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*Editor: Rudolf Kischer, Maynard Kischer Stojicevic, Immigration & Citizenship Lawyers*

## **An Overview of Canada's New Caregiver Program: A Shift From Permanence to Precariousness**

*By Natalie Drolet, Staff Lawyer/Executive Director West Coast Domestic Workers' Association*

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

On November 30, 2014, the federal government eliminated the LCP, replacing it with the Caregiver Program, a new branch of the Temporary Foreign Worker Program ("TFWP"). The changes were brought in without clear guidelines for caregivers and employers, resulting in an abundance of questions relating to the impacts of the changes on caregivers already working under the LCP, new caregivers from abroad seeking to work in Canada, and employers. What follows is an overview of the new scheme, including a discussion of the new barriers faced by caregivers vis-à-vis access to permanent residence and those faced by employers.

### **The 1992 Live-in Caregiver Program**

Since 1981, an objective of the former Foreign Domestic Movement Program and subsequent LCP introduced in 1992 was to facilitate permanent residence for caregivers. These programs recognized the value in ensuring a pathway to permanent residence for caregivers, who perform critical work essential to the Canadian economy. They also recognized that many caregivers go on to work in the health care field in Canada in occupations such as as Care aides and Licensed practical nurses. These have been the only federal immigrations programs for so-called low-skilled workers with a direct pathway to permanent residence. From 2005 to 2014, an average of 5,540 caregivers became permanent residents in Canada each year. In the same ten-year period, an average of 31,859 caregivers held a work permit each year (Government of Canada, *Facts and figures 2014*, online: [www.cic.gc.ca/english/resources/statistics/menu-fact.asp](http://www.cic.gc.ca/english/resources/statistics/menu-fact.asp)).

Under the LCP, if caregivers completed 24 months, or 22 months with 3900 hours, of full-time live-in caregiving work within four years of arrival in Canada, they became eligible to apply for permanent residence with concurrent processing for their dependents. To enter the program, applicants were required to demonstrate that they had completed high school, had one year of experience working as a caregiver or had completed a 6-month caregiver training program, and possessed a good knowledge of English or French. Workers were paid minimum wage and room and board could be deducted from their wages according to provincial labour standards.

Ninety-five per cent of caregivers are women, the majority of which are from the Philippines, who come to Canada to escape chronic underemployment in their countries of origin to be able to support and provide a better future for their children. As low-skilled workers, they do not enjoy the same rights as high-skilled temporary foreign workers whose family members are given access to open work permits in Canada. Taking the current 49-month processing time into account, caregivers are separated from their families for 6-8 years while they complete the program and wait for their permanent residence applications to process (Government of Canada, online: [www.cic.gc.ca/english/information/times/](http://www.cic.gc.ca/english/information/times/)).

To hire a foreign worker, an employer in Canada must apply to Employment and Social Development Canada (ESDC) and receive a positive Labour Market Impact Assessment (LMIA), formerly known as Labour Market Opinion (LMO). The LMIA requires that employers demonstrate a genuine labour market need and their attempts to hire a permanent residence or Canadian citizen first before resorting to the LCP, including advertising the position according to the requirements established by ESDC. With a LMIA, job offer and job contract in hand, caregivers then apply to IRCC for a visa to enter Canada and a work permit that authorizes them to work for a single employer. Under the LCP, work permits could be issued for up to four years. To connect with an employer in Canada, caregivers typically utilize the services of third party recruitment agencies.

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For many years, academics and advocates have documented widespread exploitation and abuse of caregivers under the LCP. The nature of caregiving work in private households where there is a decreased likelihood of workplace inspections contributes to caregiver isolation and vulnerability. Work permits that are tied to a single employer facilitate employer control and exploitation of caregivers including working excessive hours without payment for overtime, being perpetually on-call, unpaid hours of work, and payment below minimum wage. While it is possible for caregivers to change employers under the LCP, the process is lengthy, uncertain and delays caregivers' ability to apply for permanent residence with the result that leaving a bad boss is the least desirable choice for caregivers. Tied work permits also facilitate recruiter control and exploitation of caregivers including paying exorbitant placement fees contrary to employment standards legislation for a caregiving job in Canada. Academics and advocates have long called for open work permits or sector-wide work permits rather than tied work permits as a means to curtail caregiver abuse.

