

# Between Temporary and Permanent : The Injustice of Canada's Live-In Care Program

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Her name is Vilma Grafil, her work contract ends a month too early for her to apply for permanent residency, and as a result her twenty-two months of work might be for naught.<sup>1</sup>

Her name is Sheila Calica. After completing her mandatory twenty-four months of work to apply for permanent residency, she has received no response after 45 months of waiting.<sup>2</sup>

Her name is Janeth Melitante, she was expected to work twelve-hour days making roughly 4 dollars an hour by her host family instead of the initial promise of 10 dollars an hour for eight hours of work.<sup>3</sup>

Vilma, Sheila and Janeth are all workers from the Philippines who came to Canada seeking opportunities through the Canadian Temporary Foreign Worker Program (TFWP). Canada has offered foreign workers the opportunity to apply for permanent residency

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<sup>1</sup> Nicholas Keung, "Foreign Caregivers Face New Hurdles to Stay in Canada," *The Star*, June 30, 2018, <https://www.thestar.com/news/immigration/2018/06/30/foreign-caregivers-face-new-hurdles-to-stay-in-canada.html>.

<sup>2</sup> Christina Gonzales, "The Nanny Diaries: Toronto's Filipino Caregivers Talk about Low Wages, Long Days and Immigration Delays," *Toronto Life*, August 15, 2016, <https://torontolife.com/city/toronto-filipino-caregiver-nanny-diaries/>.

<sup>3</sup> *Ibid.*

after 24 months of work in the caregiving domain.<sup>4</sup> Many of these workers come to Canada and work as live-in nannies for either children or the elderly through a subset of the TFWP called the Live-in Caregiver Program (LCP). While the program has gone through a major change in 2015 where the live-in requirement was removed, a majority of the problems that will be presented in this essay still remain.<sup>5</sup> This program has led to over 75,000 caregivers receiving permanent status since 1992 and is a major draw for foreign work in Canada.<sup>6</sup> This is contrary to countries like Singapore that offer much more restrictive terms that emphasize temporary work with nearly no opportunity to become a permanent resident.<sup>7</sup> From the onset we would assume that this is a great opportunity for workers aiming to migrate. However, Vilma, Sheila and Janeth as well as thousands of other women who have been part of the LCP are exploited by a broken system that has become a staple of the Canadian migration legislation. This system has created a grey area where the workers are neither temporary nor permanent and as such, they become especially vulnerable due to their status being so volatile. The volatility of this position leads to immense amounts of workplace injustice that often times are undocumented due to the fear of backlash from employers.<sup>8</sup> However, unlike the average Canadian worker who relies on their employment for a salary, foreign workers have a much more intimate relationship with their workplace, as it has the dual function of workspace and home for the foreseeable future. This is coupled with their work being their only avenue towards permanent residency. Members of the LCP have a huge burden to

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<sup>4</sup> Carmona Marjorie Newman, “Canada’s Permanent Residency Program for Caregivers to End in Nov. 2019,” ABS-CBN, April 11, 2018, <https://news.abs-cbn.com/overseas/04/11/18/canadas-permanent-residency-program-for-caregivers-to-end-in-nov-2019>.

<sup>5</sup> Elsa Galerand, Martin Gallié and Jeanne Ollivier-Gobeil, *Domestic Labour and Exploitation: The Case of the Live-In Caregiver Program (LCP) in Canada*, (Montreal, QC: SACPINAY Research Report, January 2015), p.2, [https://www.mcgill.ca/lldrf/files/lldrf/15.01.09\\_rapport\\_en\\_vu1.1.13\\_0.pdf](https://www.mcgill.ca/lldrf/files/lldrf/15.01.09_rapport_en_vu1.1.13_0.pdf)

<sup>6</sup> Gonzales, “The Nanny Diaries,” Toronto Life.

<sup>7</sup> Joseph H. Carens, *The Ethics of Immigration* (Oxford: Oxford University Press, 2013), p. 111.

<sup>8</sup> Galerand, Gallié, Gobeil, *Domestic Labour and Exploitation*, p. 29.

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bear given the stakes of their employment and how their opportunity for residency hinges on potentially exploitative circumstances.

