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# **PATHWAYS TO PRECARIOUSNESS:**

**CANADA'S INTENTIONAL FAILURE OF  
MIGRANT AND UNDOCUMENTED  
CARE WORKERS**



Trish Van Katwyk, Atheven Jeyakumaran & Veen Wong

# **PATHWAYS TO PRECARIOUSNESS: CANADA'S INTENTIONAL FAILURE OF MIGRANT AND UNDOCUMENTED CARE WORKERS**

Trish Van Katwyk\*

School of Social Work, Renison University College, University of Waterloo

Atheven Jeyakumaran

Factor-Inwentash Faculty of Social Work, University of Toronto

Veen Wong

School of Public Health Sciences, University of Waterloo

\*Corresponding author: Trish Van Katwyk ([pvankatwyk@uwaterloo.ca](mailto:pvankatwyk@uwaterloo.ca))

## Acknowledgements

We, the authors and research team, are immigrant settlers in Toronto and Waterloo, who live, work and play on the ancestral lands and traditional territories of the Anishinaabeg, Haudenosaunee, Attawandaran (Neutral), Wendat and Mississaugas of the Credit peoples.

In researching migrant care workers, we believe it is crucial to recognize the intersection of their experiences with the historical context of colonization. The land acknowledgments for Waterloo and Toronto highlight the traditional territories of Indigenous peoples, emphasizing the lasting impacts of colonization on these lands. Migrant care workers often come from countries that have their own complex colonial legacies, and as they work to support families in Canada and abroad, they navigate systems deeply shaped by colonialism. Understanding the historical and ongoing effects of colonization can shed light on the broader socio-economic and cultural dynamics that migrant care workers encounter in their daily lives, making it imperative to address these intersections when studying their experiences and advocating for their rights.

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## List of Abbreviations

<b>Abbreviation</b>	<b>Definition</b>
<b>CBSA</b>	Canadian Border Services Agency
<b>CIC</b>	Citizenship and Immigration Canada
<b>CORE</b>	Canadian Ombudsperson for Responsible Enterprise
<b>EI</b>	Employment Insurance
<b>ESA</b>	Employment Standards Act
<b>ESDC</b>	Employment and Social Development Canada
<b>HRSDC</b>	Human Resources and Skills Development Canada
<b>IFHP</b>	Interim Federal Health Program
<b>IMP</b>	International Mobility Program
<b>LCP</b>	Live-in Caregiver Program
<b>LMIA</b>	Labour Market Impact Assessment
<b>LMO</b>	Labour Market Opinion
<b>NCP</b>	National Contact Point
<b>NIEAP</b>	Non-Immigrant Employment Authorization Program
<b>OECD</b>	Organisation for Economic Co-Operation and Development
<b>PPE</b>	Personal Protective Equipment
<b>PSW</b>	Personal Support Worker
<b>TFWP</b>	Temporary Foreign Worker Program
<b>UN</b>	United Nations
<b>UNHCR</b>	United Nations High Commissioner for Refugees

## Executive Summary

In this report, we, the research team, are going to consider the policies that come together to create an exploitative and precarious labour conditions for migrant care workers, who are predominantly financially challenged racialized women. We have conducted a systematic narrative synthesis analysis of the policies that are relevant to migrant care workers. In our consideration of these myriad policies, we will present a narrative that emerges in the coordinated design of these policies. The narrative that has emerged presented a journey to precariousness through a heightened likelihood of human rights violations that is facilitated by a network of policies and practices. We identify policies and practices that obscure care workers and the conditions of their labour, as well as the discriminatory impact of various policies and practices that support devaluing and delegitimizing the identities and labour of care workers. Finally, we consider the ways in which multiple policies and practices come together to create significant authorities with the capacity to surveil, restrict, and punish workers. When the erasures, devaluing, and heightened authority come together, a “synergy of failures”<sup>1</sup> emerges with the outcome of unreasonable limits to the autonomy and choice-making capacity of care workers, thus paving the way for human rights violations. We have presented the work of care workers, advocates and activists who have addressed the human rights violations which UNrepresent the lived experiences of the policies we have studied. These care workers, advocates, and activists have also provided important recommendations for changes in labour and immigration policies. We will present these recommendations through an upstream lens, exploring the root causes that these recommendations are responding to.

## Methodology

This report presents a review of policies that centred around the question of “How are migrant care workers impacted by the policies that are relevant to their work in Canada?”. We conducted a systematic narrative synthesis<sup>2</sup> to review relevant policies that impact migrant care workers. After synthesizing the data, we began the process of developing a theoretical model of how the policies work and its impacts on migrant care workers. After developing a preliminary narrative synthesis, we invited and shared our synthesis with key stakeholders to collect and integrate their feedback to this final report.

### Systematic Narrative Synthesis

For this systematic narrative synthesis policy review, we began with a systematic review of policies and literature related to policies and migrant health work in Canada. The review question was: How are migrant care workers impacted by the policies that are relevant to their work in Canada? We applied a critical social justice lens, considering equity and human rights. We accessed literature through university databases, government of Canada websites, and the databases of several organizations whose focus is on migrant workers in Canada. We included the policies that were relevant to migrant care workers, as well as studies that analyzed these policies. We searched for policies and policy analyses that were related to *immigration policy* particular to racialized women doing unregulated health labour; *labour policies* particular to racialized women in Canada and migrant health work; *economic policies* pertaining to the health care system, labour, and immigration; *foreign*

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<sup>1</sup> Lopez. Personal communication to the authors.

<sup>2</sup> [Popay et al., “Guidance on the Conduct of Narrative Synthesis in Systematic Reviews.”](#)

*policies* with regards to agreements related to unregulated health labour between Canada and other nations; and *health care policies*, looking specifically at migrant health work in long term care centres, community care, and hospitals. We included academic peer-reviewed journals, Canadian government websites, published reports by advocates, activists, and international non-governmental and/or humanitarian organizations (i.e. United Nations and Amnesty International).

