

Live-in Caregivers and Intimidation in the Workplace

Submitted by PINAY

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Abstract

Canada's Live in Caregiver program (LCP) serves to create an environment in which women are uniquely vulnerable to intimidation and abuse. In order to appreciate the full extent of their vulnerability, it is first necessary to understand the background and structure of the live in caregiver program itself. The program is currently structured such that women are left in a situation where their individual employers have enormous discretionary power over the future citizenship of the caregiver and her family; and where the caregiver usually lives in their employers' house and is isolated from the broader community. This situation leads to abuse of many forms including but not limited to financial, psychological, and sexual abuse. The structure of the Live in Caregiver program must change in order to make these women less vulnerable to exploitation, bullying and intimidation.

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1.0 Introduction

Economic globalization has produced an international workforce wherein many groups, and especially women, experience systemic marginalization in their migration for employment opportunities beyond the borders of their country of origin.¹ In Canada, this is true for those working under the federal government's Live-in Caregiver Program (LCP) which was put in place in 1992² and has raised a vast number of immigration law, labour law, human rights law, and public policy issues.³

It is not widely known that Canada annually admits almost as many temporary foreign workers as permanent immigrants through a number of different programs, of which the LCP is a recognized example.⁴ A live-in caregiver (LIC) is “a person who provides, without supervision, in a private household in Canada in which the person resides, childcare, senior home support care, or care of the disabled. The definition excludes people who do only housework.”⁵ The program is a gateway for women to gain entry to Canada with the hope of immigrating permanently, but in order to do so the caregiver must complete “a total of either 24 months or 3900 hours of authorized full-time employment to be eligible to apply for permanent residence” in four years.⁶ During this period her work permit ties her to one employer in whose home she must live.⁷ Canadian immigration law recognizes only two categories of migrant, temporary resident (the visitor) and permanent resident (the immigrant), so the woman within the LCP become “paradoxically” long-term temporary residents.⁸

The intersectionality of class, race, and gender create a complex interlocking experience for individual woman that has implications for public policy.⁹ Generally caregivers are “excluded from Canadian labor law and marginalized from public policies and practices, such as unemployment insurance, worker’s compensation, disability and maternity benefits, pension plans, and the advocacy services of an elected Member of Parliament or a labor union,”¹⁰ a status which has led many who study the program to refer to it as “inherently exploitative”.^{11,12} Moreover the program generates working and living conditions which facilitate vulnerability to abuse and intimidation by the caregiver's employer and recruitment agencies. The conditions which give rise to such abuse are many and include the caregivers' temporary status, the fact that they have work permits which are both work-specific and tied to individual employers, the 24-month qualifying work period, the live-in requirement, and others.¹³

PINAY is a Filipino women's organization in Quebec founded in 1991, which promotes the “basic rights and welfare of the Filipino migrant workers in Canada.”¹⁴

2.0 Canada's demand for domestic workers

2.1 Globalization

The LCP is part of a growing international exchange of domestic workers,¹⁵ but Canada has been importing domestic workers since the 19th century.¹⁶ What these immigrant labour schemes had in common with the current program was that they created a source of “cheap, vulnerable, and socially excluded disposable female workers”¹⁷ to respond to the needs of Canadian households. It has been measured that 84 percent of LCP migrants are women and of those women 80 percent are from the Philippines.¹⁸

The restructuring of the global economy has changed the relative positions of certain countries drastically because of the growing wealth inequalities of the sending and receiving countries.¹⁹ This process is the context behind the marginalization of migrant women, but also explains the impact of economic hardship in sending countries which contributes to the desire to migrate.