This essay will argue that members of the foreign caregiver program are trapped in a form of excluded inclusion, where, while they have the chance to work and strive towards opportunity, a blind eye is turned to their struggle leading to an immense amount of vulnerability. Fundamentally, migration always begs the question of who to exclude and who to include. It is clear that Canada has made the choice to include these women and to provide them with an opportunity that few other countries would offer. However, their inclusion is a double-edged sword that offers a chance of residency, but at the same time, exposes the workers to some of the most easily exploitable work circumstances possible, due to their permanent resident status relying on the duration of their employment. To show this, we will explore how the limited rights provided to members of the LCP restrict their autonomy and freedom by creating oppressive relationships with both the Canadian government and the host family. In arguing for this included exclusion, I will show that there is a moral obligation for states that are taking workers in to treat them better, as they are in some cases even more vulnerable than certain members of the host state. Given that Canada is a state that chooses to include these women and give them an avenue towards permanent residency, based on this inclusion, there is a moral obligation to address the problems that will be presented in this essay. This obligation rests on Canada's status as a democratic state and highlights the injustices that manifest themselves when we condemn these potential residents to a seemingly eternal processing time. This process renders them even more vulnerable to workplace injustice due to their status as temporary workers. Further, they do not have means of recourse against the Canadian government directly due to their temporary status, thus leading to a serious tension between the rights granted to citizens and temporary workers.

Too often, these women are reduced to mere statistics and as such we should keep them at the heart of our discussion. Further, we should not infantilize these women as they are qualified workers that are being abused by a system that enables a victimizing structure. The women who choose to take part of the LCP are abused by a system

that is broken and needs to be addressed. We should understand these women as individuals who face their own plight within the Canadian migration system. However, these women are not alone as just last year, over 23,000 caregivers came to Canada from the Philippines.<sup>9</sup> As such, there are two key relationships that we must understand in order to quantify the problem found within the live-in care program. The first relationship is one that is primarily discussed by ethical theorists like Joseph Carens as it explores the general obligations host states have to temporary migrants. The goal of the first section of this essay will be to discuss the problems in this first relationship by revising Carens' work and adapting it to the reality of the LCP in Canada. The second relationship is between the caregiver and the host family, and how it is a key factor to the plight of members of the LCP, as their relationship to work is fundamentally different due to this reliance on a host family. In order to understand the struggle of a foreign caregiver, it is paramount that we treat the host family as even more powerful over the caregiver than a traditional employer. Given that the host family is so implemented in the life of the caregiver, they are subject to a quasi-governmental structure that often, as this essay will show, becomes tyrannical. This problem will be addressed in the second section of this essay given that we must first understand the relationship between the host state and caregiver as it is what makes possible the injustices within the host family and caregiver relationship. In exploring these two relationships, I will argue that the potential resolution for the problems presented are more direct routes towards permanency, thus giving caregivers more freedom when in the host state.

## 1. A Question of Status

There are a variety of different programs under the umbrella of the TFWP in Canada and not all of them give the temporary worker a route towards permanent residency. For example, workers in domains such as agriculture cannot apply for residency through their program and would have to seek for a more traditional work visa.<sup>10</sup> This is

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<sup>9</sup> Gonzales, "The Nanny Diaries," Toronto Life.

<sup>10</sup> "Hire a Temporary Foreign Worker through the Agricultural Stream – Overview," Government of Canada, September 18, 2018, 78

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contrasted by the LCP which offers a direct pathway towards permanent residency. It should be noted that there have been a variety of iterations of the LCP program that have come to be, over the past decade. These iterations can be split up into three versions that will aid in our discussion of the problems in the program. The first version of note is the pre-2015 iteration of the program which made it so that workers who entered the LCP were required to live with the host family upon employment. As mentioned above, in 2015 the live-in element was removed, which acts as the second version. This version has lasted until 2019 where the program faced termination. However, in February of 2019, two pilot programs were introduced to tackle fundamental problems found in the past two versions of the plan. Prior to 2019, workers would only begin the legislative side of the permanent residency application after their mandatory 24-month of work.<sup>11</sup> Further, in previous iterations, workers would be employed by a single family and if this were to change, workers would have to apply for a labor re-evaluation, which in the case of some workers, meant the possibility of not having their contract renewed, thus ruining their chances of becoming permanent residents. The 2019 iteration of the LCP looks to give workers “occupation-specific work permits,” which would allow more freedom to move from one family to another.<sup>12</sup> The final change found within the 2019 iteration of the plan is the ability for caregivers to migrate with their family instead of alone.<sup>13</sup> As such, common-law partners, or spouses, and the children of caregivers can accompany them to the host country. What we see with these three fundamental

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<https://www.canada.ca/en/employment-social-development/services/foreign-workers/agricultural/agricultural.html>.

<sup>11</sup> “Caregivers will now have access to new pathways to permanent residence,” Government of Canada, February 23, 2019, <https://www.canada.ca/en/immigration-refugees-citizenship/news/2019/02/caregivers-will-now-have-access-to-new-pathways-to-permanent-residence.html>.