After reviewing for robustness and analytic strength, we synthesized our review. A pattern emerged that indicated a relationship between hidden labour conditions, devalued persons, strict methods of authority and the occurrence and heightened potential for human rights violations. We have identified this pattern as the narrative that became apparent in our synthesis work. A similar narrative has also been applied to the incarceration system in Canada, noting that the hidden nature of prisons, the undervalued status of prisoners, and the extreme authority measures of the prison system leads to a capacity for significant violations of the human rights of people who come into conflict with the law<sup>3</sup>. In considering the limits of choice and autonomy that were being described by the migrant health work policies and their analyses, we felt the parallel pattern was apt.

### Community Symposium

In engaging and fostering community relationships, we invited eight (8) stakeholders to participate in a half-day online symposium to discuss the preliminary findings from our systematic narrative synthesis policy review. The invited symposium participants consisted of three (3) migrant care workers, one (1) PSW advocate, one (1) community legal worker, one (1) equity and inclusion policy maker, one (1) long-term care research and policy maker, and one (1) care worker researcher and professor. We shared a draft of our systemic narrative policy synthesis to receive feedback and gather knowledge to add to this policy report. A visual representation of the symposium was created as an addition to our knowledge synthesis work (Appendix A).

### Invisibility

Gathering data in order to make visible the issues and experiences of migrant care workers is difficult, thus diminishing transparency and visibility. For this policy report, sourcing literature, policy analyses, and policies was obstructed because there are different names that care workers across Canada utilize as job titles. The titles of care worker roles vary within, and across, provinces including Personal Support Workers (PSW), Home Support Workers, Health Aides, Personal Attendants, Orderlies, and Homemakers. In Ontario alone, across settings and regions, there are 70 job titles that require PSW training and practice<sup>4</sup>. With multiple job titles, it becomes difficult to gather information to gain a full picture of the care worker experience in Canada. As well, varying titles can create further precarities for care workers. For example, during the pandemic, the job titles determined the provision of personal protective equipment (PPE) to individuals working in health settings and community. Health support workers became exempt from PPE distribution due to their job title. We heard from care workers who, in response, created unofficial distribution sites where

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<sup>3</sup> [Jackson and Stewart, “A Flawed Compass: A Human Rights Analysis of the Roadmap to Strengthening Public Safety.”](#)

<sup>4</sup> Bulmer, Personal communication to the authors.

PPE was shared, exchanged, sold, and purchased<sup>5</sup>. Due to the wide variety of titles, for this report, we will be using “*care workers*”.

Citizenship and Immigration Canada (CIC) disclosed data indicating that an estimated range of 20,000 to 500,000 undocumented individuals currently reside in Canada<sup>6</sup>. It is important to note that the actual figure may exceed this estimate. Concurrently, the Migrant Rights Network released a report titled “Guidance for Employees of Temporary Foreign Workers Regarding Covid-19,” wherein they asserted that the number of individuals without citizenship or permanent residence status in Canada is significantly higher, reaching at least 1.6 million<sup>7</sup>. The significant discrepancy between the two sets of statistics underscores a substantial and multifaceted societal, political, public health, labor, and financial issue that remains largely invisible to official records. The lack of precise and comprehensive data is compounded by the inability to gain a clear understanding of the experiences of care workers, and other individuals holding similar roles, in Canada. This challenge is further exacerbated by the inadequacy of race-based data collection in the Canadian context<sup>8</sup>. As a result, it becomes challenging to develop an accurate and comprehensive portrayal of the experiences and challenges faced by various demographic groups, including care workers, within the Canadian society.

Much of the work that migrant care workers provide is out of eyesight, in institutions whose residents are protected by important standards of confidentiality, or in private home situations. Additionally, the risks that migrant care workers face when exposing their work conditions and the labour practices of their employers are substantial. While Canada has measures in place to protect temporary migrant workers, such as the Temporary Foreign Worker Program (TFWP)<sup>9</sup>, International Mobility Program (IMP)<sup>10</sup>, and Labour Market Impact Assessment (LMIA)<sup>11</sup>, activating these measures is time-consuming, with the burden of proof placed entirely upon the migrant worker’s shoulders. Due to the length of time involved in activating the measures, migrant workers are left with limited options: to remain with the employer who is being investigated for their complaints; leaving Canada; or working illegally for a new employer who has submitted an LMIA, which requires additional fee payments and can take an additional processing time of nine (9) months<sup>12</sup>. Care work has been documented to involve exposure to harm and violence, as a matter of fact rather than a matter of concern<sup>13</sup>. Additionally, within institutions, care work gets grouped with

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<sup>5</sup> [Van Katwyk and Wong, “Personal Support Workers and COVID-19: Political and Existential Precarity.”](#)

<sup>6</sup> [“CICMM – Undocumented Migrants– November 18, 2022.”](#)

<sup>7</sup> [Migrant Rights Network, “Guidance for Employers of Temporary Foreign Workers Regarding COVID-19.”](#)

<sup>8</sup> [Ahmed et al., “Racial Equity in the Fight against COVID-19: A Qualitative Study Examining the Importance of Collecting Race-Based Data in the Canadian Context.”](#)

<sup>9</sup> <https://www.canada.ca/en/employment-social-development/services/foreign-workers.html>

<sup>10</sup> <https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/quebec-skilled-workers/international-mobility-program-plus-csq.html>

<sup>11</sup> <https://www.canada.ca/en/employment-social-development/services/foreign-workers.html>

<sup>12</sup> [Ballard and Plourde, “Recruiters and Employers Increasingly Taking Advantage of Temporary Foreign Workers, Advocate Says.”](#)

<sup>13</sup> [Sayin et al., “Workload, Workplace Violence and Harassment, and Well-Being of Personal Support Workers in Home and Community Care.”](#)



the other reproductive forms of labour such as dietary and housekeeping roles, which creates a data gap, in terms of understanding clearly what care workers' experiences of harm and violence are<sup>14</sup>.

