BEYOND TOKENISM: TRANSLATING CANADA'S COMMITMENT TO GENDER-BASED ANALYSIS + INTO THE DEVELOPMENT OF IMMIGRATION PROGRAMS AND PRACTICES THAT ARE RESPONSIVE TO THE NEEDS OF MARGINALIZED MIGRANT LIVE-IN CAREGIVERS

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The Live-In Caregiver Program (LCP) has offered an entry point to Canada to many migrant caregivers (mostly women). This article offers a critical review of the 2014 changes that the Canadian Federal Government brought to the Live-In Caregiver Program. Specifically, the focus is on the new program requirements relating to education and language, and the ongoing challenges migrant caregivers face to obtain permanent resident status and to achieve family reunification.

Le Programme des aides familiaux résidants (PAFR) a offert un point d'entrée au Canada à de nombreux soignants migrants (principalement des femmes). Cet article propose un examen critique des changements apportés en 2014 par le gouvernement fédéral canadien au Programme des aides familiaux résidants. Plus précisément, l'accent est mis sur les nouvelles exigences du programme en lien à l'éducation et à la langue, ainsi que sur les défis continus auxquels sont confrontés les aidants migrants pour obtenir le statut de résident permanent et compléter la réunification familiale.

The Government of Canada has always been vocal in its commitment to gender equality. In 1995, it adopted the use of Gender-based Analysis (GBA) in the development of its policies, programs and legislation across the federal government, including in Immigration, Refugee and Citizenship Canada (IRCC). The IRCC has been mandated under Section 94 of the 2002 Immigration and Refugee Protection Act (IRPA) to identify the gender-based impacts of IRPA through its Annual Report to Parliament on Immigration (Paddock, 2010). In accordance with this Act, one important question that needs to be asked is whether the government's commitment to the use of GBA as a tool has resulted in better immigration policies and practices that are responsive to the needs of disadvantaged groups under Canada's immigration policy. With the recently renewed commitment of the Canadian government to GBA+ and its recognition of the importance of how gender intersects with other identities such as race, ethnicity, age, sexual orientation and physical disability (Status of Women

Canada, 2017), IRCC must fulfill the legitimate expectation to come up with immigration reforms that are inclusive and reflective of the needs of marginalized community members, such as live-in caregiver migrant workers.

Canada needs to recognize the positive contribution that live-in caregivers have made for many years and who continue to provide service to Canadian families today. Their work is critical for the growth and efficient functioning of the Canadian economy. Their temporary status, however, makes their employment precarious, which compounds their vulnerability and marginalization. Caregivers look after Canada's aging parents and young children — in most cases leaving their own children back home in the care of relatives. The actual number of years of potential family separation for caregivers can be more than eight years, longer for those who worked in Taiwan, Hong Kong or in the Middle East before coming to Canada (Thorncliffe Neighbourhood Office, et al. 2016). Most of these workers are racialized women coming from developing countries who left because of chronic poverty and high unemployment (Migrant Workers' Alliance, et al. 2016). While the main source country for caregiver applications is the Philippines, caregivers also come from the Caribbean, South America and other parts of Asia (Santos, 2009). Live-in caregivers are only allowed to work for the employer specified on their work permit. They are low-wage earners who are also the bread winners for their families back home. Previously, live-in caregivers had to work for 24 months, and at the end of their contract could apply for permanent residency (PR). In 2014 the Live-in Caregiver Program (LCP) was replaced by the creation of the two New Caregiver Pathways: (1) Caring for Children Pathway; and (2) Caring for People with High Medical Needs Pathway (Citizenship and Immigration Canada, 2016a). Under this two-stream program caregivers will no longer have a guaranteed pathway to PR after working in Canada for two years. This new program also restricts the number of caregiver PR applications accepted to 2,750 under each stream for a total of 5,500 a year. There are also stricter rules on education and language requirements. Caregivers must pass a level 5 language test in English or French, or if the caregiver is a registered nurse or a psychiatric nurse he or she must pass a Level 7 language test (Black, 2014).