<sup>12</sup> “Caregivers will now have access to new pathways to permanent residence,” February 23, 2019.

<sup>13</sup> *Ibid.*

changes is a significant amelioration of the working conditions for the caregivers brought into Canada.

In making the process start prior to the entry into the country, workers are less susceptible to processing delays and their transition into permanent residents becomes much smoother as a result. Further, giving caregivers the ability to change employers in the face of exploitative work circumstances makes it so workers can take control over their work and removes a significant level of vulnerability. However, we should remain sceptical of the ease of this change as it is yet to be seen if workers will be able to seamlessly move from employer to employer. This change is on a similar level to the removal of the live-in requirement in the 2015 iteration of the program, and I believe both changes empower the caregiver and give them more control over work. Finally, the integration of the family unit into the migration process makes it so that caregivers become more rapidly integrated into life in Canada. This eliminates the problem of working away from your family for a prolonged period of time and without a doubt creates a more ideal circumstance for caregivers who might be mothers and wives. While these changes seem promising, I believe there still exists a more fundamental issue with the LCP that is not addressed in any of the changes made. What we are seeing in these new pilot programs is a change that address problems, but the core problem remains. Workers are still treated as temporary throughout their term working in Canada. The wording of the proposed pilot program is important:

Under the new pilots, applicants will be assessed for permanent residence criteria before they begin working in Canada. Once the caregiver has their work permit and 2 years of work experience, they will have access to a direct pathway to become a permanent resident.<sup>14</sup>

What's important to derive from this is that the Canadian government is providing a promise of a direct pathway towards permanent residency, but from the onset they are still not permanent. This program still opens up a grey space where workers are treated as if they are temporary, but they are more permanent than that. In

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<sup>14</sup> *Ibid.*

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keeping their status as temporary, workers do not have full access to rights offered to permanent residents. While this program gives caregivers a more direct pathway, due to there still being a reliance on the completion of the 24-month term, there is still the potential for exploitation, especially now that caregivers can migrate their entire family unit. In all three iterations of the program the problem of the grey area still exists, and I argue that this is the most philosophically problematic part of the program as the caregivers are neither temporary nor permanent. In this grey area, workers are technically considered temporary due to the nature of the program, yet from the time of their arrival they are working towards residency, unlike the agricultural worker. This leads us to take up a question often asked by ethical theorists: when does a temporary worker acquire the moral right to remain permanently? Carens has already taken this question up in his work on temporary workers, however I believe pursuing the question further with the aforementioned grey area is required.

*1.1. Moral Obligations and Democratic States*

It is at this point that we should make a clear distinction between temporary workers and permanent residents. On Carens' account permanent residents are in a different circumstance than temporary workers as they should be seen as prospective citizens, where the temporary worker is not, due to the fact that permanent residents are categorized differently in the migration process.<sup>15</sup> As such, the guarantees for permanent residents, given the potentiality of citizen status, demand more than basic rights when in the host country. This is directly contrasted by temporary workers, whose relationship with the host country is impermanent, thus, treated more contractually.<sup>16</sup> This is not to say that temporary workers do not have any rights, however, it is clear that the nature of their stay is limited and thus, the rights provided to them should be as extensive as they can be within this limited context.<sup>17</sup> In Carens' chapter, he addresses that this delineation between permanent and temporary ought not be made as

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<sup>15</sup> Carens, *The Ethics of Immigration*, p. 111.

<sup>16</sup> *Ibid.*, p. 110.

<sup>17</sup> *Ibid.*, p. 110.

democratic states should supply the same level of rights to anyone staying within its border.<sup>18</sup> While this would work in ideal terms, I believe there is a certain level of infeasibility that comes with a blanket provision of rights. What this section will explore is how, due to the guaranteed route towards permanency provided by the LCP, rights should be given upon arrival given the government's interest in migrants who enter with the aims of becoming citizens, or at least permanent residents. This falls in line with Carens reasoning, while also being more feasible from an implementation standpoint, as while it would be optimal to provide equal rights to everyone, often this can become difficult on larger scales. Rights for those attempting to become permanent residents are much more prevalent than those who are explicitly temporary, as the workers who must stay to gain permanence are much more vulnerable to exploitation due to the fact that they must put up with the work circumstances for the greater goal of becoming a resident. This is not the case for temporary workers as once their contract is done, they may leave and choose not to renew it. To juxtapose the positions, the temporary contracted worker is giving up a job where as members of the LCP are giving up a potential future for themselves and their family if their position falls through.

