

**LIVE-IN CAREGIVERS IN SASKATCHEWAN: DEPRIVATIZATION OF
PRECARIOUS LABOUR**

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DEDICATION

For hard-working women, in and outside of the home

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Chapter 1

Thesis Overview and Objectives

Introduction:

The Live-in Caregiver Program (LCP) is the only Temporary Foreign Worker Program (TFWP) stream in Canada to provide the option of permanent residency. After 3,900 hours (within a 22 month minimum period) of full-time work for an employer, caregivers can apply for permanent residency (Citizenship and Immigration Canada 2012: Guide 5290). Citizenship and Immigration Canada (CIC) defines live-in caregivers as “individuals who are qualified to provide care for children, elderly persons or persons with disabilities in private homes without supervision. Live-in caregivers must live in the private home where they work in Canada” (CIC 2012). The LCP has become a prominent route for women from developing nations such as the Philippines to work for an extended period and attain Permanent Resident Status in Canada.

This chapter provides foundation for the central question of this thesis: **Do the elements that construct Saskatchewan foreign live-in caregiver policy, comprised of the federal Live-in Caregiver Program, Saskatchewan immigration policies, and Saskatchewan labour legislation in combination ensure sufficient labour rights protections for these women?**

This question examines the potential for labour rights abuses that caregivers may experience resultant of working and living within the same space. As policy for foreign live-in Saskatchewan caregivers is reliant on federal/provincial immigration policy as well as Saskatchewan labour standards legislation, analysis and understanding of these individual elements is imperative with regards to devising any potential policy suggestions. Upon examination of the LCP, highlighting the lack of transparent policies to govern caregivers within

Saskatchewan immigration and labour policy, and several surveys/interviews from caregivers across Canada, I argue that caregiver-employer relationships require increased governmental regulation in the province of Saskatchewan. I contend that the caregiver-employer relationship encompasses not only non-standard elements but also gendered and socio-ethnic inequalities as well. As such, I argue that a policy that increases protections for caregivers whilst decreasing the potential for labour rights abuses is vital. I conclude by presenting a number of policy suggestions, including recognizing the unique employment situations of caregivers in provincial labour and immigration legislation/agreements, learning from provinces with caregiver-specific legislation, provincial mediation of caregiver-employer contracts, and increasing the potential for unionization.

As of late 2014, the Live-in Caregiver Program underwent a major change and became a two-stream program to be implemented in 2015. Applicants may now choose to apply under the “Caring for Children” stream or the “Caring for High Medical Needs” pathways (Citizenship and Immigration Canada 2014). The new program has eliminated the mandatory live-in requirement and caregivers who opt to live outside of their employer’s home must apply for a regular work permit. Each stream has a cap of up to 2,750 applicants for permanent residency per year, and those who are currently working under a Live-in Caregiver Program visa may apply to one of the new streams (Citizenship and Immigration Canada 2015). Due to the structural revitalization of the program, the implementation of a permanent residency application cap where none previously existed, and elimination of the live-in requirement, this thesis will serve as a historical examination. However, the decision to revamp the LCP does not provide a solution to the demand for home-based care for children and those with high medical needs in Canada. Therefore, the questions surrounding foreign caregivers in this thesis remain relevant. In

addition, I suspect that policy makers and future governments will continue to contend with the potential for abuse without caregiver-specific legislation. Thus, the policy suggestions presented in this thesis, particularly for caregivers who live with their employers, remain pertinent.

1.1 Temporary Foreign Work Shifts and the Place of Live-in Caregivers

Immigration is an integral part of the Canadian economy. There are three primary routes for potential immigrants to enter Canada: the economic class, the family class, and the refugee class. The family and refugee classes require sponsorship from Canadian citizens or proof of endangerment while the economic class is divided into two sub-groups: permanent migrants and the Temporary Foreign Worker Program (TFWP) (CIC 2010). The TFWP is comprised of the Seasonal Agricultural Worker Program (SAWP), stream for Lower-Skilled Occupations, stream for Higher-Skilled Occupations, and the Live-in Caregiver Program (LCP) (EDSC 2014).

