

The Shift in Canadian Immigration Policy and Unheeded Lessons of the Live-in Caregiver Program

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This report elaborates the shift in immigration policy which began unfolding in Canada from the 2006 expansion of the Temporary Foreign Worker Program, culminating in June 2008, with the amendment of the Immigration and Refugee Protection Act. It shows how this shift has been modeled on some of the weakest elements of the Live-in Caregiver Program (LCP), the longest standing immigration program offering temporary migrant workers the possibility of permanent residency. Presenting figures never calculated before on the LCP – *estimated retention rates*, or a measure of the success of the Program in retaining temporary migrant workers as permanent residents – the report demonstrates that only 50 per cent of migrant live-in caregivers entering Canada from 2003-2005 became permanent residents by 2007. Calculated yearly for the period, 2003-2007, the *estimated retention rate* falls to 28 per cent by 2005. It is thus argued that the shift from permanent residency to temporary migration as a basis for the immigration system will not lead to building citizenship and labour supply in Canada. It is further argued that this is due to the inordinate amount of power granted by government to employers in the migrant worker-employer relationship. Testimonies of temporary migrant caregivers documented from the 1990s are used to illustrate this power imbalance. Judging from the pro-employer reorientation of Canada's immigration system, federal and provincial governments have not learnt from testimonies presented by feminist advocates over the past 20 years.

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This paper posits there has been a significant shift in Canadian immigration policy over the past two years – a shift which has passed under the radar screens of most Canadians. Formerly based on the precepts of permanent residency and family reunification, from 2006, Canada's immigration system began shifting to a model of *temporary migration as the path to permanent residency*. Presenting figures estimating the retention rates of the Live-in Caregiver Program for the period 2003-2007 – until recently, the only program of labour importation modeled on temporary migration as path to permanent residency – it is demonstrated here that the reorientation of immigration policy is unlikely to serve the long term needs of Canadian society: building citizenship and the labour force.

The Live-in Caregiver Program (LCP) is a program of the federal government allowing Canadians to import temporary migrant live-in caregivers, also known around the world as domestic workers. Along with the Canadian Seasonal Agricultural Worker Program (SAWP), it is one of the oldest programs of labour importation in Canada. Both the LCP and SAWP are streams of the Temporary Foreign Worker Program (TFWP), which since its expansion in October 2006, permits the temporary migration of workers for a wide range of employers and sectors in the Canadian economy.¹

For several years, the LCP was unique in Canada and known around the world for offering temporary migrant workers a path to permanent resident status. Upon completing 24 months of work for a single employer, live-in caregivers may apply to Citizenship and Immigration Canada (CIC) for permanent residency. Permanent residency is a legal status confirming the formal right to protections offered through the Canadian Charter of Rights and Freedoms, labour and other laws at the federal, provincial and municipal levels. It also allows for family reunification, or the sponsorship to Canada of family members residing in other countries, as well as the freedom to live and work in any part of Canada. Given this potential of permanent residency for migrant workers entering Canada under the

¹ For an in-depth analysis of the expansion of the Temporary Foreign Worker Program, see "Analysis, Solidarity, Action: a worker's perspective on the growing use of migrant labour in Canada," Canadian Labour Congress: March 2007, http://canadianlabour.ca/en/Analysis_Solidarity. Since the publication of that paper, employer access to temporary migrant workers was further accelerated, especially through the Expedited Labour Market Opinion Pilot Project of the TFWP.

LCP, the LCP was long perceived by many as relatively better than other streams of the TFWP, which only allow migrant workers to work in Canada for periods up to three years.

The Canada Experience Class (CEC) – a new immigration program launched in August 2008 – is identical to the LCP in one crucial way: both are based on temporary migration as the path to permanent settlement of workers and their families in Canada. Combined with the expansion of the TFWP, the CEC is a key element of the new immigration policy direction being posited here. Employers and their supporters have for some time been urging for such a policy reorientation. Over the past several decades, official immigration policy has been based on the principal that internationally trained workers possessing skills which respond to Canada's needs be admitted to Canada, along with their families, as permanent residents from the onset.

Working from a combined, feminist and public policy perspective, three major questions regarding the Live-in Caregiver Program (LCP) are answered here, using these answers to draw parallels with the shift in immigration policy as a whole. How are live-in caregivers recruited to Canada and why? How well do these workers fare in achieving family reunification? And how successful is the Live-in Caregiver Program in retaining temporary migrant workers as permanent residents in Canada? These questions are rarely posed, even more rarely answered. It is important to answer these questions given the long term needs of Canadian society to build not only the labour force, but also citizenship, within the context of a declining birth rate, ageing workforce, and swiftly changing immigration policy.

