

Permanent Status on Landing: Real reform for Caregivers

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April 6, 2018

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I. Setting the Context: This is the Time for Real Reform

For more than a century, Canada has relied on migrant women to provide essential care for Canadian families. In the early 20th century, British and Western European women were specifically recruited to provide care with the expectation that these women would settle permanently in Canada and become “mothers of the nation.” As British subjects, these women arrived with permanent status in Canada. But since World War II, migrant caregivers have been recruited overwhelmingly from the Global South, arriving with only temporary migrant status. Beginning in 1955, caregivers arrived with temporary status under the Caribbean Domestic Scheme at a time when permanent immigration was closed for most racialized people. Under the Non-Immigrant Employment Authorization Schemes beginning in 1973, caregivers were only allowed into the country with temporary status. They had no access to permanent residence and could only remain in Canada as long as they worked as caregivers with temporary migration status.

After a concerted period of activism in the 1970s led by migrant caregivers, caregivers won the right to apply for permanent residency after completing two years of live-in employment under the Foreign Domestic Movement (FDM), which later became the Live-in Caregiver Program (LCP). As set out below, further program changes were made in 2014 to create the current Caregiver Program (CP). Migrant caregivers continue to actively call for more comprehensive reforms to the program.

A century of experience has demonstrated that caregiving labour is an ongoing permanent need in the economy. More than 60 years of caregivers’ experience with temporary labour migration to Canada has demonstrated consistent, well-documented, widespread problems of exploitation and abuse by employers and recruiters. Repeated reviews by Parliamentary Committees (most recently the 2016 HUMA Committee hearings), as well as academic and community-based research have demonstrated that this exploitation is rooted in the vulnerability that is created by the terms of Canada’s temporary labour migration program itself.

In addition, caregivers over the past four decades of the program have suffered from the “two-step” immigration system that requires them to finish their employment contracts before being allowed to apply for permanent residency. This has led to profoundly damaging and lasting impacts on the physical and mental health of caregivers and their families. Years of family separation can cause intergenerational conflicts between caregivers and their children as well as family breakdown.

The time has come to make real, meaningful reforms that ensure decent work and security in this core area of the labour market. Caregivers are united in demanding:

1. A comprehensive and transparent consultation process to reform the Caregiver Program.
2. A new Federal Workers Program - Caregiver Stream that provides caregivers with permanent status on entry and family unity.
3. Reforms to protect caregivers who are already in Canada and in the backlog to ensure that no one is left behind.

These reforms will involve allowing caregivers to come to Canada with their families; eliminating the backlog in caregivers’ permanent residency applications; removing the ‘excessive demand’ provision in the *Immigration and Refugee Protection Act* (IRPA); regularizing the status of caregivers who have become undocumented; developing immigration criteria that are consistent with what is needed to do the job; and putting an end to the second medical and to excessive educational and language requirements re-introduced in 2014. We particularly urge the creation of an open work permit program as an interim measure.

II. 2014 Changes to create the current Caregiver Program

Under the current CP, the mandatory live-in requirement has been eliminated and two new caregiver streams to apply for permanent residency were created -- the High-Medical Needs Stream and the Childcare Stream. While we strongly support the removal of the mandatory live-in requirement, the change from the LCP to the CP has impeded migrant caregivers' ability to apply for permanent residency while increasing worker precarity.

First, because the CP was created under Ministerial Instructions, there is a mandatory cap of only 2,750 caregivers who can apply for permanent residency each year under either the High Medical Needs Stream or the Childcare Stream. There is no cap on the number of caregivers who can work in the country under the Temporary Foreign Worker Program (the program by which caregivers can come into Canada after the LCP was eliminated). The number of migrant caregivers working in Canada far exceeds the annual permanent residence cap under the CP, which means that individual caregivers do not know in advance whether they will have an opportunity or not to apply for permanent residence.

Second, new language requirements were imposed.

- Under the High-Medical Needs Stream, caregivers have to pass Canadian Language Benchmark (CLB) 5 or 7, depending on the job in which the applicant has worked in order to fulfill the employment criteria. Caregivers in this stream, classified under NOC 3012 or NOC 3233, may also be required to prove that they have the appropriate license to practice in Canada.
- Under the Childcare Stream, caregivers have to pass CLB 5.