TFWP streams such as the LCP mark a shift towards temporary foreign work, where foreign nationals work in Canada to fill labour and skills shortages for a designated amount of time (dependent on work contract terms), before returning to their home countries (CIC 2012). Most TFWP participants, excluding the LCP, are ineligible for permanent residency under the federal program. Temporary foreign work in Canada increased through two key components: globalization/neoliberal restructuring and the increase in non-standard employment relationships (NSER). The current phase of neoliberalism is characterized by free, deregulated markets, free trade, and minimal government intervention at the broadest level (Harvey 2005: 71). Developing states in turn have shifted to become more consistent with neoliberalism insofar that they engage in competition between firms, accept (and in most cases are dependent upon) free trade, and open markets (Harvey 2005: 72). These trends also include the transnational migration of

temporary and precarious workers to places such as Canada. The LCP is comprised of approximately 95.5 percent women with over 90 percent hailing from the Philippines, making it the most gendered program in Canadian immigration (Khan 2009: 29; Asia Pacific Foundation of Canada 2014). Caregivers wishing to reside in Canada under the LCP must accept an offer from an employer in any Canadian province who provides a private work contract. The caregiver is then subject to the labour standards laws of that province and risks becoming unqualified for permanent residency if she leaves her position or is fired (Hick and Allahar 2001: 8). This unique employment relationship gives employers an incredible amount of power in the employment relationship.

How has the newest phase of work altered employment relationships amongst caregivers and employers? The restructuring of the labour market by increases in temporary foreign work, has created conditions that have increased NSERs that are represented in Canada's LCP. The NSER is associated with a non-standard 40 hour work week (shift work, other than 9:00 AM-5:00 PM variants), temporariness of work and lacks full workplace benefits. In addition, it encompasses some Canadian workers as well as temporary foreign workers (Vosko 2007: 133). Bakan and Stasiulus highlight the relationship amongst neoliberalism, non-standard employment, gender and ethnicity amongst caregivers:

Migratory movements from third-world to first-world countries, as Robert Cox describes, have "combined with the downgrading of job opportunities in advanced capitalist countries (the McDonald-ization of the workforce) [to] constitute what has been called the 'peripheralization of the core'" (1991, 340). Within the growing sector of low-wage, unprotected jobs, the class division that defines a capitalist labor force has become further segmented by gender, race and ethnicity... One major growth area in low-wage, unprotected occupational niches occupied by third-world women in advanced capitalist countries is that of nannying or domestic service for first-world families (Bakan and Stasiulus 1994: 9).

The caregiver-employer NSER is of particular interest for several reasons: work is done within a private home; there is no governmental mediation of employer-employee contracts concerning fair wages or overtime; and the program is overwhelmingly used by non-Caucasian Filipina women who often have faced socio-economic inequalities in their home regions due to underdevelopment (Bakan and Stasiulis 1995: 315). The increase in NSERs and labour market shifts creates policy issues that may lead to labour and contract violations as current employment policy remains modeled on the standard employment relationship (SER)—a 40 hour work week with benefits and job permanency (Vosko 2007: 132).

This chapter examines the shift to temporary foreign work, standard and non-standard employment, as well as why Saskatchewan has been chosen as a case study. In order to effectively determine the potential for labour rights abuses of caregivers in Saskatchewan, analysis of temporary foreign work, employment relationships and Saskatchewan's need for immigrants is vital. The following questions will be addressed in this chapter: why has Canadian immigration policy shifted to increase the numbers of temporary foreign workers? How does the caregiver-employer relationship differ from standard and non-standard employer-employee relationships? How do policy analysts regulate the LCP and the employment relationships that follow?