The analysis is divided into three sections:

- A. Filling a vital need: Demand for migrant caregivers in Canada
- B. Carrot and Stick: The promise of permanent residency
- C. Absence of monitoring, enforcement, and the right to unionize: Explaining low retention

A. Filling a vital need: Demand for migrant caregivers in Canada

In terms of basic statistics, Table 1 below presents figures on the entry of temporary migrant workers under the LCP, by province. Ontario is the major destination of LCP workers migrating to Canada, followed by British Columbia, Alberta, and Quebec. According to *The Monitor*, an analytical publication of Citizenship and Immigration Canada,

the top ten occupational categories of temporary migrant workers entering Alberta, the category of 'live-in caregivers, nannies and parent's helpers' was in first place for the first two quarters of 2006. (CIC: 2006). *The Monitor* also reports that Filipinas constituted 77 per cent of live-in caregivers entering Canada in 2005. (CIC: 2006) The draw of the LCP for workers of the Philippines is not unrelated to the Program's promise of eventual permanent residency. Indeed, it is for this reason that workers pay extremely high 'placement fees' to recruitment agencies and wait several years for placements in Canada under the LCP. Furthermore, as argued below, the steadily increasing number of migrant live-in caregivers entering Canada between 2002 and 2007 gives weight to the suggestion that the LCP is a means to fill demand for vital caring labour which is underpaid and undervalued in Canada, as in most other countries.

Table 1. Flow of temporary migrant workers entering Canada under the LCP

Province/ Territory	2002	2003	2004	2005	2006
Newfoundland, Labrador	0	–	5	–	–
Prince Edward Island	–	–	–	–	–
Nova Scotia	7	15	16	17	32
New Brunswick	–	5	11	7	16
Quebec	463	491	902	728	453
Ontario	2,083	2,270	2,968	3,245	4,422
Manitoba	47	49	67	71	73
Saskatchewan	31	43	49	69	87
Alberta	650	638	731	882	1,202
British Columbia	1,052	1,180	1,451	1,412	1,606
Yukon	–	–	5	7	5
Northwest Territories	6	9	6	0	5
Nunavut	–	–	–	–	–
Province/Territory not stated	1	0	0	1	8
GRAND TOTAL	4,351	4,708	6,216	6,448	7,915

Source: Citizenship and Immigration Canada, Facts & Figures 2006.

The concept of *carework* aims to capture the complexity of work carried-out mostly by women – both paid and unpaid caregiving involving time, effort, technique, and social skills. According to Abel and Nelson, carework involves “a distinctive pattern of thought that can be learned and practiced, but which differs sharply with scientific

rationality.” (1990, as cited by Mellow: 2007, 452) Carework integrates instrumental tasks (“caring for”) and affective labour (“caring about”), both of which figure into the work of live-in caregivers in Canada. While legislation in all provinces except Quebec specifies that live-in caregivers are to ‘care for’ and ‘care about’ particular individuals in their charge, as specified in contracts (i.e. care and light household tasks for children, elderly people, or people with disabilities), most live-in caregivers report having responsibilities caring for all members of the employers’ family. Some examples of this are meal preparation for the entire family, washing family cars, and cleaning the family home.

The excessive workload faced by live-in caregivers, and the assumption that more is always possible, crystallize the paradox that while over 70 per cent of mothers of small children in Canada work outside the home, Canada still lacks public systems of affordable and safe childcare and homecare. A further paradox is that, as Guy Ryder, General Secretary of the International Trade Union Confederation points-out, domestic workers enable their employers – in most cases, workers themselves – to improve their living standards by freeing them of responsibility for the bulk of caring work. (ITUC: 2008)

The pattern of determining wages of live-in caregivers is predictable given the historic undervaluing of unpaid labour still performed mainly by women within the home. In a book assembling the findings of the United Nations (UN) Decade for Women (1975-1985), Buchi Emecheta states “a mother with a family is an economist, a nurse, a painter, a diplomat and more.” (Emecheta: 1995) Regardless of being required to have this range of skills, live-in caregivers are mandated to earn only minimum wage in each Canadian province, with over-time pay and rest days applying, in accordance with provincial legislation.

Though not the intention, a requirement of the Philippines Overseas Employment Administration (POEA) – a government body controlling worker migration – seems to be in some recognition of the value and skills involved in carework. Workers in the Philippines wishing to become live-in caregivers in Canada are required to complete a seven month course prior to applying to Canada’s LCP. The course involves five modules: childcare, elderly care, personality development, first aid, nutrition and housekeeping. Quizzes and examinations occur throughout the six months of the classroom course, followed by one month of on-the-job training and an oral English language test.

For its part, Citizenship and Immigration Canada (CIC) also has training requirements for workers migrating under the LCP. A live-in caregiver is defined as:

a person who provides childcare, senior home support care, or care of the disabled without supervision in a private household in Canada in which the person resides. (CIC, as cited by Corrigan: 2008)

Live-in caregivers are required to have successfully completed the equivalent of Canadian secondary school. Upon this basis, live-in caregivers may qualify to enter Canada either under the 'education' or 'experience' streams. The education stream covers those workers having completed a minimum six month, formal education program in an accredited institution of the home country, in the area of early childhood education, geriatric care, first aid, or pediatric/geriatric nursing. Alternatively, the experience stream covers those who have completed

one year of full time employment, including at least six months of continuous employment with one employer, in that field or occupation, within three years immediately prior to the day on which the person submits an application for a work permit at the visa office. (CIC, as cited by Corrigan: 2008)

Finally, reinforcing inadvertently another skill necessary for care work, CIC requires that live-in caregivers have a level of fluency in English or French allowing them to function independently in an unsupervised setting and protect the persons in their care.

