Caregivers' Action Centre

To: Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities

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June 1, 2016

Members of the Committee,

As organizations in British Columbia, Ontario and Quebec that are the primary service providers and advocacy bodies for caregivers in Canada, we are deeply aware and concerned about abuse and unfair treatment of caregivers. Labour Market Impact Assessment (LMIA) fees have not only caused consternation for employers, in our experience they are also routinely downloaded to temporary foreign workers, and as such we look forward to the fees being removed for caregivers as well as all temporary foreign workers.

It is our recommendation that no third-party should hire caregivers or temporary foreign workers on behalf of employers. The only real and permanent solution is granting these workers permanent resident immigration status on landing – this is our key recommendation. As an interim measure, we propose open or sectoral work permits along with stronger provincial labour protections as fairer and more effective mechanisms than regulated companies to hire caregivers. Permanent immigration status on landing does not entail a closure of the temporary foreign workers program or a mass expansion of it. Rather we propose a third way: inclusion and access for low-waged racialized women in care work to Canada with full rights and benefits that can only be secured by permanent resident status.

Not only will these changes result in stronger rights for temporary foreign workers, they will alleviate burdensome administration on families for the LMIA application process. Permanent status on landing

or open work permits would entail replacement of individual LMIA applications and assessments with comprehensive labour market impact assessments by region and industry by government departments.

Our organizations are also concerned about changes introduced by the previous government in November 2014. The Caregiver Program replaced the Live-In Caregiver Program and effectively took away the right to permanent status. We are also concerned about intolerable delays that caregivers face in gaining permanent residency and family reunification.

We are happy to note that Immigration Refugees Citizenship Canada (IRCC) has made it a priority to finalize 2010 and 2011 applications without affecting those submitted since then. We urge you to address applications submitted prior to 2010, and address concerns around medical inadmissibility, and rejection on administrative grounds.

We have enclosed further details about the issues that we have outlined in this letter. We look forward to meeting with you in the near future to discuss our experiences and to work together to develop solutions that further the interests of caregivers and employers.

Sincerely,

- Caregivers Action Centre (Toronto)
- Caregiver Connections Education and Support Organization CCESO (Toronto)
- Coalition for Migrant Worker Rights Canada (Cross-Canada)
- Committee for Domestic Workers and Caregivers Rights
- Gabriela (Ontario)
- Migrant Mothers Project
- Migrant Workers Alliance for Change (Cross-Canada)
- Migrante (British Columbia)
- OCASI - Ontario Coalition of Agencies Serving Immigrants (Ontario)
- PINAY (Quebec)
- Thorncliffe Neighbourhood Office (Toronto)
- West Coast Domestic Workers Association (British Columbia)

I. Introduction

Caregivers are among the most vulnerable of workers in Canada. Ninety-five percent of caregivers are women who come to Canada from developing countries such as the Philippines to escape chronic underemployment and poverty to support their families and provide their children with a better future.

The nature of caregiving work contributes to caregiver vulnerability. Caregivers work in isolation. They are employed in private households and in some provinces, such as Ontario, employment standards inspections cannot take place in private homes. Employment relationships are personal and intimate, yet highly unequal and this can be exacerbated by the social location of the caregiver, including aspects such as gender, race and class. Caregiving work is classified in Canada as low-skilled, low-wage work because it is seen as "women's work" that is undervalued.

II. Tied work permits: Indentured work

Work permits that are tied to a single employer are a modern form of indentured labour whereby caregivers are not free to circulate freely in the labour market like other workers. "Tied" work permits, coupled with inadequate monitoring and enforcement of labour standards, create the conditions that allow unscrupulous employers and recruiters to abuse caregivers with impunity. "Tied" work permits facilitate employer control and exploitation of workers including working excessive hours without payment for overtime, unpaid hours of work and often less than minimum wage pay.