1.2 Background: The Shift to Temporary Foreign Work, Standard/Non-Standard Employment, and Perspectives Surrounding the LCP

1.2.1 Managed Migration and Temporary Foreign Work in Canada

The LCP is a stream of the Temporary Foreign Worker Program (TFWP). This stream is considered part of an economic migration class that allows foreign nationals to work in Canada

for a designated amount of time. Contracts typically range from six months to two years before workers must return to their home countries. Most TFWP participants are ineligible for permanent residency under the federal program. The TFWP is comprised of the Seasonal Agricultural Worker Program (SAWP), a stream for Lower-Skilled Occupations, another stream for Higher-Skilled Occupations, and the Live-in Caregiver Program (LCP) (EDSC 2014). The LCP is currently the only TFWP stream to offer the option for participants to apply for permanent residency after 3,900 hours of full-time work for an employer (CIC 2012: Guide 5290).

Since the implementation of the streams in 2000, temporary foreign workers present in Canada have more than tripled from 89,746 to 338,222 in 2012 (CIC 2012: 64; Taylor et al. 2012: 2). In addition, in 2011 CIC processed (excluding international students) 190,842 temporary work applications, a 6.1 percent increase from the 179,179 admitted in 2010 (CIC 2012: 16). Numbers continued to rise in 2012 with 213,573 TFWP applications processed (CIC 2012: 62). Workers in designated lower-skill occupations more than doubled from 2000 to 2009. In comparison to the high, increasing rates of TFWs in Canada, the rates of permanent residency through economic, family, and refugee classes combined have remained relatively steady from 2005 (262,242) to 2013 (258,953) (CIC 2012: 6; CIC 2013: 12).

With the numbers of economic, family, and refugee class entrants remaining relatively stable, why are the numbers of TFWs in Canada continuing to grow? This question may be partially answered by examining the Canadian-born population. Canada's immigration policy has relied on a number of push/pull factors for cross border migration (Reed 2008: 470). These may include political, economic, social instability in overseas nations or the presence of the TFWP program in Canada to attract workers. These factors account for recent trends towards

temporary foreign work that favour current labour market conditions. Regarding Canadian-born residents, Canada's increasingly aging population is an important factor in labour market shortages. Seniors (age 65 and over) make up the fastest growing age group with 14.4 percent of Canadians (5.0 million) in this category, a large increase from 8 percent in 1971 (ESDC 2014). Low birth rates among Canadians are a contributing factor with the recorded high of 3.93 births per woman in 1959 to the recorded historical low of 1.49 in 2000 (ESDC 2014). Since 1980, birth rates have remained relatively stable, fluctuating between 1.49 and 1.7 live births per female (ESDC 2014). However, a replacement rate of 2.10 children per woman for decades would be needed to counter the aging population in Canada, a number that has not been recorded since 1972 (Statistics Canada 2010: 22). Due to these recorded low birth rates, Canada's mean age has increased from 26.2 years in 1971 to 39.9 years in 2011 (ESDC 2014).

Statistics of part time temporary foreign work not only align with this trend but also reflect changes from standard work to non-standard work. Between 1975 and 1985, part time positions increased in Canada (30 hours a week or less) by 78 percent, while full time positions increased by 15 percent (Valiani 2012: 3). Temporary and casual workers, many of whom were temporary migrant workers, reduced labour costs for employers and earned 43 percent less than full time permanent workers in similar and equivalent positions (Valiani 2012: 4). Furthermore, Canada's working age demographic (age 15 and over) is expected to decrease by 13 percent from 2009 to 2036, allowing for shortages of workers that may need to be filled by temporary foreign workers (Elgersma and Simeone 2012: 1). The aging population and low birth rates among Canadians have created a labour market shortage in areas such as seasonal farm work and home-based care, leading employers to advertise sector-specific employment opportunities to overseas workers.