We should now take up the question of when workers acquire the moral right to remain permanently. If a worker is admitted temporarily, and that it is made clear in their initial admission that from the beginning there is no access to a permanent status, then the claim to permanence is much weaker, even upon a renewal of contract. Yet, this begs the question, if from the onset there is a clear opportunity to become a permanent resident, then does the migrant not have a much stronger claim towards permanence? This highlights a tension within the Canadian LCP. The question of when permanence is acquired is one that I believe demands a deeper philosophical inquiry. It would be easy to understand the problem of the LCP as merely a political issue that needs to be addressed by the Canadian government if they want to continue to take in foreign workers. However, I believe we should think of this question on a more fundamental level that addresses the notion of permanence in

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<sup>18</sup> *Ibid.*, p. 124.

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and of itself. What makes someone a permanent member of society? Is this exclusively a question of citizenship? Or, do people acquire a claim towards permanence at the start of the migration process? Clearly, if we follow the reasoning presented by ethical theorists like Carens, migrants have a claim towards permanence much earlier than once they have obtained the full status of a citizen. If a state admits someone with the potential of permanency, is there not a fundamental moral obligation to treat that person as a permanent resident from the onset? Therefore, given that there is an avenue towards permanent resident status, caregivers have a much stronger moral claim to permanence than other temporary workers. However, because of their status as temporary workers, they can be trapped in processing delays for years without a clear sign of a change in status. A worker who is contracted to work for only a given amount of time has a much smaller investment in leaving their home country temporarily, whereas when caregivers leave, they are often trying to open up avenues for the migration of their families, thus rendering the system much worse if their application for permanence falls through. We can clearly see here that members of the LCP fall into a category that is not truly temporary, while simultaneously not being permanent. This results in a core issue where democratic states guarantee a high level of rights to citizens, but not to temporary workers on the grounds that they are not permanent assets to the state. However, these caregivers are not impermanent as they journey towards citizenship upon arrival unlike temporary workers. The system in Canada is flawed and leads to excessive processing time for a plethora of caregivers, resulting in a quasi indefinite temporary status.<sup>19 20 21</sup>

With this established we should move forward by posing another poignant question: when we discuss a moral obligation on the side of democratic states, what exactly do we entail? To break this question

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<sup>19</sup> Gonzales, "The Nanny Diaries," Toronto Life.

<sup>20</sup> Susan McClelland, "Susan McClelland on Nannies from the Philippines: Suffer the Caregiver," National Post, January 24, 2014, <https://nationalpost.com/opinion/susan-mcclelland-on-nannies-from-the-philippines-suffer-the-caregiver>.

<sup>21</sup> Newman, "Canada's Permanent Residency," ABS-CBN.

further, we must understand the circumstances and injustices that these women face on a daily basis. A 2015 study of the exploitation of women in the live-in care program will aid us in quantifying the multiplicity of injustices that can occur over the course of 24 months of live-in care. Out of the women surveyed, over half of them were subject to 51 plus hours of work a week. 24 of the 28 women asked were not paid overtime either, even though there are rules in place in provinces like Quebec to protect these workers.<sup>22</sup> Also, workers in Quebec have the right to deny work after 50 hours, however these workers in most cases cannot outright deny work in fear of repercussion, even when their hours exceed the mandated 50. I believe this can be directly correlated to these women's status as temporary as, due to their limited rights and lack of resources, they become exceedingly vulnerable. This is coupled with the workers not wanting to speak out against their employers in fear of repercussion, as their employers are a quintessential part of the migration progress for them. These women report a feeling of powerlessness and this is in part due to the temporary nature of their employment.<sup>23</sup> However, the main issue here is that they are not temporary as they are pursuing a direct avenue towards permanency. These injustices demand responses in democratic states, but instead what we constantly see is that these women are being pushed aside as they are not citizens or permanent residents and as such have a weak claim in the eyes of the government. However, if we follow Carens' reasoning, due to their potentiality to become permanent residents and subsequently citizens, we should treat them as such.<sup>24</sup>

### *1.2. An Argument for Immediate Permanence*

Canada has chosen to give these women an avenue towards permanency and instead of treating the members of the LCP as potential citizens, they are further marginalized and treated as if they have no claim to citizenship. This is made clear by the racialization of caregivers as most of these women come from developing countries

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<sup>22</sup> Galerland, Gallié, Gobeil, *Domestic Labour and Exploitation*, p. 19-21.

<sup>23</sup> *Ibid.*, p. 22.

<sup>24</sup> Carens, *The Ethics of Immigration*, p. 115.