B. Carrot and Stick: The promise of permanent residency

Precisely because of the undervaluing of carework inside the home – and the poor wages and working conditions flowing from it – retention rates of workers in this occupation have historically been low. According to sociologist Sedef Arat-Koc, prior to 1973, workers admitted to Canada to perform carework inside the home sought other employment not long after arriving. This was because these workers had the employment and geographic freedom associated with permanent residency. (Arat-Koc: 1992)

The 1973 introduction of mobility restrictions – tying eligibility for permanent residency to the requirement that workers live and work in the home of a single employer for 24 months – solved the retention issue for employers, leaving the real problem untouched. Compounding problems followed suite: not only could employers obtain the carework needed, they could extract without limit from caregivers given their indentured condition and the LCP promise of eventual permanent residency upon fulfillment of Program requirements.²

² Though the LCP requires workers to live with their employers, it does not require employers to provide accommodation and food. In most cases, fees for accommodation and food are deducted by employers from salaries of live-in caregivers.

While the range of abuses endured by workers, and the lack of state mechanisms to monitor employers and assure their compliance to contracts are explored in the following section, what is important to underline here is the extent of power carried by employers as a result of mobility restrictions on workers, as well as the promise of eventual permanent residency. The story of Vinita in Ontario, documented by INTERCEDE, one of the longest standing agencies serving live-in caregivers in Canada, makes the point shockingly well:

Vinita was employed by a wealthy single male employer (who had earlier accused a previous caregiver of theft and threatened her with reports to Immigration and the RCMP). Vinita's employer preferred to "be served" his dinner around 7:00pm or later. He started getting upset with her when Vinita wanted to assert her right for an off-time in the evenings. Saying he did not want to be rushed during his dinner, he "reminded" her that her contract states the number of hours she works, but is flexible with when those hours start and end. He wrote Vinita a letter, which starts in a "reasonable" tone but goes on to put her in her place.

I am not asking you to work extra hours each day. I am merely saying to you that if 8:00am to 6pm is not suitable for me, then you start at 9:00am and work till 7:00pm, or for that matter, start at 10:00am and work till 8:00pm.....you must further understand that you've been hired as a convenience for me, you must therefore comply with all my reasonable requests. (Vinita, 1993 Case Files)

...As the tension between them grew, Vinita was dismissed by this employer. He wrote a very bad reference letter (which he copied to then Immigration Minister Bernard Valcourt). In the letter he said "I would have great difficulty recommending this woman as a housekeeper and I strongly question her presence here in Canada at all." (Arat-Koc: 2001, 56, 57)

Further examples of employer reprisals in response to workers' attempts to claim their rights in Ontario demonstrate the links between restricted mobility as institutionalized by Canadian law, the racist attitude of some Canadian employers, and the power they are permitted to exercise through the LCP:

There were several cases where the employers responded to Employment Standards Branch (ESB) claims by reprisals. Reprisals from employers can be intimidating for any employee. They have extra

intimidation power, however, for employees whose status in and future immigration to Canada is directly tied to their employment. One typical reprisal took the form of employers writing bad letters of reference, or refusing to provide record of employment (which were needed for Immigration as well as for a potential Employment Insurance claim).

...In a much worse form of reprisal, there were several cases of employers responding to an ESB claim with a vindictive attitude, with accusations of theft against the caregiver (Case Files: Terry, 1993; Nona, 1993; Yolanda, 1995; Rosa 1998; Elly, Interviews). When Yolanda left her employer and made a well-documented ESB claim for back wages, overtime and vacation pay, her employer accused her of greed, theft and of wrecking the coffee-maker. She said she would report all this to Immigration. She ended a letter she wrote to Yolanda and copied for her new employer in a tone which was patronizing as well as insulting: "You have greatly abused a position of trust and the generosity of Canada in allowing you to stay here." (Arat-Koc: 2001, 50, 51)

Rather than drawing lessons from these and other documented experiences of the LCP, Canada's newest immigration program, the Canada Experience Class (CEC), transmits one of the main weaknesses of the LCP to several other occupational categories. In offering the "carrot" of permanent residency to international students and temporary migrant workers of various skilled categories – after they've completed 12 or 24 months of work (respectively) – for a single Canadian employer, the CEC further entrenches the "stick" held by Canadian employers to whom legal status of migrant workers is bound through work permits. Within the context of weakened and poorly enforced labour legislation throughout Canada, migrant workers hoping to remain permanently in Canada and eventually sponsor their families are rendered yet more exploitable by employers well aware of their employees' precarious legal and economic status.