Authors such as Reed (2008) cite poverty, political turmoil, and social factors surrounding race and gender as key drivers for temporary foreign workers to leave their home nations and seek work in Canada (Reed 2008: 470). These push/pull factors have led to the “[creation of] and [maintenance of] a permanent migration circuit that moves back and forth between [these entities]...based on a time-bound, employer-specific work contract” (Reed 2008: 471-472). Although temporary foreign work has been a part of Canadian immigration policy for several decades, the TFWP has regulated the conditions of certain workers based on labour market needs and also through bilateral agreements. Reed terms this phenomenon as “managed migration” (Reed 2008: 471). Managed migration “entails a form of documented movement that ensures both sending and receiving governments know how, when, and where an individual is working during the tenure of the overseas employment contract” (Reed 2008: 471).

Due to high amounts of migrant workers destined for Canada, policy makers have engaged in Memoranda of Understanding (MOUs) with nations that produce large amounts of temporary foreign workers. For example, nations such as Mexico and the Philippines have specialized agreements with the Canadian federal government and some provincial governments. Provincial governments such as Saskatchewan have provided incentives for all participating parties such as worker protections and use of foreign nationals from participating countries in times of Canadian labour shortages. Reed notes that MOUs establish the creation of “a permanent circuit of temporary workers” that contributes to the Philippines economy in several ways. Firstly, the Philippine Government has incorporated sending temporary foreign workers to Canada and other overseas destinations into its political economy scheme (Reed 2008: 480). Reed states that in 2008 approximately 2,600 Filipino nationals left the country for overseas work every day, about 70,000 persons per month (Reed 2008: 480). Furthermore, approximately

half of the almost seven million Filipinos who leave the country for work do so under temporary foreign work programs (Reed 2008: 481). In addition, these foreign workers often send remittances to their families in the Philippines which in turn helps to stabilize the national economy. For example, Reed notes that in the mid-2000s, Filipino workers have remitted approximately USD\$10 billion, which accounts for five percent of the gross national product (Reed 2008: 481).

Canada benefits from these interactions as well by importing labour on a case-by-case basis. When a shortage of workers occurs, (in harvesting seasons for example), the TFWP can ensure a supply of short term labour and then guarantee the return of foreign workers once their labour is no longer needed/contract conditions expire (Reed 2008: 478).

Policy towards temporary foreign work since the mid-2000s has thus been implemented to supplement an aging workforce and as an instrument of convenience. However, managed migration through the TFWP does not rectify the social, political, or economic conditions that entice foreigners to seek work in Canada and in turn establishes a non-standard employment relationship among foreign workers and employers. This situation leaves temporary foreign workers in Canada in a system of indeterminate job security. The need for temporary foreign workers stems from labour market fluctuations, creating the need for short-term employment. As such, workers may enter into employment contracts that provide little to no benefits and/or differ from a standard 40 hour work week. An overview of standard, non-standard, and precarious employment relationships is imperative to understand the nature of employment under the TFWP and the subsequent potential for abuse workers face.

1.2.2 *Global Care Chains and the LCP*

As part of Canadian immigration policy, the LCP is part of a non-linear process of immigrant women coming to Canada under the LCP to care for children and high medical needs persons. The series of interdependencies are resultant of the care chain between the caregiver and the family in Canada she is contracted to care for. Global Care Chains are networks that transfer caregiving duties across borders and are driven by labour market fluctuations of the demand country, such as Canada (FitzGerald Murphy: 192). The “chain” has multiple links between the live-in caregiver and her work-related responsibility to care for a Canadian family, the cost associated with leaving her own family/children in her home nation, and between the person(s) who will assume the caregiver role of the live-in caregiver’s own family (Fudge 2011: 237). These interdependencies resultant of Western demand and “Global South” supply of foreign caregivers have been designated as the “transnational economy of domestic labour” (Fudge 2011: 239). Ultimately, as these caregiving chains redistribute caregiving duties across borders, the feminization of migration has been incorporated into Canadian immigration policy through the LCP, which not only creates precarious work, but fosters a global/transnational program of primarily female precarious labour.

