



## **Migrant Workers Centre:**

### **A Proposal for Improving Canada's Caregiver Program**

#### **Introduction:**

Established in 1986, Migrant Workers Centre ("MWC"), formerly West Coast Domestic Workers' Association, is a non-profit organization dedicated to legal advocacy for caregivers and other migrant workers in British Columbia. MWC facilitates access to justice for migrant workers through the provision of *pro bono* legal information and services. The organization also works to advance the rights of its more than 350 members through public legal education and training, law and policy reform initiatives, and test case litigation.

MWC welcomed the announcement by Immigration, Refugees, and Citizenship Canada ("IRCC") that it was conducting a review of the IRCC Caregiver Pilot Programs. This presents an opportunity to create a new caregiver program that attributes value, respect and dignity to care work and ensures that all caregivers are able to access permanent residency in Canada.

Labour migration of caregivers to Canada under the Temporary Foreign Worker Program ("TFWP") benefits Canadian families, employers and the economy as a whole. Labour migration may also provide caregivers with positive outcomes, including the ability to "exercise greater autonomy over their own lives, thereby benefiting themselves as well as their families and communities."<sup>1</sup> However, over the years, our organization has documented widespread discrimination, labour exploitation and labour trafficking of caregivers under the TFWP due to structural aspects of the TFWP itself.

#### ***The need to apply a gendered lens to migration***

Care work continues to be a gendered and under-regulated sector of work. For example, in British Columbia, only "domestics," or live-in caregivers are covered by the full gamut of minimum labour standards under the BC *Employment Standards Act* ("sitters," or live-out caregivers are excluded from the *Act*). In Canada, women migrant workers are vastly over-represented in care work. 95% of caregivers are women, comprising about 80% of women migrant workers coming to Canada under the TFWP. Only 20% of women migrant workers

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<sup>1</sup> General Assembly, Report of the Secretary-General on violence against women migrant workers, UN Doc. A/66/212, 29 July

come to work in high-wage jobs. This is in contrast to men, of whom 55% come to work in high-wage jobs.<sup>2</sup>

Although Canada has recognized some value in ensuring a pathway to permanent residency for caregivers, practical access to permanent residence for caregivers under the 2014 Caregiver Pilot Programs (“2014 Program”) was severely restricted through the imposition of caps, higher educational and language requirements and the requirement for a second medical exam. Restricting access to permanent residency for caregivers under the 2014 Program has resulted in lower numbers of caregivers coming to Canada and decreased access to permanent residency for women migrant workers.

Limiting access to permanent residency for caregivers reflects our country’s de-valuing of care work. For too long, work that is associated with women, particularly migrant women and racialized women, has been less valued. In a similar vein, the 2014 Program positions migrant women as less desirable citizens. The time is ripe to implement real change that champions women’s rights and empowers women in their migration to Canada, resulting in improved settlement outcomes.

This submission will address the discussion topics identified in IRCC’s written submission guide, and includes a comprehensive proposal for a new **Caregiver Program Stream** that embeds the core Canadian values of permanent status, labour and human rights, and family unity.

### **Positive Aspects of the 2014 Caregiver Pilot Programs**

While the 2014 Caregiver Pilot Programs introduced some positive changes, overall the 2014 Program did not adequately address core structural aspects of the TFWP, such as employer-specific work permits that position caregivers as extremely vulnerable to discrimination, labour exploitation, and labour trafficking. The 2014 Program also increased caregiver insecurity through less certain pathways to permanent residence.

Positive changes in the 2014 Program include removing the live-in requirement, thus providing caregivers with the choice to either live in the home of their employer or live out. Our organization had long advocated for this change as a mechanism to prevent abuses as a result of the live-in requirement.

Another positive change is the reduction in processing time for applications for permanent residence to 6 months, which has had the effect of reducing the length of family separation. Under the Live-in Caregiver Program, caregivers were separated from their dependents for an average of 7 years while completing their work requirement and waiting for their applications for permanent residence to process.

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<sup>2</sup> IRCC, Facts & Figures, Temporary Foreign Worker Program work permit holders with a valid permit on December 31st by gender and occupational skill level, 2006 to 2015.