### **The 2014 Caregiver Program**

On November 30, 2014, Ministerial Instructions (MI) issued by Canada's Minister for Citizenship and Immigration Chris Alexander announced that no new permanent residence applications under the LCP would be accepted for processing unless the work permit associated with the caregiver's initial entry into Canada was based on an LMIA that was received by Service Canada on or before November 30, 2014. At the same time, two new pathways for permanent residence for caregivers were introduced. Caregivers from abroad could no longer be able to apply to enter Canada as part of the LCP. Instead, they would apply for a work permit under the TFWP, which may be issued for up to two years.

The rationale for the new program on the part of the federal government was to "protect caregivers from abuse and reduce family separation" (Government of Canada, *Improving Canada's Caregiver Program*, online: [http://news.gc.ca/web/article-en.do?nid=898729&\\_ga=1.127505102.257588392.1441911488](http://news.gc.ca/web/article-en.do?nid=898729&_ga=1.127505102.257588392.1441911488)). Removing the live-in requirement was lauded as protecting caregivers from abuses caregivers have experienced as a result of the previous live-in requirement. The government also emphasized the need to reduce backlogs in processing permanent residence applications.

### **Impacts on caregivers**

While some changes to the program appear to be positive for caregivers, they do not go far enough to protect caregivers from abuse. These changes include removing the live-in requirement, thus providing caregivers with the choice to either live-in the home of their employer or live-out. Under the new program, caregivers can no longer be charged for room and board should they choose to live-in. The government also promised to process permanent residence applications within six months, thus reducing wait times for family reunification significantly. Employers must also now pay caregivers the prevailing wage according to the work location. However, as with the LCP,

caregivers continue to receive tied work permits instead of open or sector-wide work permits.

The new Caregiver Program has the effect of increasing caregiver vulnerability through less certain pathways to permanent residency. The direct pathway to permanent residence for caregivers under the LCP has been replaced by two new pathways, the caring for children and the caring for people with high medical needs classes. Under these pathways, caregivers have the ability to apply for permanent residence upon completion of 24 months of full-time caregiving work according to either pathway. The option of applying after 22 months with 3900 hours is no longer available. However, each pathway is capped at 2,750 applications that will be processed by IRCC each year for a total of 5,500 applications with the result that there is no longer a guarantee of permanent residence if program requirements are met.

Caregivers also face new difficulties when renewing work permits under the TFWP. If a caregiver wishes to extend her work permit with the same employer, she will now require a new LMIA, whereas caregivers under the LCP are exempt from this requirement. If caregivers are between employers and their work permit is about to expire, they do not have access to bridge extension work permits as caregivers under the LCP do. Caregivers under the TFWP who find themselves out of status or outside of the restoration period will be unable to apply for a new work permit to complete their 24 months of work. The process for changing employers is lengthy and uncertain for caregivers under both programs, as they must find a new employer and wait for the LMIA application to process, and then apply for a new work permit. This process can take from 6 to 10 months and applications may be unsuccessful at either the LMIA or work permit stage.

The two new pathways to permanent residence differ by the type of caregiving work in which the caregiver would have to have acquired their 24 months of full-time work experience. The pathways also differ in terms of eligible occupations according to the National Occupational Classification (NOC). Under the caring for children class, caregivers working as Home child care providers (NOC 4411) are eligible to apply. Under the caring for people with high medical needs class, four occupations are eligible: Registered nurses and registered psychiatric nurses (NOC 3012), Licensed practical nurses (NOC 3233), Nurse aides, orderlies and patient services associates (NOC 3413) and Home support workers and related occupations (NOC 4412). In their permanent residence applications, caregivers must demonstrate that they performed all of the essential duties and most of the main duties listed under the NOC group with the result that caregivers can no longer combine work experience caring for children and caring for the elderly, for example, in their 24 months of work.