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where they cannot find work.<sup>25</sup> We would assume that these women are not skilled and thus choose to enter the domain of care, however most of them hold bachelors' degrees but cannot get jobs and thus become deskilled, through prolonged processing times before becoming residents.<sup>26</sup> <sup>27</sup> Often these women work for the Canada's elite and this puts forward an enormous amount of normative pressure, as their work is restricted to the domain of care. One could argue that they agreed to this when they initially signed up for the program, but what should be understood is that the injustices that occur take advantage of people who are in need of work and cannot find it in their home state. These women are all striving towards a better future, but are treated as cheap labour instead.<sup>28</sup> Even if we look at recruitment sites that give Canadians tools to hire foreign caregivers, it is clear that their interest is not to showcase what qualifications these women have to be the best caregiver. Instead, they are marketed as 12% less than the cost of a domestic caregiver.<sup>29</sup> At its core, this is a normative problem regarding how we treat members of the LCP, as they are understood as people who don't truly belong and this is reinforced by the legislation that brings them into this country. While we choose to include them, they are excluded from full access to their rights due to both the normative and legislative power behind the notion of temporary work. Further, they are excluded from exercising their skills, as traditional avenues for migration offer a much more difficult route towards permanency. What these studies show is that the temporary worker becomes more akin to disposable and while avenues exist for these women, they are severely limited due to their reliance on both the Canadian

<sup>25</sup> Maria Denna Santos, "The Live-in Caregiver Program: Issues, Trends and Updates," The Philippine Reporter, May 15 2009, <http://philippinereporter.com/2009/05/15/the-live-in-caregiver-program-issues-trends-and-updates/>.

<sup>26</sup> Santos, "The Live-in Caregiver Program," May 15, 2009.

<sup>27</sup> Galerand, Gallié, Gobeil, *Domestic Labour and Exploitation*, p. 2.

<sup>28</sup> *Ibid.*, p. 6.

<sup>29</sup> "Sponsoring a Foreign Nanny: All You Need to Know in Plain English," CanadianNanny.ca, July 27, 2016, <https://canadiannanny.ca/sponsor-foreign-nanny-in-canada-everything-you-need-to-know-plain-english>.

government and the benevolence of their host family, both of these parties however, as empirical data shows, take advantage of the vulnerability of these women instead of attempting to render circumstances better for both parties.

We must understand that in democratic states there is an obligation to provide those included in the migration process with a full access to rights. This is on the grounds that we have power within our own borders and when countries like Canada choose to include people into programs like these, the fact that injustices exist mandate a call for regulation and revision. Given that we are taking in these workers, their struggle becomes something that must be taken into account due to the fact that we have power within our own borders to make a change and better their living circumstances.<sup>30</sup> While there is an argument to be made that there should be systems in place to get these women jobs within their own country, the fact remains that we have chosen to bring them in and are subsequently allowing their vulnerability to be exploited. This is highlighted by Maria Deanna Santos, a dual Filipino-Canadian immigration lawyer who argues that we should allow these caregivers the rights of a permanent residency upon arrival.<sup>31</sup> Santos argues that there is a fundamental failure of international human rights regarding these caregivers and there is a clear lapse between the home state and the host state leading to a consequent inadequacy in integrating these women.<sup>32</sup> What we should understand from this is that at the core of the problem lies a moral obligation for the host state to take responsibility for those admitted from the onset due to its willingness to take them in the first place. This obligation is reinforced by the avenue provided towards permanent residency and if we build from Caren's argument into Santos' we can clearly see that these women are trapped in a grey area. To eliminate this, they should be treated as permanent due to their intention to migrate permanently. This notion of immediate permanence would give the members of the LCP not only legislative power, given that their status would not solely rest on employment, but also normative strength as they would no longer be seen as temporary. This would also allow them both social and economic

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<sup>30</sup> Carens, *The Ethics of Immigration*, p. 117.

<sup>31</sup> Santos, "The Live-in Caregiver Program," May 15, 2009.

<sup>32</sup> *Ibid.*

mobility as they would not be tied down to a single family that knows the power it holds over these women. Further, because of the niche nature of the program it would be easier to implement special conditions for members of the LCP instead of having to re-write the entire book on temporary work. This revision to Carens' work offers a plausible alternative without overly idealizing the rights countries can provide to all people that enter. This section has addressed the relationship between caregiver and state, and the following section will take up problems that exist between the caregiver and host family that would be alleviated if we would treat members of the LCP as permanent residents from their acceptance into Canada.