1.2.3 *Standard, Non-Standard, and Precarious Employment Relationships*

How does the standard employment relationship (SER) differ from a non-standard employment relationship (NSER)? Furthermore, how does the NSER differ between temporary foreign workers and caregivers who must work within an employer’s home? Examining the types of relationships between Canadians and employers and how these vary amongst temporary foreign work sectors provides a foundation in which to view the unique and precarious work conditions live-in caregivers in Canada face.

After WWII, the standard employment relationship became the dominant model of employment through “state mediated compromise between the predominately white male, industrial workers and their unions and employers in large workplaces shielded from the competitive pressures challenging many smaller firms” (Cranford et al. 2003: 7). According to Vosko, a standard employment relationship is characterized as a full-time, permanent job under one employer, working under the employer’s direct supervision, in normally a unionized sector where employees can be afforded benefits (Vosko 2007: 132). Cranford, Vosko, and Zukewich note the SER has been modeled after a “male breadwinner”, “female caregiver” dichotomy and principally applies to work within the public sphere. The authors also suggest that the SER does not always apply to Canadians working in smaller, non-permanent sectors such as the service industry and often does not apply to temporary foreign work programs (Cranford et al. 2003: 7).

Those under some temporary foreign work program streams generally fall under the umbrella of non-standard employment. Since the mid-1970s, there has been a decline in standard workers and an increase in non-standard forms of employment, namely temporary foreign work. Labour market fluctuations and increasingly new regulations on temporary foreign work labour policy have contributed to this change (Fudge and Vosko 2001: 329). Throughout the 1980s and 1990s temporary foreign work in Canada drastically increased, consisting of over 10% of total employment by 2005 (Vosko 2007: 133). The shift to the NSER is typically associated with a lack of workplace benefits, non-permanency of work, or a type of employer-employee contract that is identified as non-normative/a standard 40 hour work week (Vosko 2007: 7). As previously mentioned, Canadian employment relationships may fall under NSERs for job insecurity reasons pertaining to benefits and non-permanency/non-standard employment hours. Cranston, Vosko, and Zukewich assert that there are:

[F]our situations that differ from the norm of a full-time, full-year, permanent paid job (Krahn 1995): part-time employment; temporary employment, including term or contract, seasonal, casual, temporary agency and all other jobs with a specific pre-determined end date; own-account self-employment (a self-employed person with no paid employees); and multiple job holding (more than one job concurrently). Some researchers also include shift work in their definitions of non-standard work (Vosko 2007: 8).

Using this definition as a template, many TFWP streams such as the SAWP and LCP qualify as non-standard based on structural features (non-permanency, contractual, pre-determined end dates) alone. Vosko argues that these employment conditions are precarious. She defines precarious labour as “forms of work involving job insecurity, low income, limited social benefits, and statutory entitlements, and high risks of ill-health” (Vosko 2007: 133). Precarious work can be shaped by employment status such as bilateral employment relationships between participating countries, forms of employment such as temporary work or part time work, or social location/social context (Vosko 2007: 133).

If many TFWP streams are non-standard by the definition provided by Cranford, Vosko, and Zukewich, what precarious labour conditions exist that are uniquely associated with the LCP? This answer is partially derived from working and living conditions that caregivers are presented with upon accepting an offer of employment. Firstly, the LCP is unique because caregiving work is done within the home, a traditionally private domain. Structurally, living within an employer’s home conjures a host of issues that caregivers may face dissimilar to public sphere temporary foreign work employees. Items such as physical/mental/emotional abuse or enforcement of contract terms between employers and caregivers may be difficult to prove or disclose due to the private nature of contracts and a comparatively more isolated work environment as to other TFWP streams such as seasonal farm work. As such, this thesis analyses how traditional notions of the home as a private space of work are currently embedded within

immigration and labour legislation. Moreover, how these traditional views may actually increase the potential for labour rights violations is examined.