Under the high medical needs pathway, caregivers working in low-skilled jobs are now competing with caregivers working in high-skilled jobs when applying for permanent residence. Two high-skill occupations have been included, Registered nurses and registered psychiatric nurses (NOC level A) and Licensed practical nurses (NOC level B). To be eligible to apply under these occupations, caregivers must demonstrate that they are

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licensed to practice and registered with the applicable regulatory body in Canada. This opens up the pool of candidates under this pathway to include former international students who may have acquired their work experience on a post-graduate work permit, for example. As such, the high medical needs pathway limits access to permanent residence for the low-skilled caregivers who have traditionally worked under the LCP, while workers in highly-skilled occupations have other avenues for permanent residence at their disposal.

The government introduced new requirements for permanent residence under the new pathways with the result that low-skilled caregivers who are qualified to work in Canada may not be eligible to apply for permanent residence. Caregivers must have their education credentials assessed in order to demonstrate that they meet the equivalent of one year of Canadian post-secondary education. They are required to take a standardized English language test and obtain Canadian Language Benchmark (CLB) 5 for low-skilled occupations or CLB 7 for Registered nurses and registered psychiatric nurses (NOC 3012). Finally, caregivers are required to take a second medical examination at the time of applying for permanent residence.

The requirement for a second medical examination is a regression from the “Juana Tejada law” which removed the requirement for caregivers to undergo a second medical. 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 government amended the law in her honour. The re-introduction of a second medical backtracks on a right that was hard fought by caregivers and their advocates.

Even if caregivers meet the new stricter requirements for permanent residence, there is no guarantee that their applications will be processed by IRCC. Applications received once the 2,750 cap is reached will be returned to caregivers in order to prevent a backlog. Caregivers whose applications have been returned must wait until the annual cap re-opens. This exacerbates worker insecurity and uncertainty with the result that caregivers face increased pressure to complete work requirements as quickly as possible during the four years they are permitted to remain in Canada as temporary foreign workers. They may feel compelled to continue working under abusive employment conditions in order to meet their work requirements.

With the elimination of the backlog for permanent residence applications, caregivers’ ability to remain in Canada if their permanent residence application is capped out is less certain. Under the LCP, caregivers who submit an application for permanent residence have a guarantee that their applications will be processed by IRCC. They are eligible for an open work permit on receipt of their application. As a result, they can continue to work in Canada and support their families while their applications are processing. In contrast, if a caregiver’s application under the TFWP is capped out, they are not eligible for an open work permit. Their ability to remain in Canada will be contingent upon either renewing their work permit with a new LMIA or applying for a new work permit with a new LMIA for a new employer. Caregivers under the TFWP

can access a bridging open work permit only once they have received confirmation that their application is complete, eligible for processing and if their current work permit will expire within four months. Likely foreseeing that caregivers’ ability to remain in Canada would be jeopardized under the TFWP, the government introduced a new rule that allows caregivers under the TFWP to apply for permanent residence from both inside and outside of Canada.

Although the changes took effect on November 30, 2014, those caregivers who had already entered the LCP and/or whose initial LMIA applications were received by Service Canada on or prior to November 30, 2014 are grandfathered in to the LCP. However, caregivers in the LCP are not able to avail themselves of the new protections offered to caregivers under the TFWP. Caregivers must continue to abide by the live-in requirement and can continue to be charged for room and board. If caregivers wish to live-out they would need to obtain a new LMIA and apply for a work permit associated with the new LMIA. Caregivers under the LCP who choose to live-out cannot count any time worked as a live-out caregiver towards the 24 months required to apply for permanent residence under the LCP. Caregivers under the LCP can apply for permanent residence under the new pathways provided they meet the new requirements in order to take advantage of the faster processing time.