Additionally, the CEC follows the 2006 recommendation of the Citizenship and Immigration Section of the Canadian Bar Association that some temporary migrant workers be retained permanently in Canada **where there is employer support**. (CBA, Citizenship and Immigration Section: 2006, 9) In other words, applications of temporary migrant workers and international students to remain in Canada as permanent residents are linked to input from their employers. Only after the completion of 12-24 months of full-time employment, during which employers will be able to test workers for their suitability, will some applicants be accepted as worthy of remaining in Canada permanently.

The language in Canada's 2007 federal budget elaborates further on this vision, rationalizing a \$33.6 million budgetary allocation for the establishment of a new immigration program based on temporary migration as a path to permanent residency:

To ensure that Canada retains the best and brightest with the talents, skills and knowledge to meet rapidly evolving labour market demands, the Government will introduce a new avenue to immigration by permitting, under certain conditions, foreign students with a Canadian credential and skilled work experience, and skilled temporary foreign workers who are already in Canada, to apply for permanent residence without leaving the country. Recent international graduates from Canadian post-secondary institutions with experience and temporary foreign workers **with significant skilled work experience have shown that they can succeed in Canada, that they have overcome many of the traditional barriers to integration**, and that they **have formed attachments to their communities and jobs**. (Department of Finance Canada: 2007, 218, emphasis added)

Amendments to the Immigration and Refugee Protection Act (IRPA) quietly passed in June 2008, through the Budget Implementation Bill (C-38), firmly seal the employer-driven policy direction making the temporary migration of workers the principal path to permanent residency in Canada. The amendments give the power to the Minister of Citizenship and Immigration Canada to issue periodically changing instructions regarding the processing of applications for permanent residency, thereby replacing the first-come, first-serve system of submission previously enshrined in IRPA. By way of example, these instructions may include limiting the number of permanent residency applications to be processed, prioritizing the processing of applications of certain classes, or capping the number of permanent residency applications accepted by category and otherwise.

The instructions published by Citizenship and Immigration Canada in November 2008 specify that new permanent residents to Canada will be selected according to a list of 38 occupations. The 38 occupations – mainly in the health, construction, and other trades sectors – are remarkably similar to those appearing in the employer-driven lists of "occupations under pressure" published since 2006, under the expanded Temporary Foreign Worker Program.³ The criteria accompanying the November 2008 list of 38 occupations state that people already working in Canada on temporary work permits, and people able to secure employment contracts prior to arrival will be given priority in

³ For more information and analysis of lists of "Occupations under Pressure", issued by province, refer to "Analysis, Solidarity, Action: a worker's perspective on the growing use of migrant labour in Canada," Canadian Labour Congress: March 2007, http://canadianlabour.ca/en/Analysis_Solidarity

securing permanent residency.⁴ In keeping with the pattern uncovered above, all of this sits well with Canadian employers. According to estimates of civil servants, by the end of 2008, in Alberta alone over 20 000 temporary work authorizations of migrant workers will expire, and double the following year. It is not difficult to see how from an employer perspective, migrant workers having already *proven* themselves are far preferable than the *untried and untested* workers among the over 900 000 backlogged applications for permanent residency.⁵

In sum, through carefully orchestrated regulatory changes, quiet legislative moves, and the alternating use of ambiguous and contrived language, the Conservative government, over the past two years, has eliminated the institution of permanent residency as it is known in Canada.⁶ Canadian employers have gained primary decision making power over immigration, a crucial aspect of building the social collective, which for the past several decades has been in the hands of bodies accountable to the Canadian public. Relating all of this back to the experience of the LCP, the ensemble of reforms to the Canadian immigration system give employers in a range of sectors official sanction to exercise the type of control exemplified in the cases of migrant live-in caregivers featured above. Clearly governments in Canada have learnt little from the numerous testimonies of migrant caregivers gathered and presented by feminist advocates since at least the 1990s.

How well does the LCP serve as a means of recruiting workers to eventually remain in Canada as permanent residents? In terms of nation-wide figures, the LCP numbers are not impressive. Calculating on the basis of CIC data for the period of 2003-2007 (see raw data in table below) – taking into account the LCP requirement that workers complete 24 months of live-in work in Canada to qualify for permanent residency – the overall estimated retention

4 For more information on the Minister's instructions, refer to the Citizenship and Immigration web page, <http://www.cic.gc.ca/english/immigrate/skilled/apply-who-instructions.asp#list>

5 Clearly among employers there are also differing interests. To date employers of skilled workers have made gains through the creation of the CEC. Some advocates have raised the critique that the CEC does not include agricultural workers, many of whom have been migrating to Canada for several years on the basis of temporary work permits. Human rights laws and notions of equality aside, this and other exclusions of so-called low-skilled workers in the CEC is quite logical: employers of these workers are not pressuring the state to allow these workers to remain in Canada permanently because this would deprive them of the captive, low-wage workforce they deem necessary for profitability in their industries.

6 In her book, **Home Economics**, Nandita Sharma (2006) argues that this process began as far back as the 1970s. For an analysis tracing the links between the Temporary Foreign Worker Program and Canadian immigration policy from the mid-1990s to present, see "The Temporary Foreign Worker Program and its Intersection with Canadian Immigration Policy," Canadian Labour Congress: December 2007, http://canadianlabour.ca/en/temp_foreign_worker

rate for the period is 53 per cent (refer to appendix for full calculation).⁷ In other words, of the 19,072 live-in caregivers entering Canada from 2003-2005, only 10,043 attained permanent resident status by 2007.