1.2.4 *Perspectives on Caregivers and Angle of Analysis*

The LCP has been explored by scholars and policy makers because of the unique nature of the program and its participants. The live-in component represents a grey area as caregiver work spaces and living arrangements are inseparable, making interactions uneasily observed by the public. The federal government has been making significant changes to the TFWP as of June 2014. The LCP, until changes to the program structure and live-in requirements were unveiled in 2015, had remained unchanged for decades. However, the nature of the program is subject to criticism. Policy makers such as former Minister of Citizenship and Immigration Jason Kenney perceive the program as a potential way for Filipina nationals to commit fraud against the Canadian immigration system. He argues that the LCP “has ‘mutated’ into a program of ‘family reunification,’ whereby thousands of foreigners are coming to work for their own relatives in jobs that might otherwise not exist” (Hough, 2014). Critics argue that Kenney’s concerns are invalid, noting that “Jason Kenney’s comment that [the LCP] has “mutated” into a family reunification program is also not relevant. If a family proves the need for live-in care, the blood relationship to the live-in caregiver is irrelevant” (Pagtakhan 2014). Kenney’s perspective is also critiqued by scholars such as Macklin who argue that policy makers are focusing on the wrong aspects of the program. She believes federal policy makers should direct their attention to the risks for abuse that caregivers in Canada may encounter with non-relative employers.

This thesis explores the intersections between Saskatchewan immigration and labour policy as well as federal immigration policy to determine if caregiver labour rights are protected once they enter Saskatchewan. Proponents and critics tend to agree that the LCP offers a chance

for women from developing countries to immigrate to Canada. Many of these women do not qualify for other economic immigration streams and would otherwise be unable to immigrate (Langevin and Belleau 2000: 34). Coupled with steady demand rates for caregiving needs in provinces such as Saskatchewan, almost all Canadians are hiring caregivers for legitimate reasons; thus, investigation into their unique employment relationships and work environments would prove a worthwhile analysis.

1.3 Federal LCP Policy and Employer Power

Federal Canadian immigration policy places the LCP under the TFWP, which categorizes caregiver work across Canada as a federal responsibility. As made mandatory by Employment and Social Development Canada (ESDC), (formerly Human Resources and Social Development Canada), persons attempting to hire a live-in caregiver must first prove that they have made every effort possible to hire a Canadian worker. The potential employer must offer “wages consistent with prevailing wage rates, and that working conditions meet provincial labour standards” (Brickner 2010: 311). In addition, the position must be advertised on the provincial “Job Bank” website for a minimum of two weeks during the three month period prior to applying for an Labour Market Opinion (LMO) (Hennebry 2011: 65). After a positive LMO has been approved by ESDC, the employer may offer a job to a potential caregiver. Apart from private sponsorship, employment agencies may be used to recruit caregivers and match them with a family. Under the LCP, recruitment costs cannot be charged to caregivers and agencies in British Columbia, Alberta, Manitoba and Saskatchewan are prohibited from charging travel fees to caregivers (CIC 2014). Once an offer has been made, federal policy dictates that the employer must devise a contract between him/herself and the caregiver stating terms of work, a pay cheque

that lists the salary and appropriate deductions, as well as a living space within the employer's home (Bricker 2010: 311).

Critics of the recruitment process claim that there is no proactive monitoring procedure in place to ensure employers honour their commitments or demonstrate abilities to conduct a thorough search for a Canadian worker (Alboim and Cole 2012: 50). The process of posting a position on a "Job Bank" can be interpreted as a mere formality. Privatized contracts with a foreign national are also less monitored by government which open the possibility for unscrupulous employers to violate labour standards (Foster 2012: 39). Due to socio-economic vulnerabilities coupled with live-in requirements, caregivers are chiefly susceptible to signing disingenuous employment contracts and risk labour exploitation.