### **Impacts on employers**

Canada has long been an attractive choice for foreign caregivers because of the offer of a guaranteed pathway to permanent residence. At the same time, the LCP has been a popular choice for employers seeking affordable care. The lack of a sure pathway to permanent residency under the new program could have the result of putting Canada at a competitive disadvantage against other countries in attracting foreign caregivers, which could exacerbate the labour market shortage of caregivers in Canada. The potential for a reduction in the supply of caregivers from abroad under the new program may constitute a disincentive or inability altogether on the part of employers to effectively utilize the new program.

In June 2014, ESDC made significant changes to the TFWP which included raising the LMIA fee from \$275 to \$1,000 for employers, including employers of caregivers, utilizing the program. The two-year maximum validity of work permits offered to caregivers under the TFWP creates unnecessary financial and time costs for employers who wish to continue employing a caregiver who enters under the TFWP. Employers will have to apply for a new LMIA in order for the caregiver to be authorized to continue working, without a guarantee that the caregiver they would like to retain will actually be allowed to continue working for them.

Due to the limited mobility in the two pathways for the new caregiver program, employers who wish to continue employing a caregiver already in their employ but for a different type of work are bound to the type of work caregivers are authorized to do according to their LMIA and work permit. Similarly, if an employer and a caregiver under the LCP agree that a live-out arrangement is more suitable, they are also bound to live-in requirements according to the LMIA and work permit. Thus, in

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these situations, employers will have to invest significant time and financial resources to apply to obtain a new LMIA and wait for the caregiver to obtain the proper work permit, even if the employer is already confident in the caregivers' skills. Currently, there is no urgent LMIA processing for employers who need caregivers in time-sensitive situations. These cost barriers for employers defeat the original purpose of the LCP as a vehicle of affordable care for Canadian families.

### **The way forward**

The new Caregiver Program reflects a preference for immigrants who are highly-skilled workers despite labour market and social needs in Canada for low-skilled caregivers. The new pathways for permanent residence for caregivers have the effect of further marginalizing low-skilled caregivers, who, despite their status as low-skilled, provide essential care work that benefits Canada's economy. The new program also creates new financial and time barriers for employers seeking to employ caregivers from abroad.

A Canadian parliamentary committee has recently completed a review of the Temporary Foreign Worker Program. Although recommendations stemming from the review have yet to be made public, Minister of Citizenship and Immigration John McCallum has publicly stated that all temporary foreign workers ("TFW") in Canada should have a pathway to permanent residence (Business Vancouver, online: <https://www.biv.com/article/2016/3/temporary-foreign-worker-program-deserves-another-/>). While this would certainly constitute an improvement to Canada's TFWP, the structure of the new caregiver pathways should not be a model for future pathways to permanent residence for other TFWs. Pathways to permanent residence for low-skilled, low-wage workers under the TFWP must be guaranteed pathways that do not impose additional, more onerous eligibility requirements than that required for their initial entry into Canada as workers.

While there is a clear need for affordable care work in Canada, caregivers from abroad must be guaranteed rights commensurate with other workers in Canada. The way forward for Canada's Temporary Foreign Worker Program is to provide permanent residence on arrival, or guaranteed pathways to permanent residence for workers and open or sector-wide work permits. This would eliminate the need for costly and time-consuming LMIA applications on the part of employers, and would go along way towards protecting caregivers from abuse.

Although it has been eighteen months since the new caregiver program came into effect, the West Coast Domestic Workers' Association has yet to see a single caregiver who has entered Canada under the TFWP. Since the launch of the two new pathways on November 30, 2014, applications under the new pathways have not yet reached a volume significant enough for IRCC to report publicly on the caps on its website. The vast majority of caregivers under the LCP are opting to stay in the LCP and apply for permanent residence under the LCP rather than under the new pathways despite the faster processing time under the new program. It remains an unknown as to whether

caregivers will continue to come to Canada at the same rate as under the LCP.

The West Coast Domestic Workers' Association is a non-profit community legal clinic based in Vancouver that is committed to providing legal aid to live-in caregivers and other temporary foreign workers. WCDWA works primarily in the areas of immigration law and employment standards, and is engaged in public legal education, advocacy and law reform initiatives.

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