## **2. Three Levels of Power: How Vulnerability is Enabled, Perpetuated, and Taken Advantage of**

What we must take from the first section of this text is that the status offered by the Canadian government, while potentially liberating the worker after a 24-month term, can box them into a vulnerable status wherein they have little to no power over their own circumstance. This is due in part to a tertiary form of governmental power that reins over the temporary worker. This three-tiered system of power can be broken down as follows. The first tier is the home government. This relationship is integral to understanding how the initial circumstance and need to migrate are enabled. The second is the host government who perpetuates circumstances that enable the vulnerable status of these workers. This is mostly due to the status given to these workers by the host government. The third is the host family. This strays from what we would understand as a formal governmental entity, but as this section will show, they hold a level of power that is comparable to the host government. In some cases, it could even be argued that the power given to the host family outweighs the domestic government as the host family is implemented in the caregiver's day to day life. The following three sections will break down how each individual form of power is held over the caregiver and why this tiered system of power enables high levels of vulnerability for the caregiver.

### 2.1. *How it's Enabled*

Given that there is not enough work in the migrant's home country, they are forced to find work abroad. Ethicists like Michael Blake, when discussing a country's right to exclude, often discuss the voluntary nature of the inclusion of doctors over less skilled workers.<sup>33</sup> This is problematic as, due to the value of a doctor's skills, they can often get a job in their home country but choose to get jobs abroad to better their living circumstances. This is not the case for caregivers as we have shown that these workers, while educated, cannot find jobs in their domain in their home country and are thus forced abroad. This represents the first relationship of power that suppresses the caregiver and it is what forces caregivers into working abroad in the first place. In an ideal world, the home government would have the means to take care of these workers, but instead they must provide for their family from thousands of miles away.

This relationship is key to our understanding of the argument as it is what enables the need for migration from the onset. An important caveat to understand is that the women involved in the LCP are not of a status so vulnerable that they can be deemed as refugees, but this does not mean that their situation in their home country is not precarious. These women are fortunate enough to not be in a circumstance that mandates a global initiative to take them in as refugees, but this categorization leads to an even greater problem that is mishandled by Blake: these women are just above the threshold of refugee status, yet they are by no means in a circumstance of wealth. For this reason, they must migrate and more specifically their migration status leads to an insurmountable level of vulnerability. It should be noted here that this status as vulnerable does not come from the fact that these women are away from their families and weak. They are vulnerable because they are the targets of a system that is flawed and does not take their struggle into account. If we look to immigration theorists like Speranta Dumitru, there must be a certain level of caution when addressing the status of these women. Dumitru argues that there is a phenomenon in the study of migrant

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<sup>33</sup> Alex Sager, *The Ethics and Politics of Immigration: Core Issues and Emerging Trends*, (London: Rowman & Littlefield International, 2016), pp. 30-31.

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caregivers where, due to emotional biases, we over-emphasize the scope of the struggle these women face.<sup>34</sup> We see these women not as workers, but as mothers who are forced into working in a distant land, away from their families.<sup>35</sup> Dumitru highlights that this form of “care drain” can be problematic as it influences the way we perceive the struggle these woman go through, thus expanding the scope of struggle and over-emphasizing issues that may not be present.<sup>36</sup>As I have mentioned in this text, these women are qualified workers who simply cannot find work at home and as such are seeking opportunities abroad. Dumitru argues for this as well and utilizes this point to showcase that the scope of the problem is much smaller than generally perceived. As statistics show, these women are often not mothers and as such I believe that Dumitru’s argument is entirely valid regarding the hasty classification of these women.<sup>37</sup> However, I believe her argument is flawed in the sense that if we strip away the emotional reaction we had when addressing the problem through the lens of “care drain”, exploitative roots still remain within the LCP. Further, even if the scope of the issue is smaller, should we not prioritize the rights of these migrants? It is pivotal that we separate the problems presented by Dumitru’s narrow view from what we are arguing for here, as the goal of this text is to highlight that, regardless of the person being exploited, the problem lies deeply within the classification and status of these women.

These women are neither refugees, nor are they doctors, they have no migration privileges and thus the legislation that takes care of their migration is often times mishandled. This is the problem we must focus on as the problem of “care drain”, while problematic in and of itself, is something that must be navigated away from in this case as we can isolate a specific problem within the LCP that is not biased by emotion. Instead, we must focus on the reality of the migrants caught in the LCP and the fundamental disconnect that exists between the

<sup>34</sup> Speranta Dumitru, ‘Care Drain’. Explaining Bias in Theorizing Women’s Migration,” *Romanian Journal of Society and Politics* 11, no. 2 (2016): p. 8, <https://doaj.org/article/e369f3ff2c62475e805b4bbc46a333bb>.

<sup>35</sup> *Ibid.*, p. 8.

<sup>36</sup> *Ibid.*, pp. 10-11.