TABLE 2. Initial Entry and Permanent Residency (raw data)

Year	Initial Entry Live-in Caregivers (all Canada)	Permanent Residency Live-in Caregivers, principal applicants (all Canada)
2003	5,110	2,230
2004	6,741	2,496
2005	7,221	3,063
2006	9,387	3,547
2007	13,840	3,433

Source: Citizenship and Immigration Canada, RDM, Facts & Figures 2007.

Muddying matters further is the well-documented fact that many live-in caregivers are not able to complete the 24-month requirement within a period of two years of employment in Canada.⁸ Indeed, it is for this reason that LCP requirements for permanent residency were changed to 24 months of live-in work within a period of *three* rather than two years. It is therefore useful to calculate the estimated retention rates (ERR) over time, or, the ability of the program to retain migrant live-in caregivers as permanent residents by year, for the time period in question. In the table below is an estimation of the dynamics caused by discrepancies between official expectations underlying the LCP design, and the lived reality of workers having to change employers at least once prior to being able to fulfill the 24 month live-in requirement. What must be underlined is that each time workers change employers, they are obliged under the LCP to obtain a new temporary work permit and restart the 24 month clock of live-in work.

⁷ Due to privacy laws, it is impossible to match initial entry figures with those of permanent residents by individual applicant. The retention rates calculated here must therefore be taken as estimate. Please refer to the Appendix (pp. 23, 24) for the calculations and rationale underlying these estimated rates.

⁸ For a government-funded study on this subject, see Louise Langevin and Marie-Claire Belleau. 2000. **Trafficking in Women in Canada: A Critical Analysis of the Legal Framework Governing Immigrant Live-in Caregivers and Mail-Order Brides**. Ottawa: Status of Women Canada. For an academic treatment of the subject, see Daiva Stasiulis and A. Bakan. 2003. **Negotiating Citizenship – Migrant women in Canada and the global system**. Toronto: University of Toronto Press.

TABLE 3. Estimated Retention Rates Over Time, Live-in Caregiver Program, 2003-2007

ERR 2003*	60%
ERR 2004**	40%
ERR 2005***	28%
* This ratio is based on the assumption that all live-in caregivers entering in 2003 attained permanent resident status in 2005, as per the official expectations underlying the LCP design. Given the weaknesses of this assumption, this ratio is an over-estimation.	** This ratio allows for the widely-known exception that not all live-in caregivers are able to fulfill the 24 month requirement within 2 years. *** This ratio allows for the possibility that some live-in caregivers complete the 24 month requirement over a period of three to four years.

Taking the 2003-2007 period as a sample, the decreasing ERRs over time indicate that each year, the LCP was less successful each in retaining temporary migrant workers as permanent residents. The ERR diminishes over time because though drawing-in more migrant caregivers due to high demand and the LCP promise of permanent residency, the number of permanent residencies granted remained fairly stable as workers could not fulfill Program requirements and were obliged to extend their temporary status for periods up to four years. All of this suggests that the LCP, and the model of temporary migration as path to permanent residency is a failure in terms of building labour supply in the long term. Though growing numbers of migrant workers were granted entry to Canada under the LCP from 2003 to 2007, the estimated retention rate of the Program fell as low as 28 per cent, despite ongoing demand for labour in this occupational category.

Adding one more dimension to this illustration are the figures tracking the number of spouses and dependents of live-in caregivers attaining permanent residency. The figures are equally unimpressive, giving backing to the claim made by INTERCEDE and other live-in caregiver advocates that LCP workers face an average wait of three to five years – often extending to seven – for family reunification. (Arat-Koc: 2001, 31)

TABLE 4. Permanent Residency: Live-in Caregivers and their families

Year	Permanent Residency– Live-in Caregivers, principal applicants	Permanent Residency– Live-in Caregivers, spouses and dependents
2003	2,230	1,074
2004	2,496	1,796
2005	3,063	1,489
2006	3,547	3,348
2007	3,433	2,684

Source: Citizenship and Immigration Canada, RDM, Facts & Figures 2007.

This is caused primarily by delays in attaining permanent residency, compounded by the high cost of sponsorship. The Philippine Women's Center in Vancouver, and the Filipino Center in Toronto set the figure of sponsorship costs at \$7000 for a small family. Clearly these are savings which are very difficult to accumulate by workers earning minimum wage at best, and remitting monies back home to support the families they've left. (as cited by Howard: 2007)

Perhaps most harsh are the stories of live-in caregivers who are not reunited with their children due to the regulation that only children under the age of 19, or those enrolled in full-time education may join their mothers in Canada. In the words of one LCP worker:

There should be no limit in the age of children we can sponsor, because they are our children. Just because they are older does not mean we don't want to be together again. (as cited by Arat-Koc: 2001, 32)