The TFWP, IMP, and LMIA policies in Canada have created invisible work conditions for migrant care workers in several ways, leaving them vulnerable to exploitation and rights violations including:

1. **Tied Work Permits and Employment-Specific Work Conditions:** Both the TFWP and IMP often issue work permits that are tied to a specific employer and job. In the healthcare sector, this creates conditions where migrant care workers can only work for the specific healthcare facility or employer that sponsored them. This situation can make care workers reluctant to report abuses, poor working conditions, or workplace hazards, as they fear losing their job and legal status in Canada.
2. **Recruitment and Placement Fees:** Some migrant care workers pay significant recruitment and placement fees in their home countries to secure employment in Canada. These fees can lead to debt bondage and create a situation where workers are trapped in exploitative work conditions, as they need to repay these debts. This financial burden can further deter them from speaking out about poor work conditions.
3. **Inadequate Oversight and Enforcement:** In some cases, there may be inadequate government oversight and enforcement of labor standards and healthcare regulations, particularly in the context of migrant care workers. Weak enforcement can allow employers to disregard labor and healthcare standards without fear of repercussions, leaving workers without protection.
4. **Lack of Access to Legal Services:** Language barriers, complex legal processes, and a lack of awareness about legal rights can make it challenging for migrant care workers to access legal services or representation when they face workplace abuse, discrimination, or health and safety concerns. This lack of access can leave them without the means to challenge these conditions.
5. **Isolation and Limited Social Support:** Many migrant care workers are isolated from local communities, social support networks, and their families. This isolation can make it difficult for them to seek assistance or support when facing challenges at work or dealing with the emotional toll of care work.
6. **Access to Benefits and Social Services:** Migrant care workers may be excluded from accessing certain social services, healthcare benefits, and occupational health and safety protections that Canadian citizens or permanent residents enjoy. This can leave them in a more vulnerable position, particularly when dealing with workplace health and safety concerns.
7. **Racial and Ethnic Discrimination:** Discrimination based on race, ethnicity, or national origin can create invisible work conditions, as care workers may be less likely to report abuse or health and safety concerns for fear of further discrimination.

Such measures can de-incentivise workers from exposing their work conditions, and their labour remains invisible. One example of how these measures come together to obscure a care worker and their working conditions is a care worker who received medical training in their home country in order to come to Canada as a care worker. They arranged the LMIA with their Canadian employer

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<sup>14</sup> [Lopez, “‘We Are Not a Machine’: Personal Support Workers’ \(Ante\)Narratives of Labour, Leisure, and Hope amidst Politics of Genderacialised Care in Long-Term Care Homes.”](#)

to provide private home health care to an ailing family member of the employer's. Shortly after arriving and beginning their new job, the family member passed away. The employer required instead that the worker provide housekeeping duties. The employer told the worker that the LMIA had been very costly. The worker felt hesitant to find a new employer, for fear of angering her current employer, as well as feeling intimidated by the costs associated with finding a new employer where they could provide the care work they had carefully planned to engage in in Canada. They worked as a housekeeper for years before they were able to arrange new employment in a health care setting.

The pre-employment skill set and training of care workers are also concealed in a number of ways. By referring to this category of workers as unskilled, policies, programs, and employers are able to disregard the high levels of education and experience that many care workers enter into the TFWP with. Many foreign care workers come to Canada with nursing degrees but are eligible only for unskilled worker permits through the TFWP. Additionally, when a job title that encapsulate migrant health work refers to 'worker', (i.e., Personal Support Worker), it becomes challenging to professionalize this job. When skills, education, and experience are hidden away with designations of 'unskilled' and 'worker', the protections and visibility that professional standards and regularization provide are lost.

The TFWP is preceded by a number of programs and policies aimed at addressing temporary labour shortages. However, these labour shortages have existed for many years, and are estimated to be continuing for many more<sup>15</sup>. By referring to the workers as temporary, Canada creates an illusion that such workers are insignificant, and the labour needs they are filling are also insignificant and short-lived. The temporary designation hides the ongoing value and necessity of the sector contributions that are being made by migrant care workers.

## Undervalued Human Beings

Historically, immigration has been the way for Canada to build a nation<sup>16</sup>. Most immigrants and refugees who had become permanent residents in Canada were eligible for full Canadian citizenship after three years<sup>17</sup>. However, a shift has occurred as Canada has become increasingly dependent upon foreign labour, where the project of broad and inclusive nation-building through permanent citizenship has been replaced by restrictive conditions, and the creation of temporary worker categories that limit access to citizenship for a class of labourers<sup>18, 19</sup>. Most of these workers are situated at intersections of oppression such as race, gender, and class.

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<sup>15</sup> [Statistics Canada, "The Daily: In the Midst of High Job Vacancies and Historically Low Unemployment, Canada Faces Record Retirements from an Aging Labour Force: Number of Seniors Aged 65 and Older Grows Six Times Faster than Children 0-14."](#)

<sup>16</sup> [Bhuyan et al., "Branding 'Canadian Experience' in Immigration Policy: Nation Building in a Neoliberal Era."](#)

<sup>17</sup> [Siemiatycki, "Marginalizing Migrants: Canada's Rising Reliance on Temporary Foreign Workers."](#)

<sup>18</sup> [Root et al., "Discounting Immigrant Families: Neoliberalism and the Framing of Canadian Immigration Policy Change: A Literature Review." ; Montiel, \*Dressing Down Migrant Sex Work: The Global Anti-Trafficking Regime, Legal Employment Rights, and Canada's Temporary Foreign Worker Program.\*](#)

<sup>19</sup> [Root et al., \*Discounting Immigrant\*; Montiel, \*Dressing Down\*](#)

After WWII, when there was a significant care labour shortage, Canada initiated labour programs for Greek, Italian, and German migrants, who were entitled to an unconditional right to live in Canada upon their arrival<sup>20</sup>. Women of colour who attempted to enter Canada through this program were often denied permanent residence<sup>21</sup>, sometimes for discriminatory reasons, such as an assumed inability to adapt to the climate<sup>22</sup>. In 1955, Canada established the West Indian Domestic Scheme to address ongoing care labour shortages, and introduced more restrictions to immigration just as the care labour force shifted quickly from a mostly white labour force to one that was prominently made up of racialized migrant women<sup>23</sup>. While the West Indian Domestic Scheme was ended in 1967, its policies, including short term work permits replacing the landed immigrant status provision, continue to be reflected in immigration programs for migrant workers<sup>24</sup>. The policies brought immigration and labour together<sup>25</sup>, portraying different classes of immigrants and workers where undervalued workers faced restrictions that limited opportunities, support, stability, and residence in Canada.