## **Proposal for a New “Caregiver Program Stream”**

This proposal would create a new stand-alone **Caregiver Program Stream** to the Temporary Foreign Worker Program. Under this stream, caregivers’ access to permanent residency would be improved through their ability to apply for permanent residence from outside of Canada or from inside of Canada. Caregivers would also continue to have the option of applying for a work permit under the TFWP. This proposal would increase flexibility for caregivers and employers to meet labour market needs while ensuring caregivers’ rights are respected through their migration to Canada.

Under this stream, caregivers would have various options for their migration to Canada:

1. If a caregiver applies for permanent residence from outside of Canada, they would arrive with permanent residency status.
2. Caregivers would also have the option to apply for a work permit from outside of Canada and begin work in Canada while waiting for their application for permanent residency to process.
3. Caregivers may opt to apply for a work permit from outside or inside of Canada and begin work in Canada before applying for permanent residence from inside of Canada.

A key aspect of the **Caregiver Program Stream** is the ability for caregivers to apply for permanent residency from outside of Canada and arrive with permanent status. This option would alleviate insecurity resulting from caregivers’ reliance on employers and recruiters for their ability to work and remain in Canada. Permanent status is the only long-term durable solution to remedying power imbalances inherent in the TFWP and leveling the playing field with respect to their bargaining power and access to services and benefits.

Under the **Caregiver Program Stream**, caregivers could also choose to come to Canada as temporary workers and apply for permanent residence from within Canada. A 12-month work requirement, 6-month permanent residence application processing time, the issuance of sector-based work permits instead of employer-specific work permits, and the option for spouses to apply for an open work permit, as detailed below, would together reduce the potential for abuse of caregivers while working in Canada with temporary status and improve their long-term success in Canada.

### **Requirements for Permanent Residency under the Caregiver Program Stream**

Regardless of whether a caregiver chooses to apply for permanent residence from inside or outside of Canada, the application requirements for permanent residency are the same.

Requirement	Description	Rationale
Job offer from a Canadian Employer	Applicants would require a full-time NOC 4411 or NOC 4412 job offer from a Canadian employer for at least 12 months.	Unchanged from 2014 Program.
LMIA requirement	Applicants would require a valid LMIA.	Unchanged from 2014 Program.
Education	Applicants would be required to have completed Canadian high school or its equivalent.	Under the 2014 Program, caregivers must provide proof of a Canadian post-secondary credential of at least one year or a combination of a foreign credential and an Educational Credential Assessment (ECA). This imposes a higher education level for PR than is necessary to work as an in-home caregiver in Canada, meaning that a caregiver may be eligible to work in Canada but not eligible for PR if they are unable to meet the education target. The removal of this requirement would ensure that more caregivers who are eligible to work in Canada are also eligible for PR.
Work experience	Applicants would be required to have completed 12 months of full-time, paid in-home caregiving work in the last 3 years for an employer in Canada or overseas. Applicants could combine work performed in Canada and overseas to meet the 12 months work requirement. Applicants could also combine work experience caring for children and caring for the elderly, people with disabilities, or high medical needs. Applicants could also combine live-in and live-out work.	Under the 2014 Program, caregivers are restricted from combining care for children and care for people with high medical needs in order to meet their 24 month work target; they can only apply under one pathway. The separation of pathways is unnecessary and causes barriers for caregivers who perform multiple types of care work. It appears that the separation of pathways resulted from the inclusion of 3 NOC jobs (3012, 3233, and 3413) that were added to the Caring for People with High Medical pathway. The <b>Caregiver Program Stream</b> only includes in-home caregiving jobs under NOC 4411 and 4412.
Language	Applicants would be required to provide the results of an English or French language	Language benchmark 4 is in line with the requirements for Canadian citizenship.

	test taken in the last 2 years and achieve language benchmark 4.	
Medical exam	Applicants would be required to provide the results of a medical exam taken in the last year if applying from overseas. For caregivers applying from within Canada, there would be no requirement for a second medical exam.	Caregivers under the 2014 Program are required to undergo a medical exam when applying to work as a caregiver through the TFWP and a second medical exam when applying for permanent residency.  The second medical exam was also a requirement of the Live-in Caregiver Program (“LCP”), but was eliminated in 2010 with the “Juana Tejada Law”, named after a caregiver who developed cancer while working as a live-in caregiver in Canada. Tejada had met all other requirements for PR under the LCP, but due to her illness, she did not pass her second medical examination and was therefore denied permanent resident status. She was a strong advocate for her rights, and the government’s elimination of the requirement for a second medical under the LCP in her memory was a step towards ensuring that caregivers would not be denied PR due to a medical condition.
Concurrent processing of dependents	Applicants could include dependents in their application for permanent residence for concurrent processing.	Unchanged from 2014 Program.
Processing time	Applications would be processed by IRCC within 6 months.	Unchanged from 2014 Program.
Caps	There would be no caps on the number of applications processed by IRCC each year.  IRCC would conduct an assessment to determine the immigration levels for caregivers each year. The level should allow for flexibility that takes into account the 6-month	Under the 2014 Program, the Caring for Children and the Caring for People with High Medical Needs pathways to PR for caregivers (NOC 4411 and 4412) are each subject to a cap of 2,750 applications that will be processed per year. Removing these caps would ensure that all caregivers are able to become permanent residents if they meet the requirements.