There are a number of concerns with tied permits, these include:

II.a. Tied Permits: Lengthy processing times and prohibitive costs

For a temporary foreign worker to change employers, they must receive a new job offer from a prospective employer, employment contract and LMIA in order to apply for a new work permit. Employers apply for LMIAs, which takes between three and five months, and then the temporary foreign worker must apply for a new work permit, which might additionally take three to five months. During this time period, temporary foreign workers are not able to work and are not eligible to apply for social assistance. Caregivers face unique barriers to accessing Employment Insurance. As a result, temporary foreign workers may spend six to ten months unemployed with no source of income.

Between January and March 2015, the department of Employment and Social Development Canada (ESDC) rejected 90 percent of employer applications for LMIAs required to hire caregivers. This placed many caregivers' progress in the program in jeopardy. Many caregivers had to wait even longer to be able to secure new employment.

As caregivers must complete 24 months or 22 months with 3900 hours of full time work within four years, switching jobs may result in a three to ten month delay in filing for permanent residency status which can threaten a caregiver's ability to accumulate sufficient hours to qualify for PR. It also puts an additional burden of delays for mothers who are separated from their children as most caregivers are.

One consequence of these delays is that caregivers feel forced to continue working under abusive conditions. For workers whose employment has ended through no fault of their own or who have chosen to leave abusive employers, many are compelled to engage in unauthorized and less protected work, such as beginning to work for a new employer while their work permits are still processing. Because there is little cost or risk to employers for unauthorized employment of caregivers, many employers require caregivers to begin work before permits have been processed. Recruitment agencies have been known to encourage caregivers to start working while their work permits are being processed because employers need caregivers who can start working right away. Performing unauthorized work puts caregivers at risk of being arrested, detained and deported from Canada.

II.b. Tied work permits: Conditions of abuse.

The lengthy processing times and high financial costs associated with changing employers make changing jobs the least desirable option for workers. This is a fact that employers are well aware of. As a result, bad employers increase their demands on temporary foreign workers asking for increased hours of work, refusing to pay for overtime, holiday or vacation pay, and not allowing for sick days.

The live-in employment arrangement gives employers substantial control over caregivers' food, space, sleep and social networks. This leaves many open to intimidation and reinforces the inequality of power between the employer and caregiver. 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.

II.c. Tied work permits: Dividing workers

Canadian citizen workers have workplace mobility, and through employment insurance and social assistance supports, have the ability to re-train for jobs or access basic income in between employment. This gives workers the flexibility and choice to leave jobs that are discriminatory, abusive or are making them sick.

Tied work permits create a layer of workers that do not have this choice - as a result wages and working conditions for these workers can be reduced. This impacts wages and working conditions in the entire sector and reduces public health and decent work for all.

III. Concerns with regulated companies holding work permits

III.a. Lack of existing regulations

"Tied" work permits already facilitate employment agency control and exploitation of caregivers. Caregivers wishing to work in Canada are required to have secured a job offer, employment contract, and LMIA with their prospective employer prior to being issued authorization to enter and work in the country. Employers are required to secure an LMIA, recruit a caregiver, provide a job offer, employment contract and travel arrangements. To do this employers usually hire recruitment agencies. These agencies have branches or agents in countries where workers are recruited. These agents charge caregivers huge fees for recruitment. It is critical that these employment and recruitment agencies do not hold the Caregiving work permit.

Payments to these agents average several thousand dollars. Caregivers typically borrow money from relatives and moneylenders to be able to pay recruitment fees, with the result that they are indebted upon entry into Canada. Although these fees are illegal under some provincial employment standards legislation, in practice, paying illegal fees is the norm. These fees are difficult for caregivers to recuperate once in Canada, as they are commonly paid to an agent in the country of origin, and partner agencies in Canada refuse to be held responsible for the actions of actors in the supply chain of caregivers. It is these same agencies that are now advocating becoming the employer and hold work permits for caregivers instead of employers.