2.2 Domestic labour market

Not only are there supply-side reasons for the large numbers of transnational migration in foreign domestic work, there is also demand in the receiving country. The LCP exists because the demand for domestic work in Canada would be “impossible to fill without foreign recruitment, even during period of high unemployment.”²⁰ The program allows an advanced capitalist country like Canada to gain access to labour completely unfettered by unionization.²¹

The labour force participation of Canadian women rapidly increased beginning in the 1970s²² which reflected a trend in other advanced capitalist countries. Along with this came the increasing dependance of families upon two incomes, creating “what has been described as the crisis in the domestic sphere”.²³ The work of raising children, without adequate public options,²⁴ became a private activity and increased the demand for in-home child care.²⁵ Federal and provincial policies which have reduced the number of affordable day care options has only “exacerbate[d] a demand for care workers, while economic inequity fuels women from less wealthy countries to accept global employment options”.²⁶

As a result, a number of middle and upper class families have sought out migrant women to meet their need for domestic and child-rearing labour needs,²⁷ deflecting the demand for public day care options by their ability to afford such care in private. This process results in “allowing Canadian women (mostly white) [to] access relatively high-paying, high-status professions through employing affordable live-in caregivers (mostly racialized)”.²⁸ Not only is this child-care and domestic work source private, but because of the live-in requirement the employer gets a deduction from the caregiver's wages, and is in practice a nearly on-call service²⁹ which renders the caregiver vulnerable to exploitation and abuse.

3.0 Canada's caregiver supply

3.1 Conditions in the sending countries

In order to fully understand the vulnerability of live in caregivers, it is critical to appreciate just how much they sacrifice for their chance at immigrating to Canada, and the reasons for which they do so. There are strong pushes which account for their willingness to give up “personal careers, family support, and the familiarity of home for the benefit of their family” for years at a time.³⁰

The effects of globalization on the economy of the Philippines is a primary motivation for this outflow of women migrants. The 1980s economic crisis “left the country indebted to Western banks and subject to the stringent requirements of the International Monetary Fund” which has resulted in much economic hardship for its citizens.³¹ The current program continues a history in Canada of importing domestic labour, and explains what “drives women from disadvantaged countries to migrate for the purpose of supporting their families and to accept conditions that Canadian citizens would not”.³² In order to finance its debt, the government of the Philippines has increasingly relied on the exportation of female domestic workers, and has encouraged such migration by setting up “schooling and recruitment agencies, and remittances [have become] a crucial part of building their nation's economy”,³³ succeeding in bringing in \$2 billion US a year.³⁴

3.2 Individual factors

There are many factors driving the emigration of these women which apply on an even more personal level. The LCP program attracts these migrant women because it is often one of the only options available to them without large amounts of capital and technical skills recognized by the Canadian government. Similarly the type of work, with its live-in

requirement, isolated working conditions, and low pay means that Canadian-born women are often not willing to do it. An employee in administration of a British Columbian office explained in May 1994 that “The reason that we have to bring in from abroad is that the occupation is *so* poorly paid and no one wants to do it. . . .The program is set up for the Canadian employer, to allow them to get on with their lives and get out to work.”³⁵

The transnational family structure is essential for understanding why these women are often willing to tolerate the working conditions of the program. As many as 83% of the women³⁶ send a significant portion of their earnings home to family during their employment. A 1994 study among Vancouver live-in caregivers said that such support makes up on average 33.4% of all gross earnings.³⁷ This monetary flow also aids the economy of the sending country, and the caregiver typically hopes to bring their family members once they have themselves become permanent residents.³⁸ All of this stems from the unequal global economic order within which the women find themselves, caught in an exchange “between rich countries and impoverished countries”.³⁹

The outcome of such unequal relationships is the drive for emigration and “a new life” in the receiving country, but it must always be remembered that the source of such movement is not the freest choice but rather a result of “the conditions of underdevelopment within the Philippines and the Caribbean.”⁴⁰ The same drive is what also forces some of these women underground, because of the “growing pressure on women in certain Third World countries to support their families”.⁴¹ Such separation also adds to the vulnerability of these women by increasing the likelihood that they will suffer from one or a combination of separation anxiety, stress, depression and other emotional difficulties.⁴² These greater missions to provide for family and eventually emigrate serves to disrupt any free market mechanism of supply of domestic labour, and makes these women more willing to accept unnaturally low wages or abusive working conditions than would be tolerated under normal circumstances.⁴³