	application processing time.	
Medical inadmissibility	Section 38(1)(c) of the Immigration and Refugee Protection Act regarding medical inadmissibility due to excessive demand would be repealed.	In order for caregivers and their families to become permanent residents they must not be medically inadmissible, which makes it difficult and even impossible for some caregivers to bring their families to Canada if a family member has a medical condition, such as a disability. This discriminates against persons with disabilities, and is particularly unjust for caregivers who provide critical services caring for individuals with disabilities and high medical needs in Canada.

### Work Permits and Labour Market Impact Assessments

The job offer, LMIA, education, work experience, language and medical exam requirements for work permit applications would be the same as for permanent residency applications. This ensures that all caregivers who are eligible to work in NOC 4411 and NOC 4412 jobs as caregivers in Canada are eligible to apply for permanent residency.

Item	Description	Rationale
Sector-based work permit	Applicants would receive a sector-based work permit that allows them to work full-time for any Canadian employer with a valid LMIA for a NOC 4411 or 4412 position. The length of the sector-based work permit would be according to the job offer and for more than 12 months.	<p>Under the 2014 Program, employer-specific work permits tie caregivers to one employer, severely restricting their mobility in the labour market.</p> <p>These tied work permits facilitate the exploitation and abuse of caregivers by locking caregivers into employment situations where their employers have a significant amount of control over them. For many caregivers, this results in excessive hours of work, unpaid hours, and a lack of overtime pay.</p> <p>Sector-wide work permits would allow caregivers to move freely within their work sector and more easily leave jobs that are discriminatory, abusive, or making them sick.</p> <p>In 2016, the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities (HUMA) undertook a study of the TFWP. In its report, the HUMA acknowledged that employer-specific</p>

		<p>work permits can place migrant workers in a vulnerable position and lead to abuse, and recommended that Temporary Foreign Workers be issued sector-based work permits instead of employer-specific work permits.</p> <p>Sector-based work permits would also provide caregivers with the practical ability to assert their rights while working under the <b>Caregiver Program Stream</b>. Under the employer-specific work permit regime, caregivers are reluctant to assert their rights for fear that they will be left jobless, homeless, and without the ability to earn an income for the 6-10 months it takes for a new LMIA and work permit to process. Caregivers also fear being removed from Canada if they are unable to find a new employer.<sup>3</sup></p> <p>Sector-based work permits would be a cost-saving measure for the Canadian government. If caregivers were able to more easily change employers if they are subject to abuse or are terminated, they will be less likely to apply for Employment Insurance for the 6-10 months it takes for new LMIA and work permit applications to process.</p> <p>Work permits are issued for more than 12 months in order to provide caregivers time to apply for permanent residence without having to renew their work permit beforehand.</p>
No live-in requirement	Caregivers would continue to have the choice to live-in or live-out of the home of their employer and cannot be required to live-in.	Unchanged from 2014 Program.
Sector-based LMIA	Employers would receive a sector-based, full-time NOC 4411 or NOC 4412 LMIA valid for up to 3 years. Employers would not be required to name a specific employee on	Under the 2014 Program, caregivers are required to provide a new LMIA in order to renew their work permit with the same employer. The requirement for a new LMIA results in additional waiting time, costs, and uncertainty for work

<sup>3</sup> See Fay Faraday, *Profiting from the Precarious: How recruitment practices exploit migrant workers*, (Toronto: Metcalf Foundation, 2014) at 37-41