Caregivers are also commonly subject to a type of fraud known as "release upon arrival" in the recruitment process whereby they receive a job offer, employment contract and LMIA for an employer in Canada from the recruiter only to discover that the employer does not require their services upon arrival in Canada. This leaves caregivers in an exceedingly vulnerable position, as they are ineligible for Employment Insurance during the lengthy process it takes to search for a new employer and obtain authorization to begin work.

Developing a system of regulated companies to hire caregivers on behalf of families would not effectively decrease abuse of caregivers by unscrupulous employment agencies and employers. Such a system would replace families as employers with recruitment agencies as employers of caregivers, while allowing the abuses of the "tied" work permit system outlined above to continue. Employment agencies are regulated at the provincial and territorial level where there are uneven levels of protection and enforcement of employment standards, including regulation of employment agencies.

As constitutional lawyer and researcher Fay Faraday has shown, recruiters are largely unregulated in Canada, and in many provinces laws against recruiters have not been enacted. Proactive enforcement of recruiter regulations have been pioneered in Manitoba and adopted in Nova Scotia and Saskatchewan - but the regions with largest caregivers, namely Ontario, British Columbia and Quebec have no such comprehensive regulation. [1]

Tied work permits already give recruiters enormous power to immediately deprive the migrant worker of authorized status by placing them in a job that fails to match the conditions on the permit. Many workers arrive in Canada to find that the job they were promised does not exist, that it is significantly different from what they were promised, that it is different from what appears on their work permit, or that it is for a much shorter period than promised. Having been deliberately forced out of status by the recruiter, the worker is isolated from a support system, without the funds to support themselves or return home, and yet subject to a debt that they must immediately start repaying. The Canadian-based recruiter or agent leverages the worker's now irregular status to place the worker in employment with potentially even more oppressive conditions.

Tying caregiver work permits to these same recruiters would give these recruiters more control over workers' lives and increase opportunities for exploitation or abuse.

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[1] See Faraday, Fay. *Profiting from the precarious: how recruitment practices exploit migrant workers.* Metcalf Foundation 2014. Available at: http://metcalffoundation.com/wp-content/uploads/2014/04/Profiting-from-the-Precarious.pdf

The Domestic Workers Convention, adopted by the International Labour Organization (ILO) in 2011, and which entered into force in 2013, specifically targets (in Article 15) employment agencies in the recruitment of migrant workers, and urges Member States to 'determine the conditions governing the operation of private employment agencies recruiting or placing domestic workers, in accordance with national laws, regulations and practice' and to 'ensure that adequate machinery and procedures exist for the investigation of complaints, alleged abuses and fraudulent practices concerning the activities of private employment agencies in relation to domestic workers.' Similarly, the ILO's Private Employment Agencies Convention, 1997 (No. 181) prohibits the charging of fees to workers and emphasizes the need for regulation when it comes to the recruitment of migrant workers. Currently comprehensive and effective regulations do not exist uniformly in provincial jurisdictions across Canada.

III.b. Triangular employment relationship

Caregivers are concerned that shifting employer responsibilities and liabilities to recruitment agencies will create a triangular employment relationship similar to that of temporary agency workers that will leave them even more vulnerable to abuse. Under such a model, employers are looking to shift liabilities for hiring, firing and, likely, payroll to agencies. Employers would maintain control over caregivers' day to day work. It would allow employers to fire caregivers without consequence or cost. As temporary help agency workers experience in Ontario, British Columbia or Quebec when there is a difference in the pay or hours worked between the client company and the worker, the temp agency will side with the client company because that is its source of profit. Workers have very little real way to enforce their basic minimum standards under temporary help agency employment. Where workers assert their employment rights, agencies threaten not to place them with new employers. Ontario has begun to regulate this triangular relationship and shift liabilities back on to the true employer, the client company. The federal government should not go in the opposite direction and create a triangular employment relationship for caregivers, employers and recruiters.

According to the experiences of caregivers we work with in countries where recruiters or agencies have more direct control over work permits, agencies consistently side with employers as they are the "client". Where workers assert their rights, agencies threaten to not place them with new employers and often initiate proceedings to have workers sent home.