All of this is of concern on at least two levels. Most workers choose to take-on the sacrifices involved in migrating under the LCP with the hope that after completing the 24 month requirement, they will be able to reunite with their children and other family members to begin building a better future in Canada. For those workers who actually manage to attain permanent residency, numerous problems develop as families attempt to reunite and settle into a new country after long years of separation. The 2003 death of Mao Jomar Lanot and February 2008 death of Deeward Ponte – teenage children of former live-in caregivers – are extreme examples of the consequences of separation, dislocation and marginalization. According to Geraldine Pratt, professor of geography at the University of British Columbia, children who join their mothers in Vancouver after five years or more have the highest school dropout rates in the city. (Pratt: 2007)

On a national level, given the declining birth rate and projections that by 2012, immigration is to account for net labour force growth in Canada, it would benefit our collective future to welcome internationally trained workers and their family members, assuring them full rights protection and settlement support upon entry such that these working families develop a sense of belonging and in turn, live healthy lives in addition to making the best possible contributions to Canadian society.

C. Absence of monitoring, enforcement, and the right to unionize: Explaining low retention

A Human Rights Watch report released in November 2007, "*Exported and Exposed*", traces abuses faced by

migrant Sri Lankan domestic workers in Saudi Arabia, Kuwait, Lebanon, and the United Arab Emirates. Chapter IV focuses on abuses faced at work within these countries. Abuses are detailed in the following categories:

- unpaid and underpaid wages
- wage exploitation
- physical and psychological abuse
- heavy workload and excessively long work hours without rest
- food deprivation and inadequate living conditions
- confiscation of passports and restricted communications

The work and life experiences of live-in caregivers in Canada come remarkably close to those documented by Human Rights Watch. The worker testimonies below provide examples of each category of abuse listed above. Live-in caregivers facing intolerable abuse in Canada must generally find new employers, apply and wait for new work permits, and in most cases, begin again to accumulate the 24 months of live-in work required to apply for permanent residency. The lack of mechanisms to monitor employers and assure their compliance with Canadian laws, the absence of contract enforcement, and lack of the right to unionize explain the low retention rate of live-in caregivers as permanent residents in Canada.

The experiences detailed below relate both to employers and recruitment agencies, neither of which are subject to monitoring and rigorous regulation by provincial or federal governments. The one exception to this is the Province of Manitoba, which in June 2008 passed the *Worker Recruitment and Protection Act*. Though quite strong on the regulation of recruitment agencies, Article 16(2) of the Act reinforces the power of employers in allowing them to sue temporary migrant workers for recovery of recruitment costs if workers are “disobedient, dishonest”, or “willfully neglect duties”. The latter was likely the compromise required to prevent employers from blocking the passing of the legislation, for which the Manitoba government – in contrast to the federal government in this area – carried-out an extensive public consultation process. Article 16(2) arguably diminishes in large part the protection afforded to migrant workers through other sections of the legislation.

Contract Violation and Excessive Workload

The story of April tells of contract violation and excessive workload, both of which are ostensibly contrary to the Employment Standards Act in British Columbia and guidelines of the LCP. Where workers are fortunate enough to

make contact with live-in caregiver advocacy groups – most of which are not funded by government for the services they provide – workers may be able to navigate making claims of employment standards violations to appropriate arms of provincial governments. As advocates of unionized and non-unionized workers in Canada can attest however, due to severely weakened employment standards legislation in several provinces, making a claim does not usually result in adequate compensation or improved working conditions.⁹

She told me that I should start working from the hour the children wake up. (Her employer, who works as a nurse, leaves the home at 6.00 a.m. on some mornings of what is a rotating and complicated weekly shift. Since her child wakes up at 8:00 a.m., she tells April to start counting her working hours from 8.00am, even though she is clearly responsible for the child from 6.00 a.m. to 8.00 a.m. April then works until 8.00 p.m., when her employer returns from work. An instance of this causing April real inconvenience and expense, is when she has had a day off the previous day, and slept over at a friend's house or the Philippine Women Center. In this instance, she must get up early and take a cab, at the cost of \$35 in order to be at her employer's home by 6.00 a.m.)...Is it right to consider it an 'off day' when the children aren't there? That's what my employer does, even if I'm in the house because I'm doing laundry. She wants to consider that an 'off day', so that it will be considered as exchange for my extra working hours...She's so ungrateful. She'll go to work on holidays – when her work falls on a statutory holiday – from 8.00 a.m. to 8.00 p.m. for two days, and then the next (third) day from 5:30 p.m. until 8:00 a.m...She arrives home at 8.00 a.m. and sleeps until 2.00 or 2.30 p.m. I work in the morning, but then I stop for two hours (mid day) and work again from 5.30 p.m. until the child goes to sleep (after 10:30). Even if I am sleeping, I'm still at work, but she says that's my off time. But you're still responsible during those hours! (When April called the Employment office, she was told that this was a violation of the Employment Standards Act. As long as the nanny is in the house alone, she is working. However, she has yet to convince her employer.)