<sup>37</sup> *Ibid.*, pp. 9-10.

host and home state. This is what enables this host/home disconnect mentioned by Santos and is what causes the inadequacies in integration of these women.<sup>38</sup> This is why the first section's discussion of the host government's relationship with the migrant is so pertinent as it has a built-in level of vulnerability for the migrant. However, this is not purely a legislative problem. In treating these women in such a way, it also enables the normative plight of how society sees migrant caregivers. These caregivers are seen as people who need this job and much like the proletariat of the past, they will subject themselves to poor working conditions if it is their only option. This also enables the ability to pay these workers far less than they should have been paid, especially given the number of hours worked, as shown with the work week of most nannies exceeding 50 hours with no overtime pay. These workers are seen as in need of this job both for income and for migration. Thus, an insurmountable level of pressure is put on their position which ultimately renders the workers vulnerable when they enter the host country.

## *2.2. How It Is Perpetuated*

The Canadian system in particular exposes these women to an even greater level of vulnerability, due to the importance of their job being linked to their migration status. As we have explored in the first section there is a clear lack of power for these women due to their status as impermanent. While Canada is offering these women an opportunity for permanence, it is at the same time locking them into circumstances wherein they lack control over the potential outcome of their work experience. In migrating to Canada, there are often fees that can exceed 5,000 dollars in order to be placed in a family that is looking for a caregiver.<sup>39</sup> This results in the migrant indebting themselves before even beginning to work. What this enables is a reliance on the job acquired regardless of the injustices that may take place. A worker who needs to pay off the debts amassed to enter the country can only do so through work, even if the circumstances are unjust. Further, they face deportation if they choose to leave an abusive workplace and cannot find another job. This is due to the fact

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<sup>38</sup> Santos, "The Live-in Caregiver Program," May 15, 2009.

<sup>39</sup> Galerand, Gallié, Gobeil, *Domestic Labour and Exploitation*, p. 7.

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that workers must request a re-evaluation of market needs to see if their work is still needed.<sup>40</sup> If a Canadian can take the position or if no jobs are available, then the workers can be deported, as it was the case for Ms. Torres, a Filipina who quit her job due to mistreatment, but could not find employment and faces deportation.<sup>41</sup> This places the worker in a position where they are likely to take the abuse present in the workplace to avoid having to find another job, because in the case that they cannot find another job, the entirety of their residency might be put in jeopardy. This is reinforced by the workers choosing not to demand overtime pay or to stop working after 50 hours.

There is a dual pressure on the migrant to perform in their role as caregiver as they not only have to pay off their debt but, as the statistics show, to send money back home.<sup>42</sup> The migrant is reliant on the host government to enable this working relationship. However as we can see with Vilma Grafil's case, work contracts may end early and thus result in potential deportation.<sup>43</sup> This problem is entirely enabled by the host governments lack of treating these women as permanent from the onset. In creating a system that does not put the women's best interests and job security first, the host government is enabling the vulnerability that is carried over in the migration process. Instead of creating an iron clad system that offers these workers a permanent stay and removing a majority of the elements that enable this vulnerability, the domestic government instead empowers the family to be the primary enforcers of power over the migrant. This is where I believe we should set our sights as the largest problem with the live-in care program.

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<sup>40</sup> Keung, "Foreign Caregivers," The Star, June 30, 2018.

<sup>41</sup> Maieton Pacheco, "Why Canada's Live-in Caregiver Program Worries Filipino Workers," Balitang America, June 3, 2015. <https://balitangamerica.tv/why-canadas-live-in-caregiver-program-worries-filipino-workers/>.

<sup>42</sup> Galerand, Gallié, Gobeil, *Domestic Labour and Exploitation*, p. 8.

<sup>43</sup> Keung, "Foreign Caregivers," The Star, June 30, 2018.

### 2.3. *How It Is Taken Advantage Of*

Elizabeth Anderson's recent work on workplace injustice puts into question the sweeping power employers have over their employees both on and off duty.<sup>44</sup> Contractually speaking, our work begins when we clock in and ends when we clock out, however those defined lines have become blurred in most work places. Apple enforces mandatory bag checks after employees' shifts, which may seem harmless, but it can take up to 30 minutes of unpaid time.<sup>45</sup> Walmart can fire employees over the taking of sick days.<sup>46</sup> Amazon does not allow interaction between colleagues and dubs it as "time theft."<sup>47</sup> These are what Anderson claims enables workplaces to become "private governments", where organizations manage the people they have power over in a way that would seem to overstep the normal employer-employee relationship.<sup>48</sup> While Anderson's claim that bosses who can be like dictators might seem absurd, our bosses hold a substantive amount of power over our day-to-day lives. However, domestic Canadian workers, they have resources that enable them to negate some of this power. For example, after their shift, they can choose to go home. If they are unhappy with their job, depending on the market, they can look for another one. While this might not be the case for all workers as finding a job can present a difficult task, this essay will not take up the domestic plight, but instead showcase how, due to the temporary status of LCP members, they do not have the same freedoms and liberties that the domestic worker has.