Temporary workers represent a labour gap in Canada that has created a reliance on temporary workers. In the health system, 22% of nursing and healthcare support workers are migrant workers<sup>26</sup>. Of those migrant workers, 90% identify as women<sup>27</sup>. While there is little publicly available data available about the current migrant caregiver population, data from 2009 indicates that care workers were mostly racialized and financially support families abroad, whose low incomes require remittances to survive<sup>28</sup>.

While Canada has become increasingly dependent upon foreign labourers, the policies do not indicate appreciation for foreign workers, but rather a suspicious and risk-averse attitude, made possible by a perception of foreign workers as an unvalued necessity. Such an attitude has led to the design of discriminatory policy responses that create multiple opportunities for abuse and exploitation. In 1973, the temporary migration programs that addressed the need for domestic and agricultural labourers were replaced by the federal Non-Immigrant Employment Authorization Program (NIEAP), marking a new chapter. The NIEAP recruited and monitored growing numbers of workers who were recruited according to identified labour shortages across the country. There were a number of restrictions in this program: migrant workers could only reside in Canada for the length of their employment agreement; migrant workers must have applied for work permits from outside of Canada before migrating to Canada; migrant workers must leave Canada and reapply for any changes to their immigration and employment status; and migrant workers' permits assigned them to one employer, job, residence, and employment time period.

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<sup>20</sup> [Wadehra, "Equal Rights for Migrant Care Workers."](#)

<sup>21</sup> [Hari, McGrath, and Preston, "Temporariness in Canada: Establishing a Research Agenda."](#)

<sup>22</sup> [Taylor, "Flying Fish in the Great White North: The 'Culture' of Black Barbadian Migration to 1967."](#)

<sup>23</sup> Ibid.

<sup>24</sup> [Hari, McGrath, and Preston, "Temporariness in Canada: Establishing a Research Agenda."](#)

<sup>25</sup> [Lopez, "'We Are Not a Machine': Personal Support Workers' \(Ante\)Narratives of Labour, Leisure, and Hope amidst Politics of Gendered Care in Long-Term Care Homes."](#)

<sup>26</sup> [Government of Canada, Statistics Canada, "Profile of Immigrants in Nursing and Health Care Support Occupations."](#)

<sup>27</sup> Ibid.

<sup>28</sup> [Hari, McGrath, and Preston, "Temporariness in Canada: Establishing a Research Agenda."](#)

The NIEAP has been replaced by the TFWP. The restrictions from the NIEAP have carried over – additionally, Canada is the only country in the world that allows employers to control which workers can come and work in Canada<sup>29</sup>. These restrictions have been called into questions by many rights’ organizations and even by the United Nations (UN), who has condemned Canada for the restrictions that have enabled significant violations of workers’ rights<sup>30</sup>. Very recently, the UN denounced Canada’s TFWP as a “breeding ground for contemporary forms of slavery”<sup>31</sup>. From August to September 2023, Dr. Tomoya Obokata, a UN Special Rapporteur and scholar of international law and human rights who focuses on human trafficking and modern slavery<sup>32</sup>, met with representatives from a number of departments of the Government of Canada and the Governments of Ontario, Québec, British Columbia and New Brunswick, federal ombudspersons, national and provincial human rights commissions, members of Parliament, the United Nations High Commissioner for Refugees (UNHCR) and the United Nations Global Compact Network, business associations, trade unions, civil society organizations, academics, and Canadian and migrant workers from a broad range of sectors. He issued a statement of concern and called upon Canada to make change<sup>33</sup>. While Canada has ratified a majority of human rights tools and conventions of the International Labour Organization to prevent forced labour, child labour, and labour exploitation and securing workers’ rights, and participates in international efforts to address contemporary forms of slavery, there are a number of treaties which have not yet been ratified. These treaties are the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families<sup>34</sup>, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>35</sup>, and international labour standards related to the protection of migrant workers.

There was also an identified need by the Organisation for Economic Co-operation and Development (OECD) to improve the work of the National Contact Point (NCP)<sup>36</sup>. The OECD Guidelines set standards for responsible business conduct across a range of issues such as human rights, labour rights, and the environment<sup>37</sup>. If there are concerns, the NCP is used to address and respond to the concerns<sup>38</sup>. However, there was a reported lack of transparency, effectiveness, protection for victims of rights violations, and positive dispute resolution in the work of the NCP. Additionally concerns about the effectiveness of the Canadian Ombudsperson for Responsible

<sup>29</sup> [Canadian Union of Public Employees, “Fact Sheet: Temporary Foreign Workers Program.”](#)

<sup>30</sup> [United Nations, “Views Adopted by the Committee under Article 5 \(4\) of the Optional Protocol, Concerning Communication No. 2348/2014 \\* , \\*\\*.”](#)

<sup>31</sup> [Obokata, “End of Mission Statement: Tomoya Obokata, Special Rapporteur on Contemporary Forms of Slavery, Including Its Causes and Consequences.”](#)

<sup>32</sup> <https://www.ohchr.org/en/special-procedures/sr-slavery/prof-tomoya-obokata>

<sup>33</sup> [UN News, “UN Expert Sounds Alarm over ‘Contemporary Forms of Slavery’ in Canada.”](#)

<sup>34</sup> [OHCHR, “International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.”](#)

<sup>35</sup> [OHCHR, “Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.”](#)

<sup>36</sup> [OECD Guidelines for Multinational Enterprises, “Action Plan to Strengthen National Contact Points.”](#)

<sup>37</sup> [OECD Watch, “The OECD Guidelines - OECD Watch.”](#)

<sup>38</sup> [Global Affairs Canada, “About the National Contact Point for Responsible Business Conduct.”](#)

Enterprise (CORE), as well as a recommendation to expand the number of sectors the CORE is responsible for.

Depending upon the province in which the migrant worker is employed, temporary workers often have limited access to the benefits that are available to permanent residents and citizens, such as public health care and income support, even as they pay income tax and employment-based deductions<sup>39</sup>. In so doing, the TFWP creates a unique class of low-skilled<sup>d</sup> and extremely exploitable labourers<sup>40</sup>. Obokata noted that the TFWP, along with other policies that regulate and restrict immigration status, employment, and housing, are applied to a disproportionately racialized workforce, “attesting to deep-rooted racism and xenophobia entrenched in Canada’s immigration system”<sup>41</sup>.