IV. Concerns with the Caregiver Program introduced in November 2014

Since the 1960s, the various incarnations of the federal Live-in Caregiver Program (LCP) have allowed Canadian families to hire foreign nationals to work as full-time caregivers in private households. For decades, the LCP has been a vehicle for affordable care for families with children, or persons with medical needs, including people with disabilities and the elderly. The demand for affordable caregiving services is expected to increase substantially in the coming years as Canada's population ages.

Since 1981, an objective of the former Foreign Domestic Movement Program and subsequent LCP introduced in 1992 was to facilitate permanent residence for caregivers. The LCP recognized the value in ensuring a pathway to permanent residence for caregivers, who perform critical work essential to the

Canadian economy. It also recognized that many caregivers, once landed, go on to work in the health care field in Canada in occupations such as Care Aides and Licensed Practical Nurses.

The LCP was eliminated by the Harper Government in November 2014 and replaced with a new branch of the Temporary Foreign Worker Program (TFWP). The rationale for the changes to the LCP on the part of the government was to "protect caregivers from abuse and reduce family separation."[2] However, the changes were ushered in following closed-door consultations that excluded caregivers and their advocates. The new program in effect increases worker insecurity and vulnerability to labour exploitation.

Under the new scheme, the ability for caregivers to apply for permanent residence has been severely restricted while "tied" work permits have remained intact.

The two new pathways for permanent residence for caregivers, the caring for children class and the caring for people with high medical needs class, are each capped at a maximum of 2,750 applications that will be processed every year. New eligibility requirements relating to language and education for permanent residence were also introduced with the result that some caregivers who are qualified to work in Canada as caregivers may not eligible to apply for permanent residence.

Also since November 2014, caregivers must now complete a second medical exam at the time of their application for permanent residence. This flies in the face of the "Juana Tejada" law. Juana Tejada was a live-in caregiver who developed cancer while working in Canada. She was initially denied permanent residence when she did not pass her second medical examination. She was a tireless advocate for improvements to the LCP and the federal government removed the requirement for caregivers to undergo a second medical in her honour.

IV.a. Key concerns

1. As a result of the caps on application for permanent residence, many caregivers feel compelled to remain working under abusive employment conditions in order to maximize their chances to apply for permanent residence in the event they are "capped out" on their first attempt.
2. The huge commitment that caregivers make including separation from their family is based on promise of being able to apply for permanent residence. The caps break that promise. Even after completing all the requirements, some caregivers may not be able to apply for PR within four years and may be forced to leave Canada or continue to stay as undocumented residents.
3. Many caregivers switch between working taking care of children and the sick or the elderly because of availability of employers with an LMIA or some employers have both young children and elderly parents. Separating the streams has resulted in caregivers working longer to fulfill the requirements of any one stream and in some cases, losing their ability to apply for PR due to insufficient hours in either stream.
4. Caregivers must now possess one year of post-secondary accreditation. To do this, caregivers must have post-secondary education prior to arrival in Canada and then pay high fees for accreditation. Or caregivers must obtain a study permit and pay international fees to complete one year of post-secondary study while working extremely long hours at minimum wage. This is

[2] See Government of Canada, *Improving Canada's Caregiver Program*, online: <http://news.gc.ca/web/article-en.do?nid=898729&_ga=1.127505102.257588392.1441911488>

generally impossible and as a result many caregivers will be unable to apply for permanent residency.

5. Caregivers must also meet a higher official language proficiency benchmark. No free English as a Second Language classes exist for caregivers as they are excluded from federally-funded settlement services. The costs and time required to study an official language within four years while meeting the work requirements is for many caregivers arduous, for some impossible.

IV.b. Recommendation

As such we recommend that the caps, increased requirements, separation of streams and second medical exam introduced in November 2014 should be scrapped.