At the time of hiring, LCP members have the ability to choose either to live with the host family or outside of the home. This is a relatively new process as, prior to 2015, the live-in requirement

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<sup>44</sup> Elizabeth Anderson "How Bosses Are (literally) like Dictators," Vox, September 3, 2017, <https://www.vox.com/the-big-idea/2017/7/17/15973478/bosses-dictators-workplace-rights-free-markets-unions>.

<sup>45</sup> Anderson, "How Bosses Are," September 3, 2017.

<sup>46</sup> River Donaghey, "Hundreds of Walmart Employees Say They've Been Punished for Taking Sick Days," Vice, June 2, 2017.

<sup>47</sup> Anderson, "How Bosses Are," September 3, 2017.

<sup>48</sup> *Ibid.*

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applied to every member of the LCP.<sup>49</sup> Regardless of if caregivers live with the family or in an apartment of their own, their host family holds an incredible amount of power over the day-to-day life of the caregiver. This ranges from the host family bearing another child and the caregiver becoming its de facto caregiver even though it is outside of their contract.<sup>50</sup> Further, this comes without negotiation of an increased salary. The question becomes: what recourse does the caregiver have? In most cases, the caregiver requires their host family to process any formal request with the Canadian government including the extension of their work contract. If the host family should choose to deny the caregiver this extension request, the caregiver must now continue to work while finding another job or face deportation. Statistics show that caregivers are outright scared to upset their host family in fear of being treated poorly.<sup>51</sup> This renders them tremendously vulnerable as we can see with the case of Janeth Melitante. Even though the terms of her contract were discussed prior to her entry, they were not respected and thus she had to work much more than initially forecasted. The libertarian line of reasoning would say that Janeth could just look for another job if she is not happy, but because the LCP requires caregivers to work, if she was to lose her job through the protesting of these hours, she would also lose her chance to permanently reside, as well as any costs incurred when initially migrating. This vulnerability demands a re-evaluation of the system and fortunately this is a problem that the Canadian government is in the process of addressing. Thus, we should understand the obligation once again falls on the back of the host government who chooses to include these women from the onset. Legislation needs to be put in place for members of the LCP to take power out of the hands of the host family and to take charge of their own working circumstances. The work/life division is not as clear for members of the LCP as their work becomes their life instead of being separated. This is reinforced by how much hinges on the fact that their job enables a future in Canada.

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<sup>49</sup> Galerand, Gallié, Gobeil, *Domestic Labour and Exploitation*, p. ix.

<sup>50</sup> *Ibid.*, pp. 16-17.

<sup>51</sup> *Ibid.*, p. 29.

## Closing Thoughts and The Future of the LCP

As of 2019, the live-in care program in its current form is being shut down. However, two new pilot programs are being implemented. These two new pilot programs aim to address some of the problems presented in this text but fail to address the problem in its entirety. While workers who have attained the mandated 24-months of work can still apply for residency, the new pilot programs are the only avenue for future members of the LCP. While these new programs seem promising, in failing to address the grey area members of the LCP fall into, the programs still risk being fundamentally problematic. While changes like the integration of the caregiver's family unit into the migration process and giving workers more freedom to change employers while in Canada, both of which are part of the pilot programs, there still needs to be emphasis put on the problematic nature of the workers status as temporary.<sup>52</sup> Therefore the question of immediate permanent residency should remain at the forefront of our discussion. Immediate permanent residency acts as both a feasible opportunity to remove these women from the grey area they currently exist in and give them the power they require to fight workplace injustice. It is clear from the circumstances described that the Canadian government has an obligation to these women on the grounds that they have chosen to take them in the first place. This essay has shown that this obligation is grounds enough for a revision of the system, and fortunately this revision is underway. However, there are still thousands of women who do not know what their next step is in the journey of migration and uncertainty remains in this time of change. Janeth, Vilma and Sheila, as well as countless other women who are subject to the rampant power imbalances of the LCP, ought to act as a model for what *not* to follow when writing migration legislation. In highlighting their stories, I believe, we take one step closer to bettering the work circumstances for current migrants and migrants to come. If we take seriously the claim that inclusion from its onset implies an obligation, and thus a claim to permanence, it is clear that the grey area that members of the LCP are

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<sup>52</sup> "Caregivers will now have access to new pathways to permanent residence," February 23, 2019.

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situated in is unjust. These workers cannot both be temporary and permanent, and the program must change to reflect this.

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