Over the course of its historical evolution, the TFWP in Canada has undergone significant developments. In 2002, a pivotal milestone was achieved with the introduction of the Low Skills Pilot, designed to facilitate the recruitment of foreign workers by Canadian companies to fill low-skilled positions for which a genuine need was established<sup>42</sup>. However, this initiative was not without its challenges, particularly due to administrative barriers that contributed to processing delays for participating companies.

Recognizing the need for expedited processing, the Federal Conservative government took a substantial step in 2006 by expanding the roster of low-skilled occupations eligible for the program<sup>43</sup>. Additionally, during this phase, the concept of the Labor Market Opinion (LMO) was instituted. The LMO served as a crucial mechanism for companies to furnish substantiation that they had made efforts to recruit domestically but were unable to fill the vacant positions. It was a prerequisite for employers to secure an LMO before they could hire migrant workers.

Further refinements to the TFWP occurred in 2012 when the LMO process was enhanced to facilitate a more expeditious filling of positions<sup>44</sup>. Subsequently, in 2013, the program underwent additional reforms in response to identified abuses, particularly instances where employers sought to hire migrant workers at wages below the market rate. Notably, there were cases in which recruiters for the TFWP prematurely presented migrant workers as candidates for jobs before those positions had been genuinely advertised domestically, a condition essential for the employment of migrant workers<sup>45</sup>.

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<sup>39</sup> [Macklin, “Dancing across Borders: ‘Exotic Dancers,’ Trafficking, and Canadian Immigration Policy.”](#)

<sup>40</sup> [Lenard and Straehle, “Temporary Labour Migration: Exploitation, Tool of Development, or Both?”](#) ; [Siemiatycki, “Marginalizing Migrants: Canada’s Rising Reliance on Temporary Foreign Workers.”](#) ;

<sup>41</sup> [Obokata, “End of Mission Statement: Tomoya Obokata, Special Rapporteur on Contemporary Forms of Slavery, Including Its Causes and Consequences.”](#) 3.

<sup>42</sup> [Canadian Union of Public Employees, “Fact Sheet: Temporary Foreign Workers Program,” August 28, 2013.](#)

<sup>43</sup> Ibid.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

Migrant workers are compensated according to the federal minimum wage. If the employer provides accommodation or room and board, there are requirements limiting the amount that an employer can take from the workers' pay<sup>46</sup>. While migrant workers' pay is reduced due to the payroll reductions such as income tax and employment insurance, migrant workers do not have full access to employment insurance<sup>47</sup>.

Employers seeking to hire foreign nationals to work temporarily in Canada must first obtain a LMIA. The LMIA considers whether the wages offered to the foreign national are consistent with the prevailing wage rate for the occupation, whether the working conditions meet generally accepted Canadian standards, and whether the employer has made reasonable efforts to hire or train Canadian citizens or permanent residents<sup>48</sup>. However, the IMP<sup>49</sup> can be used by Canadian employers to provide employment to foreign workers on a work permit without the need for an LMIA, IMP workers are defined within the program guidelines as workers who provide "broad economic, cultural or other competitive advantages for Canada, and reciprocal benefits for Canadian citizens and permanent residents"<sup>50</sup>, thus identified as highly valued workers in the Canadian labour market. These workers enter Canada on an open work permit, thus not restricted to one employer, workplace or a specified employment time period. The entrance rate for these temporary foreign workers has grown substantially, while the rate of entrance for agricultural and care workers has remained steady<sup>51</sup>.

The graph below<sup>52</sup> shows growing number of work permits, from approximately 125,000 in 2000 to almost 400,000 in 2019, a growth of four (4) times in between this period. However, the growth is mainly in the IMP, with little growth in TFWP, where the LMIA is necessary.

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<sup>46</sup> [Canada and Employment and Social Development Canada, "Program Requirements for Low-Wage Positions."](#)

<sup>47</sup> [Migrant Rights Network, "Underinsured: Ending the Exclusion of Migrants from EI.":  
https://www.nmwig.ca/files/ontario-migrant-worker-employment-insurance-information.pdf](https://www.nmwig.ca/files/ontario-migrant-worker-employment-insurance-information.pdf)

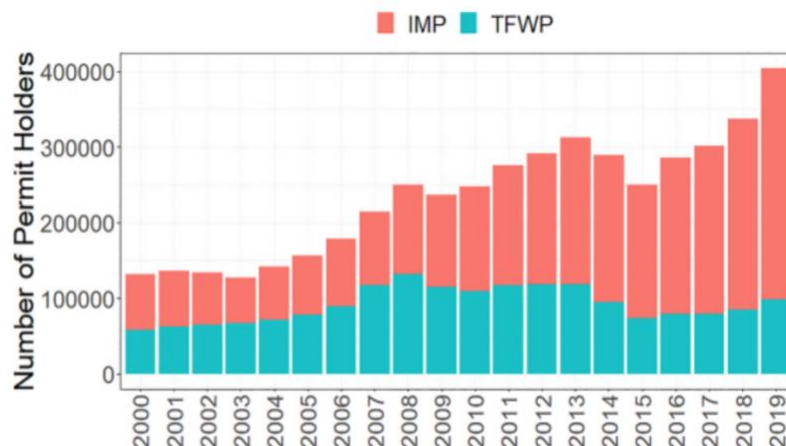
<sup>48</sup> [Fudge and MacPhail, "The Temporary Foreign Worker Program in Canada: Low-Skilled Workers as an Extreme Form of Flexible Labour." ; Faraday, \*Made in Canada: How the Law Constructs Migrant Workers' Insecurity\*, 2012.](#)

<sup>49</sup> [Immigration and Immigration and Citizenship Canada, "Hire a Worker without an LMIA: About the Process."](#)

<sup>50</sup> [Immigration and Immigration and Citizenship Canada, "Hire a Worker without an LMIA: About the Process."](#)

<sup>51</sup> [O'Donnell and Skuterud, "The Transformation of Canada's Temporary Foreign Worker Program."](#)

<sup>52</sup> *Ibid.*, 8.



**Figure 3: Number of Work Permit Holders by Program**

Notes: Work permit holders are given in the year the permit becomes effective.

Source: Government of Canada 2017a, 2017b.