4.0 Factors of vulnerability and marginalization

4.1 Immigration law

The factors which contribute to the vulnerability of live-in caregivers to exploitation are varied, but greatly center around the legal issues of the live-in requirement, employment status, and possibility for eventual citizenship.⁴⁴ The first objective for these women almost always remains the completion of the program.⁴⁵

The legal limitations placed on the caregiver for participation in the social and public sphere of their receiving country interacts with the decline of funding for state-run social services in the recent decades, and accompanying “hostility to racialized ‘others’ to produce hierarchies of citizenship”.⁴⁶ Moreover, the legal framework of the LCP means that, because the employer can to renew or cancel their employment at any time, the whole possibility of eventual Canadian citizenship for the caregiver is in the employer’s hands.⁴⁷ The employer is thus left with an incredible amount of bargaining power over the caregiver.

This power is further exacerbated by the fact the caregiver is living in the employer’s house. If a caregiver is to leave their employer voluntarily on account of abuse, they face the loss of their salary, healthcare, and other social protections and are forced to find new employment and request a new work permit.⁴⁸ It is unsurprising, therefore, that “often, fearing possible reprisals, the women choose to stay with an otherwise unfit employer.”⁴⁹

After two years of “indentured employment”, the caregiver can apply for permanent resident status.⁵⁰ But even after this has been accomplished, the caregiver will then face “ghettoization within marginal occupations” because of deskilling, a result of the time they had been out of their original field of specialization.⁵¹ If a caregiver leaves an abusive employer procedural delays in processing work permits means that they can wait months before they are allowed to legally work again which puts their path to citizenship at risk and ultimately acts as a barrier to objecting an abusive situation.

4.2 Labour law

The Live-in Caregiver Program has not only immigration law, but labour law implications. The program requires that the caregiver live inside the employer's home “without labour protection or citizenship rights” which has important implications for their vulnerability towards sexual harassment.⁵² The class relationship in such an employment context is undeniable and immediate.⁵³ Unlike their employer who has full citizenship rights and the ability to influence their representatives in the the political sphere, the caregiver has none of these rights, resulting in a severely asymmetrical power relationship.⁵⁴ Many new caregivers are forced into completing “unpaid trial period[s]”,⁵⁵ and express frustration with the fact that their work permits are not open but instead tied to a single employer. Such practices are much more common than reported, due to the unavailability of methods of retaliation on the part of the caregiver.⁵⁶

4.3 Workplace isolation

The isolation experienced by caregivers adds another dimension of vulnerability which facilitates abuse because they are obliged to reside in the private home of their employer. Although such an arrangement may prove attractive to both parties by allowing the employer to reduce wages and the caregiver to obtain cheaper accommodation,⁵⁷ it also means that caregivers as a group are isolated and “notoriously hard to reach”.⁵⁸ The constant presence of employers may make caregivers uncomfortable to participate in advocacy groups,⁵⁹ and because “unlike migrant workers who work in groups in fields or on construction sites, caregivers live in isolated circumstances, with no opportunity for establishing a network of friends”, such advocacy groups are often their only outside contacts.⁶⁰

The very immediate control over the caregiver's food, space, sleep and social network means that the caregiver is very vulnerable to intimidation and threat,⁶¹ reinforcing the inequality of power between the employer and the caregiver.⁶² The live-in caregiver has little recourse to a clear boundary between their on-duty and off-duty time,⁶³ and many have reported feelings of being “under surveillance and socially isolated”.⁶⁴ Even for live-out domestics the long hours and isolation on the job can lead to similar effects.⁶⁵ The traditional separation between the public and private space has made lawmakers uneasy or unwilling to increase government interference in the home, despite this potential for abuse.^{66,67}

Isolation is also an important factor for why workplace inspections are done with insufficient frequency⁶⁸ and it is also responsible for the difficulty of domestic workers to organize themselves into collective bargaining associations. This explains in large part the lack of unions for caregivers and domestics.⁶⁹ The vulnerability of the worker is thus obvious in regards to their well-connected employer with full citizenship rights and the ability to negotiate with the caregiver on an absolutely individual basis.