V. Permanent Residency backlog

Currently there are an estimated 38,000 caregivers and their families waiting to be reunited in Canada. Caregivers look after Canada's aging parents and young children in most cases leaving their own children in the care of their relatives. Their own children grow up without them. The average number of years of family separation is 6-8 years -- including the required 24 months of employment and then the published 49 months processing time towards permanent residence and family reunification.

Many caregivers are deeply disappointed with the current processing time and the inefficient handling of their applications. An average waiting time of 49 months is not acceptable. Years of waiting create other problems:

- repeated medical examinations of family members at home is costing hundreds of dollars for the same procedures;
- some applications are being refused because of administrative errors by IRCC;
- caregivers are unable to access information about their pending files;
- applications are being refused based on the medical inadmissibility of one or more family members;
- there have been several cases where caregivers have died after completion of the LCP program conditions but before PR status application and/or processing of their children had been completed. As a result these children were unjustly forced to leave or to struggle to stay in Canada.

Delays in processing have caused prolonged family separation, helplessness, uncertainty, anxiety, and vulnerability to caregivers and their families. The psychological and emotional impact is huge, many expressing their frustration over the torture of waiting which has caused problems for all members of the caregivers' family.

V.a. Recommendations:

- dedicate more resources to PR processing to decrease waiting time and increase efficiencies;
- address PR refusals caused by administrative errors;
- complete permanent residence application processing taking into account the best interests of the child and other humanitarian and compassionate considerations even after the sponsor has died;
- review section 38 of the Immigration and Refugee Protection Act for discriminatory content against persons with disabilities

VI. Key recommendation: Permanent resident immigration status, or open work permits or sectoral work permits

We believe that caregivers must come to Canada with permanent resident immigration status upon arrival. Canada's system for establishing permanent residency should not systematically exclude low-waged and racialized women who perform important care work for Canadian children, people with disabilities and the elderly, rather it should grant immediate access to permanent residency for women from this demographic. Currently, Canada has permanent residency on arrival for workers whose work is classified as high skilled – the same access should be extended to caregivers and other temporary foreign workers.

This is because:

- **Permanent residency ensures services:** Many labour rights and basic services in Canada like healthcare and post-secondary education are tied to permanent immigration status. Migrant workers pay for all these services through taxes and deserve access to them.
- **Permanent residency is the norm:** Most immigrants – refugees, spouses, high-waged immigrants - arrive to Canada with permanent residence immigration status which gives them peace of mind, the ability to re-unite with their families and the tools they need to lay deeper roots and build our society further as soon as they arrive.
- **Permanent residency re-unites families:** Landed status on arrival would also allow caregivers to enter Canada with their families, thus eradicating family separation which averages 6-8 years under the LCP while caregivers complete the program and wait for their permanent residence applications to process.

Finally, landed status on arrival would alleviate the need to issue work permits to caregivers, thus reducing administrative costs significantly.

In the interim, open work permits should be provided to temporary foreign workers and caregivers. Such provisions already exist for workers in the International Mobility Program, post-graduate workers program, etc. and will respond to the concerns about lengthy processing times, high costs, abuse and divisions that tied permits generate.

If open work permits are not possible, we believe that sectoral permits which allow caregivers or Temporary Foreign Workers to work for any employer in a given industry would account for these concerns.

Permanent resident immigration status, or open work permits, or sectoral permits will also benefit employers and result in greater cost savings for the federal government.

Alleviate burdensome administrative weight on employers: Currently employers must apply for Labour Market Impact Assessments (LMIA), which is a time consuming and expensive process. Permanent immigration status on landing or open or sectoral work permits would do away with these applications and allow them to hire temporary foreign workers in much the same way as they would hire permanent residents or citizens.

Be more cost effective for the federal government: Currently the Federal government must process every LMIA application from employers - often assessing the labour market for similar jobs in the same urban metropolis where most caregivers are arriving. Replacing these with annual, or more frequent, assessments would save considerable financial resources and streamline the process. Utilizing existing labour market assessment tools and the Canada Job Bank to connect employers with workers would alleviate concerns about lack of workers.