For those using the TFWP program, where the LMIA is necessary, the requirements that need to be met in order to be eligible for a PR application are restrictive and financially demanding. The temporary foreign workers must work the hours that would make up a 24-month work period. They must complete one year of post-secondary training (with international student tuition charges), and the work that they do while studying does not count towards the 24-month work hours requirement. The temporary foreign worker must also score high marks on an English Proficiency exam (with training and testing fees). Because the LMIA restricts workers to their employers, worker rights can be easily violated, as the process to secure another LMIA can take at least 6 months to a year. temporary foreign workers are reticent to pursue another LMIA, with the choice of a 6 month to one year period of unemployment or illegal employment while waiting for the new LMIA to be activated. This leaves the temporary foreign worker in an unprotected state of limbo, without full social and employment and health insurance, even as their pay is deducted for these insurance programs<sup>53</sup>.

With the designation of ‘unskilled worker’, migrant care workers enter into workplaces without acknowledgement of the health-based skills and training many have obtained before entering Canada. As such, they are located low in workplace hierarchies. Additionally, many care workers have shared stories of the discriminations they have faced in their workplaces, in a sector made up of mostly women and racialized migrants<sup>54,55</sup>.

<sup>53</sup> [Migrant Rights Network, “Underinsured: Ending the Exclusion of Migrants from EI.”; https://www.nmwig.ca/files/ontario-migrant-worker-employment-insurance-information.pdf](https://www.nmwig.ca/files/ontario-migrant-worker-employment-insurance-information.pdf)

<sup>54</sup> [Caregivers Action Centre et al., “Behind Closed Doors: Exposing Migrant Care Worker Exploitation During COVID-19.”](#)

<sup>55</sup> [Van Katwyk and Wong, “Personal Support Workers and COVID-19: Political and Existential Precarity.”](#)

## Authority

In considering the authority which includes oversight, the imposition of requirements, and penalization for failure to comply, a great deal of authority is exercised in the TFWP. The TFWP is jointly administered by CIC, Employment and Social Development Canada (ESDC), formally known as Human Resources and Skills Development Canada (HRSDC), and the Canadian Border Services Agency (CBSA)<sup>56</sup>. Employers seeking to hire foreign nationals to work temporarily in Canada must first obtain an employment authorization, the LMIA. Issued by ESDC, the LMIA considers whether the wages offered to the foreign national are consistent with the prevailing wage rate for the occupation, whether the working conditions meet generally accepted Canadian standards, and whether the employer has made reasonable efforts to hire or train Canadian citizens or permanent residents<sup>57</sup>. Once in receipt of a positive LMIA, the foreign national must apply to CIC for a work permit. CIC is primarily concerned with whether the potential temporary foreign worker meets the job qualifications (e.g., if applying for an engineer position if they have an engineering degree, required job experience, designations, etc.), and if the individual will leave Canada at the end of their authorized stay. It is then up to the CBSA officer at the port of entry who has the final say on whether an individual can enter Canada. Thus, a positive LMIA and permission to work in Canada are not determinant of admission, since the CBSA officer must still review all immigration, identity, and work-related documents before printing off the actual work permit and allowing the person to enter the country<sup>58</sup>.

In the context of the temporary help sector, a notable contributing factor to the limited transmission of information by care workers to the CBSA and Immigration officials is the noncompliance of employers with the Employment Standards Act (ESA). Compliance with ESA is primarily driven by individual complaints, a mechanism which tends to be suboptimal for enforcing regulations within the temporary help agency workforce<sup>59</sup>. The processing of complaints can be between six (6) to twelve (12) months. Additionally, the care worker would need to secure another employer who is willing to submit an LMIA, which is a timely process with an expense. Care workers, due to the precarious nature of their employment, often find themselves in a vulnerable position, facing potential income loss and job insecurity, and limited choices which may include illegal employment until the ESA and LMIA are processed. Consequently, they are less likely to assert their rights, either with the client company or the temporary agency.

The reactive nature of the compliance model in place fails to adequately address the inherent structural dynamics within the triangular employment relationship (the worker, the employer, and

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<sup>56</sup> [Nakache and Kinoshita, “The Canadian Temporary Foreign Worker Program: Do Short-Term Economic Needs Prevail over Human Rights Concerns?”](#)

<sup>57</sup> [Fudge and MacPhail, “The Temporary Foreign Worker Program in Canada: Low-Skilled Workers as an Extreme Form of Flexible Labour.”](#) ; Faraday, *Made in Canada: How the Law Constructs Migrant Workers’ Insecurity*, 2012.

<sup>58</sup> [Nakache and Kinoshita, “The Canadian Temporary Foreign Worker Program: Do Short-Term Economic Needs Prevail over Human Rights Concerns?”](#)

<sup>59</sup> [The Ontario Ministry of Labour, Immigration, Training and Skills Development, “Your Guide to the Employment Standards Act.”](#)



the recruiter/ agencies that connect worker with employer), where migrant care workers possess the least bargaining power. Notably, Alberta, British Columbia, and Quebec have all implemented mandatory licensing regimes for temporary help agencies, thereby fortifying the enforcement of employment standards in this sector. More recently, Ontario approved Bill 27 in 2021, which established a licensing requirement for temporary agencies, mandating that client companies engage only with licensed temporary agencies starting in 2024<sup>60</sup>. It is noteworthy that Ontario previously mandated the licensing of temporary agencies operating<sup>61</sup> ~~in the~~.

## Human Rights Violations

Nell Toussaint is a national of Grenada who has lived in Canada since 1999. She came to Canada as a visitor and remained. She cleaned houses, cared for children, and worked in a factory. Some of her employers took advantage of her precarious citizenship status through unjust labour practices. Some of her employers also made promises to assist with her permanent residency, which they did not keep. She began the process to regularize her immigration status in 2005 but encountered obstacles because of her inability to pay significant fees. While this process was pending, she developed serious health conditions. She was diagnosed with pulmonary embolism, and suffered from complications from other health conditions, including renal dysfunction and diabetes. She had some access to emergency health care, but required other essential curative and preventative care, for which she applied through Canada's Interim Federal Health Program (IFHP). She was denied access to this program because of her irregular immigration status. She challenged this decision in Canadian courts. While this challenge was pending, Toussaint's application for permanent residency was successful, on humanitarian and compassionate grounds, and, as a result, she was finally eligible for health care insurance coverage. By this time, her health was already severely compromised, and she had lost a leg, her vision, and her kidneys.