4.4 Financial and legal abuse

The salaries of caregivers are poor relative to Canadian standards and overtime, which may mean a workweek of 60 to 80 hours,⁷⁰ and because overtime is often not remunerated the wages of

these workers has been found to fall below the minimum wage.⁷¹ A study of Montreal caregivers showed that only 52% percent were remunerated for their overtime.⁷² Another measured that 24% were paid less than the minimum wage, and that 57% did not receive a pay slip as required by law.⁷³

The hours are often longer and harder for caregivers assigned to patients with special medical needs,⁷⁴ and it is not uncommon for the employer to confiscate the papers and passport of the caregiver.⁷⁵ The caregiver has no recourse for being assigned caregiver work beyond their contract, and nothing to prevent the employer from waking them up in the middle of the night and other behaviours that go beyond a typical professional relationship.⁷⁶ Neither is it uncommon for the caregiver to be disallowed from having guests in the residence or to have found that their employer has gone through their personal items.⁷⁷ Employers may even put the caregiver's eventual citizenship application at risk by trying to claim the caregiver for tax breaks⁷⁸ and engage in “nanny-sharing” where the caregiver is lent out to family and friends.⁷⁹

Workplace protection schemes and laws covering workplace accidents and sickness are not usually accessible to caregivers.⁸⁰ In the case that the caregiver becomes pregnant, they often do not receive adequate treatment and accommodation for maternity leave and employment insurance that Canadian citizens enjoy.⁸¹ The caregiver is subsequently burdened with obtaining medical certificates and childcare which is often expensive just so they can complete the 24 months required for their permanent residency application.⁸²

4.5 Other forms of abuse

Some commentators have likened the LCP to a “modernized version of forced labour or servitude” because of the inaction of governments which allow these women to live under the “constant menaces of unemployment and deportation [which] suggest[s] a tacit denial of economic and social freedoms”.⁸³ Similar language has been used to characterize the live in caregivers a “captive workforce” put in “a situation of vulnerability” which erects barriers for the changing of employers.⁸⁴

It has been measured that among caregivers 18.5% report some form of abuse⁸⁵ including “working outside of job description, low salaries, unpaid overtime, long hours, racial discrimination, verbal abuse, sexual harassment, and ‘slave-like conditions’”.⁸⁶

Racist bullying by the employers and their children has been reported, becoming more and more common for caregivers who are women of colour in Quebec and Canada⁸⁷ along with bullying which criticizes the caregiver's work or social class.⁸⁸ Despite “unpaid or excessive working hours, violations of privacy, greater dependence on employers, sexual harassment and sexual assault”, the abuses mainly go unreported because the caregiver feels compelled to tolerate the situation until they can obtain their permanent residency application.⁸⁹ Many have been threatened openly by their employer with a call to immigration services or deportation⁹⁰ and it is precisely because of these abuses that community organizations began to emerge to combat them.⁹¹

4.6 Placement agencies

Placement agencies are another source of abuse for live-in caregivers. Because of the current levels of international migration, the “immigration industry” is a recognized phenomenon especially in regards to the migration of women.⁹² In general, these employment agencies will represent the interests of the employer rather than the caregiver⁹³ and many of these agencies operate illegally and openly in major Canadian newspapers.⁹⁴ These same agencies, because of their positions as gatekeepers to the receiving country, also engage in financial, psychological and sexual abuse of the women seeking to migrate.⁹⁵

Placement agencies may also pass on caregivers to employers who are themselves known to create an abusive workplace, the agencies frequently demanding fees that are too high, and processing fraudulent applications.⁹⁶ Another common experience is that the agency will take the fees from the caregiver for a job which never existed in the first place, putting the caregiver in a situation where they must reorient themselves in Canada and search for new employment under a new work permit before they run out of time, all of which requires the payment of additional fees.⁹⁷