Third, the CP requires that caregivers complete the equivalent of one year of Canadian post-secondary education. When caregivers' credentials acquired outside Canada are not recognized, caregivers are required to enrol in post-secondary education in Canada. This enrolment means that caregivers must pay foreign student fees. Also, the work they do while enrolled in post-secondary studies is not counted towards their eligibility to apply for permanent residence. This requirement places many caregivers in an impossible situation.

Caregivers have found it difficult to acquire permanent residency under the CP due to the high benchmarks for qualification, the equivalent of Canadian post-secondary education 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.

III. The Future of Care in Canada: Proposal for a Federal Caregiver Program

Caregiving work is without a doubt a core and growing part of Canada's labour market and social infrastructure. Without care work, the economy doesn't work. 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 caregiving labour must be the foundation for that care strategy.

Migrant caregivers 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. Caregivers must also be recognized as whole human and social beings who contribute to our communities beyond their labour. Family unity is a guiding principle in Canada’s permanent immigration system. Caregivers should not be forced to endure years of family separation before they can be reunited with their own families in Canada. To provide care to other people’s families, while being denied access to their own, imposes a cruel and damaging hardship on caregivers and their families. Caregivers should be able to arrive in Canada with permanent resident status, remaining united with their families on entry.

A. Elements of the proposed Federal Caregiver Program (FWPC)

To replace the Caregiver Program “pilot project”, we propose the creation of a Federal Workers Program - Caregiver Stream (FWPC) 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 FWPC has been designed to reflect the actual skills needed to deliver the care work that migrant caregivers are currently providing.

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

New Federal Workers Program - Caregiver (FWPC) Stream proposed through modifications to existing Express Entry System

Criteria	Proposed details	Reasoning
<p>Modifying the Common Minimum requirements</p>	<p>Common minimum requirements are education, work experience, and language ability. The FWPC 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 FWPC 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>

<p>Modifying Education and Work Experience</p>	<p>Foreign nationals with high school education and either work experience or training in Care Work should be able to apply for the FWPC 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>FWPC 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 LMIAs.</p>	<p>The FWPC 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>
<p>Modifying Language Ability</p>	<p>Foreign nationals applying in the FWPC stream with a score of CLB Level 3 should be able to qualify under the modified Express Entry Program. 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 caregivers. Migrant caregivers 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>
<p>Modifying Age</p>	<p>The age requirement should be eliminated.</p>	<p>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.</p>
<p>Modifying the Job Bank</p>	<p>Once FWPC applicants have created their profiles in the Express Entry system, they should be able to seek employment as caregivers in Canada via a national job bank tied to the development of Canada’s care strategy.</p>	<p>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.</p>
<p>Potential employers</p>	<p>Potential employers seeking caregivers can use the job bank to find caregiver employees.</p> <p>Employers must pay processing fees (equivalent to current LMIA fees) when they register for the job bank, and when they hire a migrant worker.</p>	<p>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.</p> <p>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</p>

		and elder care strategy that recognizes the labour shortage in this sector on a default or ongoing basis.
Modifying the Labour market impact assessment	The FWPC would eliminate the need for individual LMIA's. 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 caregivers who are needed in the labour market. This system-wide analysis would remove the need for LMIA's on an individual basis for employers in the FWPC 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 caregiver employees.
Modifying the Points Calculation	Once workers in the FWPC 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 FWPC stream. Such a system automatically favors higher levels of education, language ability and experience. Such a system will not work for the caregiver program or for the development of a national care strategy.
Permanent residency and family unity	Primary applicants under the FWPC 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 caregivers and their families. Caregivers and their families will integrate and settle into the country more easily when they arrive together.

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

B. Proposed Transitional Provisions under Federal Caregiver Program

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

Permanent residency

(i) Caregivers 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.

(ii) Remove the caps that allow only 2,750 permanent resident applications each year in each caregiving 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 caregivers 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.

(iii) 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 caregivers 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 caregivers to accumulate all their work experience within the same category has resulted in many caregivers being unwilling to leave abusive labour situations or become undocumented. The separate streams should be eliminated and caregivers who have been forced into undocumented work should be regularized.