Toussaint decided to take her case to the Human Rights Committee. She claimed that her human rights to live and to non-discrimination had been violated, requesting law and policy changes that would ensure that people have rightful access to health care that will protect their right to life, even without legal migration status. Before she was able to see her legal case through, Nell passed away, having failed to receive adequate and timely medical care. Opinions regarding international and comparative law and standards were submitted by Amnesty International and the International Network for Economic, Social, and Cultural Rights.

Posthumously, her case was successful<sup>62</sup>. "This is the first time a human rights body has affirmed that irregular migrants' rights to life and equality include access to essential health care," said Alex Neve, Secretary General of Amnesty International Canada's English Branch. "In recognizing our common humanity this case sends a strong signal that the right to life can never be compromised by one's immigration status and that essential health care must be available to everyone who lives in a

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<sup>60</sup> [Legislative Assembly of Ontario, "Working for Workers Act, 2021."](#)

<sup>61</sup> [Gellatly, Ladd, and Hussan, "Mandatory Licensing for Improved Compliance with the ESA."](#)

<sup>62</sup> [Amnesty International Canada, "People with Irregular Status Have the Right to Access Essential Health Care." ; Glynn, "Saying Goodbye to Nell Toussaint — a Health Care Hero for Undocumented Migrants in Canada."](#)

country – regardless of immigration status”<sup>63</sup>. As noted by Amnesty International<sup>64</sup>, human rights violations are ripe within the TFWP<sup>65</sup>, including labour rights violations such as wage theft, unsafe working conditions, and verbal, psychological, physical and sexual abuse<sup>66</sup>. The difficulties in obtaining permanent residence for temporary migrant workers is in contradiction<sup>67</sup>. The issue of precarious work within the Canadian immigration system is particularly acute for migrant care workers. Their employment circumstances are often characterized by instability and vulnerability, which are deeply embedded in the structure of the Canadian immigration system. This precarious situation places care workers in a position of extreme vulnerability and hardship, as they face the threat of deportation and blacklisting if they dare to raise their voices against their challenging working conditions.

Care workers come to Canada to provide essential services and support, often to the most vulnerable members of society. However, their employment status is often temporary, and they are frequently bound to specific employers through programs like the TFWP or the Live-in Caregiver Program (LCP). This reliance on specific employers makes them highly dependent on their employers for their work permits and legal status in the country. As a result, many care workers are afraid to speak out against abusive or exploitative employers, fearing that they may lose their jobs, face deportation, or even be blacklisted from future opportunities in Canada.

Temporary work in Canada should not translate into permanent disenfranchisement to essential benefits and protections. Migrant care workers, like all other workers, diligently pay Employment (EI) premiums, hoping to access these benefits during periods of unemployment. However, migrants are excluded from some EI benefits and administrative barriers and complexities often prevent them from accessing these much-needed benefits<sup>68</sup>. These workers are left in a state of precariousness, despite their financial contributions to the EI system, which is meant to provide income security to those facing job loss.

The LMIA process presents a disconcerting environment that fosters the exploitation of migrant care workers, revealing several disconcerting factors that leave this group vulnerable and subjected to challenging conditions. A prominent issue is labor intensification, wherein migrant care workers are frequently subjected to demanding work hours, often surpassing reasonable expectations. This

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<sup>63</sup> [Amnesty International Canada, “People with Irregular Status Have the Right to Access Essential Health Care.”](#)

<sup>64</sup> [Amnesty International, “Canada: Human Rights in Peril.”](#)

<sup>65</sup> [FCJ Refugee Centre and Canadian Centre to End Human Trafficking, “It Happens Here: Labour Exploitation Among Migrant Workers During the Pandemic.”](#) ; [Canadian Council for Refugees, “Trafficking in Persons for Forced Labour: Background.”](#); [Holman and Godden, “Literature on Labour Trafficking in Canada.”](#)

<sup>66</sup> [House of Commons Canada, “Temporary Foreign Worker Program: Report of the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities.”](#) ; [Nakache and Kinoshita, “The Canadian Temporary Foreign Worker Program: Do Short-Term Economic Needs Prevail over Human Rights Concerns?”](#) ; [Agricultural Workers Canada, “The Status of Migrant Agricultural Workers in Canada, 2022.”](#)

<sup>67</sup> [IOM Ukraine, “Policy Brief on Migration, Environment and Climate Change: Ukraine.”](#)

<sup>68</sup> [Migrant Rights Network, “Underinsured: Ending the Exclusion of Migrants from EI.”](#); <https://www.nmwig.ca/files/ontario-migrant-worker-employment-insurance-information.pdf>

grueling workload not only contributes to physical and emotional exhaustion but is also typically met with insufficient compensation, exemplifying wage exploitation. Many care workers find themselves grappling with unpaid wages or wages falling below the minimum wage threshold, with additional employment standards violations such as the absence of overtime pay or the failure to contribute to EI adding to their financial hardships.

The LMIA process itself acts as a significant hurdle for these workers. It necessitates a multi-step approach where someone must first apply for and receive LMIA approval before the worker can apply for a work permit. This intricate process frequently results in delays and challenges in securing suitable employment. Serious processing and administrative delays further exacerbate the issue, with the COVID-19 pandemic amplifying the challenges. This prolonged waiting period, often spanning years, poses a significant risk as work permits may expire without a guarantee of continued employment from the initial sponsor. In such cases, migrant care workers can find themselves burdened with debts and facing the looming prospect of becoming undocumented.

Enforcing their rights is a formidable task for these workers, with complex bureaucratic barriers often hindering their ability to assert their rights and access the protections they are entitled to. Furthermore, the LMIA process may lead to lost work opportunities, as administrative complications and extensive delays introduce uncertainty and instability into the lives of migrant care workers, leaving them with limited access to essential income supports when they are most needed.

The COVID-19 pandemic further exacerbated the challenges, making it nearly impossible for migrant care workers to secure LMIA employers due to economic downturns and restrictions on immigration and employment opportunities. This situation underscores the urgency of addressing these systemic issues, reforming the LMIA process, and protecting the well-being and rights of these crucial members of the Canadian workforce. A comprehensive and immediate response is necessary to address these issues and create a fair and equitable environment for migrant care workers within the Canadian labor market.