The fees charges by such agencies are frequently found to be exorbitant, with some measurements ranging from 1000 to \$2000⁹⁸ or even 2000 to \$10 000,⁹⁹ and caregivers are often indebted to the agency and they work to pay it back upon arrival in Canada.¹⁰⁰ The agencies themselves, when marketing the potential caregivers to employers in Canada, will do all they can to make the women appear “ripe for exploitation” as in one case where “several domestic workers were told to indicate on their applications forms a willingness to work long hours.”¹⁰¹

Some commentators have identified these recruitment agencies as a key source of the abuse and vulnerability that caregivers face, saying that they “open the door to abuses on the part of the employers.”¹⁰² This problem is compounded when it is recognized that “even in provinces where licensing exist, regulatory mechanisms are minimal.”¹⁰³ These agencies also argue loudly against reforms to existing labour laws, claiming to clients that the new laws will bar them from their chance at a life in Canada.¹⁰⁴

All of these are reasons why recruitment agencies should be an important area of regulation if the caregivers are to be protected against conditions of vulnerability and abuse. “Recruiting agencies operating in Canada should be subject to controls to prevent unfair practices in their dealings with immigrant caregivers”¹⁰⁵ and should be prohibited from making the caregiver indebted to them¹⁰⁶ so that the imbalance of power and knowledge that exists between the agency and the caregiver is not further compounded.

5.0 Policy changes

Many scholars have called the Live-in Caregiver program “inherently exploitative” because it “has under-regulated working conditions while over-regulating the workers”.¹⁰⁷ Yet it also must be recognized that the program is one of the only options legally open to the women who use it¹⁰⁸ and thus cannot be simply done away with, even discounting the labour demand for domestic workers in Canada. There are many ways, however, that the program can be improved to reduce the potentiality of abuse and workplace harassment.

5.1 Legal rights and social services

Commentators have made several proposals in the area of legal rights, including that all caregivers be automatically enrolled in compensation schemes protecting them from workplace injury or sickness.¹⁰⁹ Among caregivers there is a demand for other social services including institutions specially set up for caregivers, counselling services and shelters.¹¹⁰ Thought should be given to the isolated work environment experienced by the caregiver, and inspection into these conditions must be regular.¹¹¹ Inspection must also take into consideration the surveillance atmosphere of the home and attempt to interview the caregiver alone where they might be able to speak freely. Information campaigns by the Canadian government can be incorporated into training for potential caregivers still in the sending country where issues such as workplace abuse and intimidation can be highlighted.¹¹²

5.2 Residency

Changes to the residency permit have also been proposed as a way of dealing with the persuasive power of gaining citizenship that it may engender which causes caregivers to put up with abusive situations.¹¹³ Some commentators propose that caregivers be granted permanent residence on arrival so that caregivers can enjoy “mobility, the right to go to school, to live where they wish, to bring their family members or to change employers. Further, caregivers should be given an open work permit allowing them to change employers. Both of these changes would make it easier than under the present system for caregivers to leave an abusive workplace.”¹¹⁴

5.3 Collective bargaining

It is important to address the lack of labour rights under the program and to facilitate the unionization¹¹⁵ and collective bargaining of caregivers. Allowing the caregivers to organize themselves would empower them to attain higher wages, reduce the exploitation of unpaid overtime and reduce nanny sharing. It would also create organic links and solidarity among these individuals who otherwise would work in isolation. Unions would permit the caregiver to negotiate on a more equal footing with their employer and combat the existing and unequal power relationship.¹¹⁶ In order to aid organizations working with caregivers and such collective bargaining groups, the addresses of workplaces of caregivers should be published by the government where now they are kept a secret.¹¹⁷

5.4 Recruitment agencies

Canada must be held accountable for the actions of private actors who commit violations of established laws, as well as those like recruitment agencies and employers who abuse and harass caregivers,¹¹⁸ and take steps to prevent these infractions. This requires imposing regulations on recruitment agencies here in Canada and making employer families, like any other employer, responsible under law for accurate and decent wages and for maintaining the safety of the workplace.¹¹⁹ Harsh penalties and fines must be set, publicized and enforced for violations¹²⁰ and the government must take on the task of informing the caregivers of their legal rights and recourse.¹²¹ Legal provisions exist to regulate immigration consulting and against human trafficking and need to be enforced especially in the case of employment agencies and other individuals who deceive and exploit caregivers.