(Pratt: 1999, 3)

Sexual and Physical Violence

The story accounted below speaks for itself. Given that around 60 per cent of sexual violence in Canada occurs

⁹ On the implications of reformed labour standards for non-unionized workers in Ontario, refer to **Working on the Edge**, a report released by the Workers Action Center in Toronto. For an analysis of reformed labour standards in British Columbia, see **Workplace Rights for Immigrants in BC**, by Habiba Zanan, Cecilia Diocson, and Rebecca Scott. Canadian Center for Policy Alternatives, BC Office, December 2007.

within the domestic sphere,¹⁰ it is appalling that the LCP does not include measures to assist live-in caregivers in danger of sexual violence.

A caregiver from Peru suffered one year of abuse in the hands of an employer who was also abusive to his own wife and children. He would walk unannounced into her room and wake her up by pulling away her blanket. She was not given sufficient food. She was not allowed to go out, not even to church. She was physically assaulted when she asked for her time off. When it became obvious she was going to leave, the employer called the police on her, accusing her of theft. The caregiver made an ESB (Employment Standards Branch) claim for \$8000 for unpaid wages upon leaving, which was settled for \$6800. While she got partial financial compensation, the worker had suffered such emotional strain during this employment that she had to be referred to an assaulted women's support group to heal (interview with Consuelo Rubio, as cited by Arat-Koc: 2001, 56)

No right to unionize

Margarita's experience near Toronto sheds light on, among other things, the absence of the right to organize and in turn, to collective bargaining. In most provinces, including Ontario – where the largest number of migrant live-in caregivers are employed – live-in caregivers do not have the right to unionize because provincial law does not recognize the domestic sphere as a workplace. In British Columbia, the second largest destination of LCP workers, under the reformed BC *Employment Standards Act*, live-in caregivers would most likely be considered “contractors”, another obstacle to unionization. The fact that both federal and provincial governments – with the exception of Quebec – do not keep and/or share a registry of contact information of all live-in caregivers, is another major obstacle to organizing workers. Migrant live-in caregivers thus have only their own personal strength, and where fortunate, the support of community and advocacy groups, upon which to rely while facing abusive working relationships with Canadian employers.

Margarita, who came as a caregiver in a small town near Toronto, was employed by a “respectable” professional couple. All her important documents (passport, employment authorization, social insurance card, OHIP card) were held by the employer. She was never given or shown her work contract, and did

¹⁰ A fact sheet of the Canadian Federation for Sexual Health, entitled “Sexual Violence”, states the following:

In a snapshot taken on a single day in October 2003, 373 agencies servicing victims of crime in Canada reported serving 4,358 clients, of whom nearly 30% were victims of sexual assault.¹⁴ Of the 1,300 victims of sexual assault, 16% had been victimized by a spouse, ex-spouse or intimate partner, 45% by other family members and 39% by others, including friends, acquaintances and strangers. Accessed on the worldwide web, March 2008, at: <http://www.cfish.ca/ppfc/media/Chapter%207%20Sexual%20Health%20in%20Canada%20Baseline%202007%20FINAL.pdf>

not have a knowledge of legal working hours or days off. She continuously did overtime work and had no days off during the three months she stayed with these employers.

Margarita was not allowed to talk with anyone who lived in Canada or to make any phone calls. Her employers hid the fact that she lived and worked in their home. They did not allow her to go outside the house at any time nor give her permission to open the door if anyone came to the house. Margarita's salary which was below minimum wage was paid month in cash with no pay stubs. Totally isolated from the rest of the world, Margarita was finally able to write a letter to an immigrant from her country of origin who lived in Toronto. This person subsequently contacted INTERCEDE. An INTERCEDE counselor called the employer's home but, instead of being allowed to speak to Margarita, the counselor was bombarded with questions by the suspicious employer who demanded to know the reason for the call and how their phone number was obtained. Margarita was finally rescued by people working in an immigrant support center of the town who were able to arrange an appointed time with Margarita to be at the door so they could escort her away. Margarita later pursued an Employment Standards claim to recover unpaid wages, but could claim no damages for the trauma of the imprisonment she suffered. (Margarita, 1993 Case Files, as cited by Arat-Koc: 2001, 55)

Rights Abuse and the Link to Delayed Permanent Residency

Experiences of migrant workers with recruitment (also known as placement) agencies are increasingly being raised in the popular media today. The following story of Tita is a common one, involving some of the complexities discussed in previous examples, as well as the typical experience of illegal employment contracts drawn-up by recruitment agencies. The effect of recruitment agency abuse combined with employer abuse on the attainment of permanent residency are also made clear here:

Tita, a caregiver from Thailand, signed an offer of employment, when she was still in Thailand, for \$300 a month salary. The offer of employment also stated "insubordination and rude behaviour" would result in immediate termination and repatriation to Thailand. During her first year, \$100 a month was also deducted by the employer for Tita's salary to send her back to Thailand if/when needed. Although the contract was illegal – as job contracts cannot offer less than the minimum set by Employment Standards – isolated and uninformed, Tita had no way of knowing this at the beginning, and was intimidated with the "repatriation" clause even after she realized how small her salary was. She worked for two years with this employer

and then left. Her application for permanent residence was delayed significantly as this employer refused to provide records of employment, and Tita could not otherwise prove 24 months of live-in work (Tita, 1994 Case Files, as cited by Arat-Koc: 2001, 56)