Many caregivers under the new program are not even aware of the language and education requirement changes. Many have long years of experience as nannies and domestic helpers in Hong Kong, Taiwan and other parts of Asia; but they will no longer qualify to enter Canada because they will not be able to meet the education and language eligibility requirements. Moreover, there is no guarantee that those who meet these tight requirements will be able to apply for PR because of the limited yearly quota of 5,500. Moreover, every time caregivers need to renew their work permit they will have to get a new Labour Market Impact Assessment (LMIA). Some employers are unwilling to apply and pay for a new LMIA, especially if the caregiver has only a few months before the completion of their 24 month contract. Another issue faced by thousands of live-in caregivers is the immigration backlog for their PR application. According to the immigration department, there are currently 29,000 foreign caregivers caught up in the PR application backlog, and they wait an average of 53 months to have their applications processed (Keung, July 2017). This is negatively impacting them and their families, with wait times for PR applications of up to 53 months. Many of these workers are frustrated with the current processing time and in some cases, the inefficient handling of their PR applications. The many years of delay of PR processing have caused prolonged family separation, stress and vulnerability to live-in caregivers as they wait increasingly longer periods to be reunited with their children and spouse. The long years of separation have serious psychological and physical impacts on these families. Many caregivers miss their children's entire childhood and so they become strangers to them. They thus face additional challenges and issues when reunited with their families. Live-in caregivers currently in Canada have to keep renewing their work permits to maintain their status while waiting for PR applications to be processed. Although the live-in requirement has been removed under the 2014 new Caregiver Program, many caregivers still opt to stay in their employers' home because they cannot afford to pay rental costs on their very low wages. Although they are aware of their rights, they are not able to assert them because of fear of deportation and job loss. Unfortunately, there are unregistered immigration consultants who take advantage of the precarious immigration situation of live-in caregivers. Many live-in caregivers who are not familiar with the paper work involved in the renewal of their work permits have no choice but to avail of the paid services of these consultants. Often these consultants do not complete or fill up the immigration forms properly, and by the time IRCC returns the incorrect or incomplete work permit application forms existing work permits may have expired.

Many live-in caregivers are often isolated socially and geographically. As a consequence, many have limited access to, and lack of knowledge about navigating, free services, especially legal, settlement and health services. This is a service gap that has been identified among many live-in caregivers. However, those who are aware of the available services also face a number of challenges in accessing them. Free services are often located far away from their employer's home and/or organizations' operating hours are inconvenient. In addition, there is limited access to health coverage for expectant mothers who are waiting for the approval of the renewal of their work permits and/or their PR approval. Most of the caregivers who gave birth in Canada are indirectly being forced to bring their babies back to their home countries because they cannot afford child care services in Canada. Another gender related issue that needs to be raised are challenges faced by single mothers when their children become ineligible to be included in their PR application. Older children need to be continuously enrolled in and attend post-secondary education in

order to be sponsored by their parents. In most cases, single mothers with 3-4 children cannot support the high cost of education for their children back home. Covering medical costs is also challenging for caregivers, and Canadian immigration sponsorship applications may be rejected due to family members' health conditions.

FEELING LEFT OUT – CAN'T WAIT NO MORE!

We cannot progress towards gender equality unless our work is inclusive. Live-in caregivers are among the most vulnerable workers in Canada. IRCC's efforts to improve the Canadian immigration system by modernizing client service delivery, specifically speeding up the family reunification for Family Class immigration category, are very laudable. However, family reunification for live-in caregivers and refugees is separate from the Family Class. Live-in caregivers and refugees are marginalized and vulnerable groups. Canada should also prioritize their needs to be reunited with their families.

The immigration department has made progress in terms of clearing the immigration backlog of live-in caregivers, which is now 29,000, down from 70,000 cases. The department plans to eliminate the remaining backlog by October 2018. However, details of IRCC's Immigration Levels Plan showed that they will only be accepting 18,000 caregivers as new PRs for 2017(Citizenship and Immigration Canada, October 2016b). This is much lower than the 22,000 targets in 2016 (Citizenship and Immigration Canada, October 2016b; Puzic, 2016) and 26,000 in 2015 (Citizenship and Immigration Canada, 2014). The 18,000 target for 2017 included admissions in all three streams of the Caregiver Program: the previous Live-in Caregiver Program, and the new High Medical Needs and Caring for Children pathways (Citizenship and Immigration Canada, October 2016d). What will happen to the remaining 29,000 cases affected by the backlog who will not be included in the 2017 quota? They may need to wait again until 2018, and many have already waited for 7-8 years and have complied with all the documents required by the IRCC.