5.5 Access to information

Lack of knowledge is another barrier for the caregiver trying remove themselves from abusive workplaces¹²² and is an important part of allowing the caregiver to advocate for their own rights and know to recognize abuse under Canadian law. All levels of government must be involved in this process,¹²³ and it must be done in a way which presupposes that violations of rights will take place so that effective remedies can be readily available.¹²⁴

Settlement organizations which arrange seminars on rights of caregivers and obligations of employers can be an effective way to transmit such knowledge.¹²⁵ In fact, seminars for employers¹²⁶ may not only ensure that they know what is expected of them in their contractual relationship with the caregiver, but may also impress upon them the seriousness with which the government is handling potential abuses.

5.6 Community self-organization

The final remedy to be explored is the potentiality of caregiver self-organization and how community organizations can play an educative and advocating role for caregivers. Increasing resources to such organizations is important because they are founded on the reality that caregivers are

“neither paralysed nor passive” but rather are in the best positioned to understand their own needs and desires.¹²⁷ These rights groups address one drawback of legal or governmental action in that caregivers often do not trust “officials and agencies due to experiences in their home countries, and they do not always understand the administrative details of their situation and live in isolation”.¹²⁸

Increasing financial and other resources for caregiver rights groups would augment their ability to play a number of other important roles.¹²⁹ These organizations help to integrate the caregiver into the wider community,¹³⁰ and are often run by women who before were also caregivers. They encourage the caregiver to get active in a community of other caregivers and advocate for her own rights,¹³¹ capitalizing on the reality that the caregiver has the ability to “utiliz[e] community resources, personal networks, and personal, cognitive effort to defy abuses and isolation”.¹³² Whereas current system requires the caregiver to submit to redress processes as an individual,¹³³ the organizations can provide solidarity and guidance in claiming their rights.

6.0 Conclusion

There are current changes being undertaken by the government for the Live-in Caregiver Program such as eliminating the live-in requirement, but the way that these changes are implemented are yet to be seen. The Live-in Caregiver program is the only way that many migrant women can access Canadian citizenship, and yet in its structure engenders an employment context which is very vulnerable to abuse and bullying. The migrant women are often exploited by recruitment agencies before their arrival in Canada and are forced to live separately from their families for long periods of time. Caregivers encounter a workplace which is isolated and in which a definite power imbalance exists between her and her employer. This leads to abuse of many forms including but not limited to financial, sexual, psychological and legal abuse made worse by the inaccessibility of advocacy resources.

The government has the ability to improve these conditions substantially by increasing inspection and regulation of workplace environments, treating the home of the employer as any other workspace, and rejecting the narrative that these spaces are private residences beyond regulation. Governments must also work to improve regulations and increase penalties for violations by recruitment agencies and employers. Finally, they must increase efforts to inform caregivers about their rights and the legal remedies available to them, and must support community organizations in their work which often performs functions that the government cannot.

7.0 Summary of Policy Changes

- programs to inform caregivers and potential caregivers about workplace intimidation and their rights under Canadian law
- government-mandated seminars for caregivers’ employers about their obligations and legal penalties for all forms of workplace abuse
- increasing persecution of employment agencies and other individuals who deceive and exploit caregivers
- changing the limitations of work permits to allow caregivers to change employers
- granting permanent residency on arrival
- regular and adequate workplace inspections
- facilitating unionization and collective bargaining
- increased funding and resources for caregiver organizations
- increasing access to social services like counselling and shelter services
- compensation schemes for workplace injuries and sickness

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