	The current system of selecting applicants with the maximum points in the Express Entry pool should not apply to the FWP-CW stream. Such a system automatically favors higher levels of education, language ability and experience. Such a system will not work for the Care Worker program or for the development of a national care strategy.
<b>Permanent residency and family unity</b>	Primary applicants under the FWP-CW stream will be able to apply for permanent residence along with their family members (spouse or common-law partner & dependent children)	Family accompaniment is a significant determinant of mental and physical health for Care Workers and their families. Care Workers and their families will integrate and settle into the country more easily when they arrive together.

**We also propose that such programs be created for all low-waged migrant workers after real consultation with those groups of workers (e.g. agricultural workers).**



## Proposed Transitional Provisions under Federal Care Worker Program

As the Federal Workers Program – Care Worker Stream is being developed, it is essential to develop transitional policy and regulations that respond to the needs of Care Workers who are already in Canada, and those who will continue to arrive until the FWP-CW is created. To this end we propose that the following changes should be made effective immediately:

### Permanent residency

- 1. Care Workers should be able to apply for permanent residency after completing 1 year of care work or 1,950 hours of work.**

This was the norm until 1973 and is currently the standard that applies under the Canadian Experience Class. Treating the work of racialized women otherwise is discriminatory.

- 2. Remove the caps that allow only 2,750 permanent resident applications each year in each Care Worker stream**

As a result of the caps, caregivers feel compelled to remain working under abusive employment conditions in order to be able to complete their two years of care work as quickly as possible to apply for permanent residence before each year's annual cap is filled.

Caps also mean that Care Workers who have completed all of the requirements may still be excluded from access for permanent residence simply because of the point in the year at which they complete their two years of work. Caps simply expand the backlog and extend family separation.



**3. Allow for care work in either Child Care or High Medical Needs Stream to count towards the one year work requirement**

Before 2014, the work that Care Workers performed in all three areas of care work (children, elderly, people with disabilities) counted towards their two-year work requirement. Separating the streams and requiring Care Workers to accumulate all their work experience within the same category has resulted in many Care Workers being unwilling to leave abusive labour situations or become undocumented. The separate streams should be eliminated and Care Workers who have been forced into undocumented work should be regularized.

**4. Remove the requirement of 1 year Canadian post-secondary education**

Care Workers must now possess one year of post-secondary accreditation. To do this, Care Workers must either have post-secondary education prior to arrival in Canada which is then recognized in Canada, or they must obtain a study permit and acquire one year of post-secondary education while in Canada. Either of these options requires that the Care Workers then pay high fees for accreditation or obtain a study permit and pay international student fees to complete one year of post-secondary study while working extremely long hours at minimum wage. Moreover, any work that is done while completing post-secondary education in Canada is not counted towards the two-year work requirement. This is generally impossible and, as a result, many Care Workers will be unable to apply for permanent residency. Under the prior FDM, Care Workers were required to take courses to upgrade their education and skills while in Canada. This requirement was dropped in 1992 under the LCP because it was recognized that it was impossible for Care Workers to upgrade skills while also performing full-time care work.

## **5. No second medical when applying for permanent residency**

Since the CP was introduced in November 2014, Care Workers have been forced to complete a second medical exam at the time of their application for permanent residence. This requirement contradicts the “Juana Tejada” law, which eliminated the second medical testing requirement. Tejada, whose permanent residency application was rejected because she was diagnosed with cancer while working in Canada, actively sought to remove the second medical testing requirement.

## **6. Remove “excessive demand” from IRPA. Repeal Section 38(1)(c) of IRPA**

Current federal laws allow permanent resident status to be denied to an entire family if any member of that family is a person with a disability or has a chronic illness. In 2017, the Standing Committee for Citizenship and Immigration (CIMM) issued a report to Parliament recommending the repeal of these laws because they discriminate against people with disabilities, construct people with disabilities only in negative terms (i.e. as a resource drain), and erase the valuable contributions of people with disabilities to our communities. In 2014, according to the evidence presented to this committee, 150 Care Workers were denied permanent residency under the “excessive demand” regime. This impact on Care Workers is particularly cruel. They are employed in Canada to care for Canadians with disabilities yet are denied permanent residence because their family members have those same disabilities.