(iv) Remove the requirement of 1 year Canadian post-secondary education

Caregivers must now possess one year of post-secondary accreditation. To do this, caregivers 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 caregiver 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 caregivers will be unable to apply for permanent residency. Under the FDM, caregivers 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 caregivers to upgrade skills while also performing full-time care work.

(v) No second medical when applying for permanent residency

Since the CP was introduced in November 2014, caregivers 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.

(vi) 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 caregivers were denied permanent residency under the "excessive demand" regime. This impact on caregivers 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.

(vii) Clear the Permanent Residency backlog

Caregivers applying for permanent resident status in Canada face an average of 6 to 8 years of family separation before being reunited with their families. This includes the required 24 months of employment and the published 49 months average processing time towards permanent residency. Caregivers who worked in Taiwan, Hong Kong, the Middle East or elsewhere before coming to Canada face even longer periods of family separation. Many caregivers are deeply disappointed with the current processing time and the inefficient handling of their applications. Years of waiting creates other problems, including: repeated, expensive medical examinations of family members; caregivers' inability to access information about their pending files; the refusal of applications based on medical inadmissibility of family members; the death of caregivers after their completion of the program conditions but before completion of their childrens' 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.

(viii) Remove the English language test prior to Permanent Residency

As noted, in 2014, the new pathways mandated that caregivers 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 FWPC accurately reflects the level required to perform the work. As caregivers 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 caregivers with open work and study permits of their own. As identified above, the principle of family unity is a key part of Canada's permanent immigration system. The hardships caused by family separation for caregivers due to the temporary migration program are well-documented. Family unity promotes economic and social success and cohesion.

Open Work Permits

While the FWPC is being developed, open work permits should be provided to Caregivers. 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, abuse that tied permits generate.

If open work permits are not possible, we believe that sectoral permits that allow caregivers 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 caregivers 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 caregivers 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 caregivers 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 caregivers 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 LMIA's required to hire caregivers were rejected by the Department of 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 their 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 licence 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 caregiver 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.

IV. Need for Comprehensive & Transparent Consultation with Caregivers

The present consultation process is rushed. It has also been conducted only in selected sites with limited preparation time. To ensure that the revisions to the program are fair, effective and provide for decent work and decent lives, it is necessary to have a comprehensive and transparent consultation process.

In consultation with caregivers and their representative organizations, Immigration Refugees and Citizenship Canada (IRCC) should create a formal, transparent and public process with a pre-announced schedule that follows these steps:

1. Meeting with caregivers and their support organizations across the country in open consultations to listen and share. The dates, times and locations of these meetings should be announced with enough notice and at convenient times for caregivers to participate (weekends). The few meetings that have taken place have been closed, by invitation, and organized at short notice. The current process is not adequate or appropriate consultation.
2. An online survey to collect policy feedback from caregivers and their representative organizations. The current deadline of April 6th, which was announced on March 20th, is not adequate time for caregivers and advocates to participate.
3. IRCC should summarize this feedback, produce a draft regulation or legislation and seek input. A timeline for providing this draft proposal should be announced.
4. A second series of open hearings should then take place to solicit feedback on IRCC's proposals directly from caregivers and their support organizations.
5. A final policy should then be produced by IRCC – with sufficient notice given to caregivers – and be presented to Parliament for debate, discussion and adoption.

V. Conclusions

The Need for migrant labour in caregiving sector is not “temporary”

The caregiving sector of our economy is a permanent fixture: it is not one that can be mechanized or eliminated. It is a sector without which our society simply could not function. Similarly, the need for migrant labour is not temporary: the domestic worker or caregiver program has been around in one form or another since the late 1800s, showing that Canada has always needed migrant care labour.

If we stick to the status quo and only tweak the current pilot program, migrant caregivers will continue to labour in precarity: paying thousands of dollars in fees to come here, working on tied permits where they are not free to leave bad jobs, becoming physically, psychologically, and emotionally unwell due to the hardship of multiple years of family separation.

Permanent immigration is the norm in other areas of Canada's labour market. It is time to ensure that Canada's immigration system again reflects the fact that workers are needed at all levels of the labour market and that care work is a critical area of need now and a growing need in the future.