	<p>the LMIA. They could provide a job offer to an employee up until the expiry of the LMIA. Employers wishing to hire a caregiver after the expiry of the LMIA would be required to apply for a new LMIA.</p>	<p>permit renewals.</p> <p>This change would also save the employer the time and cost of applying for a new LMIA when hiring a new caregiver.</p>
Open work permits for spouses	<p>At the same time as applying for a work permit, applicants could apply for an open work permit for their spouse.</p>	<p>Caregivers spend years in Canada caring for others' children and family members, while being restricted from reuniting with their own. This heartbreaking separation has lasting negative effects on caregivers and their family members.</p> <p>Open work permits for spouses would allow caregivers to work without leaving their children behind, and allow spouses to find employment and settle in Canada. Spouses of high-skilled temporary foreign workers are able to apply for open work permits in Canada; spouses of caregivers should be given the same opportunity.</p>
Processing time	<p>Work permits and LMIAs would be processed within a reasonable time (1-2 months).</p>	<p>Long processing times for work permits and LMIAs cause delays for caregivers to start work and for employers to access the care they require.</p>
Recruitment agencies/ immigration consultants	<p>To prevent widespread abuse in the recruitment of caregivers to Canada, the Canadian Government would require that provinces and territories regulate recruiters of caregivers according to best practices in the Manitoba and Saskatchewan models.<sup>4</sup></p> <p>The Canadian Government would implement the recommendations of the Standing Committee of Citizenship and Immigration outlined in its report: "Starting Again: Improving</p>	<p>Caregivers are routinely charged exorbitant fees, which typically range from \$4,000 - \$10,000, for jobs in BC contrary to the BC <i>Employment Standards Act</i>. Caregivers are also frequently subject to a fraudulent recruitment practice known as "release upon arrival" whereby caregivers are promised a job and receive an employment contract from the employer; however, when they arrive in Canada the job does not exist. Other caregivers may find that their job differs from what is stated in their work permit, or that the work type, wages, conditions, hours, or length of employment are not what they initially agreed to.</p>

<sup>4</sup> For example, see the *Foreign Worker Recruitment and Immigration Services Act*, SS 2013, c F-18.1.

	<p>Government Oversight of Immigration Consultants” (2017), as immigration consultants frequently act as recruiters of caregivers.</p>	
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**What do you think are the most important skills and qualifications for caregivers to be able to do their jobs in the immediate term; and do well in Canada in the long term?**

Caregivers are already qualified to work as caregivers in Canada. The long history of Canada bringing in foreign nationals to work as caregivers demonstrates that the need for care work is a permanent, rather than a temporary need. Care work contributes to Canada’s social and fiscal economy, and with Canada’s aging population and increasing life expectancies, the need for caregivers will continue to grow.

In the long term, caregivers and their families would have improved settlement outcomes if they arrived together with permanent residence status. As permanent residents, caregivers and their families would be able to immediately begin their integration process. Their status as permanent residents would facilitate access to settlement services, as well as education and vocational training.

**What would be the best way to communicate with people likely to apply to a future caregiver pathway?**

It is critical for caregivers to have access to services. When caregivers first arrive, they may be unfamiliar with their options for and the process to apply for permanent residence, as well as any community services, programs, and support available to them. However, caregivers are not provided with any such information upon their arrival in Canada, and as temporary foreign workers, caregivers are not eligible to receive federally-funded settlement services.

One model for improving communication with caregivers is for the government to partner with non-profit community organizations such as Migrant Workers Centre, which conducts outreach to inform caregivers of their rights and support them in applying for permanent residence.

**Consultation process**

On 22 March 2018, the Migrant Workers Centre and other BC-based caregiver advocacy organizations sent a joint letter to Immigration Minister Ahmed Hussen to request that in-person consultations take place in British Columbia. Caregivers in BC should be given the opportunity to have their voices heard in the context of an open, transparent and accessible in-person consultation process. We urge the Government of Canada to conduct in-person consultations with caregivers and their advocates across the country.

## Conclusion

The time is ripe for a new **Caregiver Program Stream** that takes into account the gendered context of care work and reflects the principles of permanent status, labour and human rights, and family unity. Care work is valuable work and helps Canada thrive, as it is the work that makes all other work possible.

While this submission has focused on caregivers under Canada's Temporary Foreign Worker Program, we also recommend that IRCC consult with other migrant workers in different sectors (agriculture, hospitality, construction, food processing, etc.) in order to create new streams for permanent residence for all migrant workers.

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