## **7. Resolve the Permanent Residency backlog**

Care Workers applying for permanent resident status in Canada face an average of 6 to 8 years of family separation before being reunited with our families. This includes the required 24 months of employment and the published 49-month average processing time towards permanent residency. Care Workers who worked in Taiwan, Hong Kong, the Middle East or elsewhere before coming to Canada face even longer periods of family separation. Many Care Workers are deeply disappointed with the current processing time and the inefficient handling of our applications. Years of waiting creates other problems, including: repeated, expensive medical examinations of family members; Care Workers’ inability to access information about our pending files; the refusal of applications based on medical inadmissibility of family members; the death of Care Workers after their completion of the program conditions but before completion of receipt of their children’s PR status; the need to keep renewing work permits and other costly duties to stay in Canada; the lack of access to health care and other services while between work permits; and, the deaths of their spouses or other family members during this wait period. Prolonged separation also results in family breakdown and difficulties upon reunification - problems that are caused by the inefficiency in the processing period.

## 8. Remove the English language test prior to Permanent Residency

In 2014, the new pathways mandated that Care Workers meet a higher official language proficiency benchmark to qualify for permanent immigration to Canada. However, they do not need to meet this higher language benchmark in order to enter and work in Canada. To work in Canada, they need to meet CLB Level 3. Setting this benchmark as the level for permanent immigration under the FWP-CW accurately reflects the level required to perform the work. As Care Workers have to qualify for an English language test prior to arriving in Canada, requiring a second English exam to stay is discriminatory and unnecessary.

## Family unity

Spouses, children or other close family members should be allowed to accompany Care Workers with open work and study permits of their own. As identified above, the principles of family unity and the best interests of the child are a key parts of Canada's permanent immigration system and international human rights. The hardships caused by family separation for Care Workers and their children due to the temporary migration programs are well-documented. Family unity promotes economic and social success and cohesion.





## Open Work Permits

While the FWP-CW is being developed, open work permits should be provided to Care Workers. Such provisions already exist for workers in the International Mobility Program and family members of high waged workers. This open permit will respond to the concerns about lengthy processing times, high costs, and abuse that tied permits generate.

If open work permits are not possible, we believe that sectoral permits that allow Care Workers to work for any employer in the care sector in a given geographic region would help to address these concerns.

"Tied" work permits are a modern form of indentured labour that deny Care Workers the right to circulate freely in the labour market like other workers. Tied work permits, coupled with lax monitoring and enforcement of labour standards, create the conditions that allow exploitative employers and predatory recruiters to abuse Care Workers with impunity. Tied work permits facilitate employer control and exploitation of workers through breaches of employment standards, including working excessive hours without payment for overtime. If Care Workers try to leave abusive employment, the tied work permit system imposes lengthy processing times and prohibitive cost (between 6-10 months for new LMIA and work permits) during which Care Workers may not be able to access employment insurance or be permitted to do documented work in order to survive.

Between January and March 2015, 90 percent of employer applications for LMIAs required to hire caregivers were rejected by Employment and Social Development Canada. These rejections meant that many caregivers had to wait even longer to be able to secure new employment. As caregivers must complete 3,900 hours of work within four years, each change in jobs may result in a three to ten-month delay in filing for permanent

residency status. This delay prolongs family separation and increases worker insecurity. Either caregivers feel constrained to continue in abusive conditions or they may leave their employer and be forced to engage in survival work that risks their removal from Canada because it is not authorized by a work permit.

Remaining with bad employers can mean that employers ask for increased hours of work, refuse to pay for overtime, holiday or vacation pay, and do not allow for sick days.

Despite the “live-in” requirement being optional under the new CP, many employers still prefer workers to “live-in” because it gives employers substantial control over caregivers’ food, space, sleep and social networks. There is often no clear boundary between being “on-duty” and “off-duty”. Even for live-out workers, the long hours and isolation on the job can lead to similar effects.

## **Recruitment**

Migrant workers are paying recruitment fees equivalent to roughly two years’ salaries in our home currency plus transit costs to predatory recruiters and agencies to work in Canada. To pay these fees, entire families go into debt. Often when workers arrive here, work conditions and wages are not as they were promised or agreed to. With families back home in debt, workers are afraid to complain about ill treatment by bad bosses here. Provincial legislation varies and the federal government has a role to play. The federal government should create model legislation for provinces to adopt that would license recruiters, register employers and hold them jointly financially liable. This recruiter legislation must ensure that there is disclosure and accountability throughout the recruiter’s supply chain. The federal government should also create inter-provincial agreements to regulate recruiters working across provinces.

## **Labour Market Impact Assessment**

Instead of individual labour market impact assessments for each employer, the federal government should conduct regional assessments per occupation that are updated on a regular basis. Such assessments should identify appropriate wages that employers must follow. An employer’s application should focus on registering the employer as a potential Care Worker employer and ensuring that an appropriate contract is submitted, rather than focusing on seeking an individual LMIA per worker. Once a worker is employed, the employer must be required to register the worker and the employer in a Central Registry, administered by the Province’s Employment Standards Branch.



Join Care Workers organizing for justice:

[www.LandedStatusNow.ca](http://www.LandedStatusNow.ca)