Within the context of weak provincial labour standards and little to no monitoring of recruitment agencies by governments in Canada or elsewhere, the above cases elaborate on the work and life experiences of migrant workers entering Canada under the LCP. Given the array of legislative and regulatory inadequacies at both the federal and provincial levels, it follows that the LCP is unsuccessful in retaining migrant live-in caregivers as permanent residents in Canada. Judging from the experience of the LCP, the model of temporary migration as path to permanent residency – now being adopted as the basis for immigration policy – does not fit well with the future needs or recent history of Canada, a thinly-populated country built on permanent migration and family reunification.

Conclusion

This paper examines the Live-in Caregiver Program in Canada, drawing-out its relevance for the sweeping changes brought to immigration policy in Canada. Connections are drawn between Canada's need to import live-in caregivers, the undervaluing of caring labour in Canadian society, the weakness of the LCP in retaining migrant workers as permanent residents (including family reunification), and the state sanctioned power imbalance between employers and temporary migrant live-in caregivers.

What happens to LCP workers not retained as permanent residents? Many re-enter the LCP, forced to prolong their tenure as indentured workers with precarious legal status. Others face deportation, with no right to an independent appeal process. Some surely remain in Canada as undocumented workers, and yet others likely leave Canada permanently after a not so welcoming stay.

For Canadian society as a whole, these findings are distressing given declining birth rates, an ageing population, and the reorientation of the Canadian immigration system. Like the LCP, Canada's newest immigration program, the Canada Experience Class is based on temporary migration as the path to permanent settlement of workers and their families in Canada, granting an inordinate amount of power to employers. Combined with the continually expanding Temporary Foreign Worker Program and legislative changes allowing for selective processing of permanent residency applications – the building of citizenship and the labour force in Canada is clearly shifting from political

commitment to permanent residency, human and workers' rights, and social inclusion, to employer-driven importation of labour. This new policy direction does not bode well for the long terms needs of the Canadian labour market. Yet more crucial, this approach runs counter to the goals of pluralism and people-oriented development – goals proposed by some as the only solution to intensifying inequality in Canada and around the world. The pressing question for all residents of Canada is: do we want a society striving for pluralism and people-oriented development or, a conflicted society like the USA, increasingly dependent on the use of migrant workers coupled with intensifying xenophobia.

Appendix: Calculations and Rationale of Estimated Retention Rates of the LCP, 2003-2007

RAW DATA

Year	Initial Entry– Live-in Caregivers	Permanent Residency– Live-in Caregivers, principal applicants	Permanent Residency– Live-in Caregivers, spouses and dependents
2003	5,110	2,230	1,074
2004	6,741	2,496	1,796
2005	7,221	3,063	1,489
2006	9,387	3,547	3,348
2007	13,840	3,433	2,684

Source: Citizenship and Immigration Canada, RDM, Facts & Figures 2007.

CALCULATIONS

1. **Overall Estimated Retention Rate (simple ratio, 2003-2007):**

$$= \frac{\text{total permanent residency, principal applicants, 2005-2007}}{\text{total initial entries, 2003-2005}}$$

$$= \frac{10,043}{19,072}$$

$$= 52.7\%$$

2. **Estimated Retention Rate, 2003** (assuming all entrants in 2003 attained permanent residency in 2005, as per 24 month requirement/Live-in Caregiver Program design):

$$= \frac{\text{total permanent residency, principal applicants, 2005}}{\text{initial entries, 2003}}$$

$$= \frac{3,063}{5,110}$$

$$= 60\%$$

3. **Estimate of non-retained, 2003** (allowing for known exception that all live-in caregivers are not able to complete 24 month requirement within 24 months):

$$= \text{initial entries, 2003} - \text{total permanent residency, principal applicants, 2005}$$

$$= 5,110 - 3,063$$

$$= 2,047$$

4. Estimate of eligible pool for permanent residency, 2006:

= non-retained, 2003 + initial entries, 2004

$$= 2,047 + 6,741$$

$$= 8,788$$

5. Estimated Retention Rate, 2004:

= $\frac{\text{total permanent residency, principal applicants, 2006}}{\text{estimate of eligible pool for permanent residency, 2006}}$

$$= \frac{3,547}{8,788}$$

$$= 40\%$$

6. Estimate of eligible pool for permanent residency, 2007:

= initial entries, 2003 + initial entries, 2004 – permanent residency, principal applicants, 2005 – permanent residency, principal applicants, 2006 + initial entries, 2005

$$= 5,110 + 6,741 - 3,063 - 3,547 + 7,221$$

$$= 12,462$$

7. Estimated Retention Rate, 2005:

= $\frac{\text{total permanent residency, principal applicants, 2007}}{\text{estimate of eligible pool for permanent residency, 2007}}$

$$= \frac{3,433}{12,462}$$

$$= 28\%$$

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