Many welcome the improvement to PR processing under the new pathways IRCC has created, but many are insisting that the government should prioritize the applications of those enrolled in the program before the 2014 policy changes. GBA principles entail the provision of fairness, and if the current government wants to adhere with its commitment to GBA, then IRCC should take affirmative action to address the backlog now and not make these vulnerable workers wait any longer. Caregivers and advocates also believe that despite the removal of the live-in requirement and the four-year limit on migrant workers' work permits, many live-in caregivers will still be vulnerable to abuse and exploitation because the temporary nature of the program remains the same. Despite the promise of faster processing of PR applications under the two new streams, advocacy groups find the removal of the humanitarian and compassionate appeals for caregivers' dependents as very problematic and discriminatory. Furthermore, if dependents are medically inadmissible, the caregiver will also be declared inadmissible for PR application.

RETHINKING GBA + AT IRCC: WHAT ELSE CAN THE GOVERNMENT DO TO PROTECT THESE VULNERABLE WORKERS?

The Ministerial instructions for the creation of the two new caregiver pathways will be expiring in November 2019. Considering the timing and focus given to GBA+ and intersectional approach, the IRCC needs to undertake a comprehensive review of the New Caregiver Program specifically to ensure that the cap and the education and language eligibility requirements are equitable and non-discriminatory, and to remove barriers for pathways to PR. The federal government should also consider the call by advocacy groups to provide PR status to all live-in caregivers and other temporary migrant workers and to allow them to enter Canada with their families. This will protect the live-in caregivers and migrant workers from being abused by their employers and allow them to speak up without risks of getting deported.

Canada's GBA+ policy presents new hopes not only for live-in caregivers affected by the immigration backlog but for those who will negatively be impacted under the New Caregiver Program and for those under the other streams of Temporary Foreign Worker Program (TFWP). The Federal Government should continue to play a proactive role in protecting the rights of these vulnerable workers by considering the following recommendations:

Addressing the immigration backlog:

- Issuance of a special order to expedite the processing of PR applications and immediately eliminate immigration backlogs involving live–in caregivers and refugees

- Reduce the lengthy processing time of work permit renewals from 114 days to 10 days

- Review section 38 of the Immigration and Refugee Protection Act for discriminatory content against persons with disabilities (Thorncliffe Neighbourhood Office, 2016)

- Require only one medical exam for their spouses and children

- Provide special considerations of, and not penalize through outright refusal, applications from live-in caregivers, refugees and other foreign workers pre-

pared by immigration consultants. IRCC should not blame and punish the victims, but ensure that immigration consultants who abuse these workers are prosecuted

• In response to the 'Death of the Sponsor' resolution of the Canadian Council of Refugees (CCR) http://ccrweb.ca/en/res/death-sponsor, complete PR application processing considering the best interests of the child and other humanitarian and compassionate considerations; (Thorncliffe Neighbourhood Office, 2016)

• Repeal Regulation 117(9) (d) of Immigration and Refugee Protection Regulations, deal with material misrepresentations in Family Class sponsorships as they arise in s. 40 of the IRPA

Fulfilling international obligations:

• Rethink its decision not to ratify the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families

• Acknowledge and ratify international human rights frameworks, laws and instruments that offer protection for women migrants (UN and ILO) and instruments/conventions with women specific frameworks such as CEDAW, UN Resolution 1325

• Expedite the consideration for the adoption of International Labour Organization Convention No. 189 (2011) concerning Decent Work for Domestic Workers

Reaching out to isolated workers and the development of alternative service delivery model:

• Increase efforts to inform live-in caregivers and migrant workers about their legal rights

• Provide support for organizations working with live-in caregivers and migrant workers

• Develop creative outreach strategies to engage hard to reach workers

• Support the development of alternative approaches to service delivery such as evening and weekend hours, itinerant services and offering various online and phone services

• Proactive support to reunited families

Improving access to services:

• Provide live-in caregivers and migrant workers across Canada access to settlement and language services

• Ensure that all persons have access to healthcare, regardless of immigration status

Protecting live-in caregivers and other migrant workers:

• Treat the home of the employer as any other workspace

• Undertake a comprehensive review of the New Caregiver Program specifically to ensure that the cap, the education and language eligibility requirements are equitable and non-discriminatory and remove the barriers for pathways to PR

• Transition all closed work permits to OPEN work permits

• Give caregivers and other migrant workers landed (PR) status upon arrival.

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