The existing situation reflects a grave injustice, where care workers, who play a crucial role in Canadian society, are denied basic employment protections and access to the social safety net that other workers enjoy. The result is that they are trapped in a cycle of vulnerability, unable to voice their concerns, and often suffering in silence due to the fear of repercussions. This highlights the urgent need for reforms within the immigration and labor systems to provide migrant care workers with the security and protection they deserve while contributing to Canadian society.

## Implications

Policy changes are necessary. A good policy design, like any good design, attends to flaws, gaps, and needs in such a way as to create a seamless and virtually unnoticeably constructed experience of a strong and well society. It does so by attending to the gaps. Some of the gaps that Canada is experiencing at this time are: a tripling population growth of older adults who will rely upon Canada's universal health care<sup>69</sup>; rising labour needs alongside low unemployment due to high

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<sup>69</sup> [Statistics Canada, "A Portrait of Canada's Growing Population Aged 85 and Older from the 2021 Census."](#)

numbers of retiring workers<sup>70</sup>; and low fertility<sup>71</sup>. Policies related to labour, immigration, and health care are pertinent to these gaps.

### Co-Designing/Incorporating Recommendations for Policy Change

The policies and practices most relevant to migrant care workers have been described as having a "swiss cheese effect"<sup>72</sup> with multiple holes and gaps leading to significant flaws. As Obokata<sup>73</sup> noted, these flaws have significant and disproportionate impact on members of society who are disadvantaged because of discriminations such as racism, sexism, ableism, and classism. In her consideration of necropolitics<sup>74</sup> and the ways in which mortalities are designed into our systems, activist/scholar Vikki Reynolds contends that flaws and cracks in the system are most likely to harm the most vulnerable members of a community and, thus, can be questioned for their intentionality<sup>74</sup>. Good policy design must consider the cracks and the individuals most likely to fall through them. When policy development occurs without engagement with the individuals who can speak from personal experience about the lived impact of a policy, the policy development is likely to contain the cracks that vulnerable individuals and communities can easily slip through<sup>75</sup>.

In considering the disproportionate impact of the policies and practices that inform migrant health workers' experiences in Canada, upstream thinking can provide guidance in terms of understanding the root causes of the flaws that exist across policies and practices. Amnesty International has developed a comprehensive list of recommendations that attend to the flaws that exist<sup>77</sup>. The recommendations are as follows:

- Permanent Immigration status for all migration workers;
- Medical inadmissibility actually upheld 38(1)(c);
- Register and license employers and recruiters;
- Joint and Several Liability (line of credit, bonds for recruiters and registry employers);
- Anti-reprisal mechanism (shouldn't be at risk for reporting employer violations);
- Removal of closed WP;
- Recognition that TFWP and LMIA contributes to precarious situation of many caregivers;
- Ensure access to all social services, and benefits (EI, CPP, CERB);
- Stop unilateral repatriation of migrant workers;

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<sup>70</sup> [Statistics Canada, "The Daily: In the Midst of High Job Vacancies and Historically Low Unemployment, Canada Faces Record Retirements from an Aging Labour Force: Number of Seniors Aged 65 and Older Grows Six Times Faster than Children 0-14."](#)

<sup>71</sup> Ibid.

<sup>72</sup> Lopez, "Personal communication to the authors."

<sup>73</sup> [Obokata, "End of Mission Statement: Tomoya Obokata, Special Rapporteur on Contemporary Forms of Slavery, Including Its Causes and Consequences."](#)

<sup>74</sup> Reynolds, "Personal Communication to Corresponding Author."

<sup>75</sup> [Mulvale et al., "A COMPASS for Navigating Relationships in Co-Production Processes Involving Vulnerable Populations."](#)

<sup>76</sup> [Amann and Sleigh, "Too Vulnerable to Involve? Challenges of Engaging Vulnerable Groups in the Co-Production of Public Services through Research."](#)

<sup>77</sup> [Amnesty International, "Canada: Submission to the United Nations Committee on the Elimination of Discrimination Against Women."](#)

- Enable labour mobility by issuing open work permits, regulating recruiters, comprehensive access to EI;
- Reunification of families;
- Collective bargaining rights (wage negotiation);
- Access to HC services;
- Expand eligibility criteria for services under Canada's national settlement program;
- Mechanisms to improve migrant worker housing.

Amnesty International, the UN, and multiple activist and advocacy organizations insist that the policy and practice flaws constitute significant human rights violations. At the root of the Amnesty recommendations lies coloniality and its overriding outcome of determining who has and has not the right to exist. The logic of coloniality is one of hierarchy and binary resulting in the normalization of violence against racialized women<sup>78</sup>. Coloniality creates a matrix of power that legitimizes unequal conditions of existence. Coloniality is a global power that covers the entire planet, a matrix of methods and powers embedded in our world system, made possible by racial and revamped gender discriminations<sup>79</sup>. Colonialism establishes the direct political, social, cultural EuroWestern colonial domination of all continents<sup>80</sup>. As we consider the intricate and global design that migrant care worker policies encapsulate, we can consider this design as coloniality in action. Policy redevelopment and design needs to begin by validating the knowledge and experience that coloniality has deemed inconsequential and invalid. Policy and program codesign work needs to consider and revamp the methods with which lives have been invalidated, where harm and violences have been normalized and injustices sustained.

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<sup>78</sup> Hooks, *All About Love: New Visions*.

<sup>79</sup> [Quijano, "Coloniality and Modernity/Rationality."](#)

<sup>80</sup> [Gallegos, "Re-Activating Critical Thinking in the Midst of Necropolitical Realities."](#)

Appendix A



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<sup>i</sup> It is important to note that the definition of ‘low skilled’ and ‘under educated’ is to be questioned. The training that is guaranteed for migrant care workers in nation-to-nation agreements often amounts to substantial health training that does not get recognized in Canada. We recommend reading Francisco-Menchavez’s 2018 book titled “*The Labor of Care: Filipina Migrants and Transnational Families in the Digital Age*”.

<sup>ii</sup> Necropolitics describes the social and political powers that are used to determine how some people may live and how some must die. Achille Mbembe provides an in depth exploration in: Achille Mbembe (2019). *Necropolitics*. Duke University Press.