Caregivers' responsibilities as specified by CIC limit care solely to the individual that is in need of care, such as a child or elderly person. Further, caregivers may carry out 'light' housework that does not include cooking or housekeeping for the family on a regular basis. The contract is expected to be upheld by both the caregiver and employer with little or no intervention from CIC or provincial governments. This aspect of private "in-home work" puts caregivers at risk for a host of abuses and lacks measures for ensuring that labour and social rights are protected. Caregivers, as party to the contract, are solely responsible for ensuring that their employer abides by the terms of the contract. CIC maintains in the information distributed to caregivers that:

The Government of Canada is not a party to the contract. We have no authority to intervene in the employer-employee relationship or to enforce the conditions of employment. It is [the caregiver's] responsibility to know the laws that apply to [her] and to look after [her] own interests. [She] should contact the ministry responsible for labour or employment in the province or territory where [she] live[s]

and work if [she has] any questions, difficulties or complaints regarding [her] employment as a live-in caregiver (CIC 2002: 6 as cited in Hick and Allahar 2001: 8).

With little to no policing on part of federal or provincial governments, caregivers rely on a complaint-based system to formally address any work-related grievances (Alboim and Cohl 2012: 50). Abuse is also difficult to document or prove. A caregiver that chooses to make a complaint may lose her job, at which point she would need a new work permit and face lengthy processing times before she can legally work again (Pang 2013: 9). Little monitoring from federal immigration and exemption from provincial protections, such is the case with Saskatchewan, immensely contributes to caregivers' precarious positions.

1.4 Temporary Foreign Work and Live-in Caregivers in Saskatchewan

It is important to explain why Saskatchewan has been chosen as a case study through which to analyze the LCP. Scholars such as Stevens note that temporary foreign work has become important to Western Canada and particularly Saskatchewan. Temporary foreign work has been integrated as “part of a policy shift [that] developed in the Conservative’s 2007 budget that prioritized the TFWP as a means of alleviating labour shortages in Western Canada’s resource economy” (Stevens 2014: 5). From 2008 to 2012, the numbers of temporary foreign workers have more than doubled in Saskatchewan, from 3,690 to 9,995, which is the highest growth rate in the country, making it an area ripe for study (Stevens 2014: 5). My reasons for using Saskatchewan as a case study are threefold: increasing need for caregiving in the province, a newly formulated immigration program in the last decade, and the creation of bilateral agreements with the Philippines and Saskatchewan.

Caregivers in Saskatchewan have slightly increased from 2005-2008 and since remained relatively stable to 2013: 155 in 2005, 190 in 2006, 235 in 2007, 245 in 2008, 190 in 2009, 250

in 2010, 200 in 2011, 205 in 2012, and 105 from January-June 2013 (only partial data available for 2013) (ESDC 2013; ESDC 2013). These numbers infer that the need for caregiving is not declining and remained stable even throughout the 2008 economic crisis. In addition, the need for caregiving, performed by either Canadians or LCP participants, is much needed in Saskatchewan. According to a 2013 Statistics Canada survey, Saskatchewan ranked the highest of all provinces with 34 percent of respondents having provided caregiving for children, aging, or disabled persons compared to the national average of 28 percent (Sinha 2013). With the demand for caregiving high in the province and the supply of caregivers from the Philippines readily available, Saskatchewan remains an area ripe for evaluation.

A second reason why Saskatchewan has been chosen for my case study is the revamped SINP. Apart from the development of an interprovincial attraction and retention strategy, the province has turned to immigration to generate investment, economic prosperity, and to fill labour market shortages. Since 2002-2003, immigration has become a frontrunner in Saskatchewan's economic strategy and has resulted in many permanent and temporary immigrants to the province (Kordan 2012: 62). With such a new immigration policy, the evaluation of the SINP's policies is important.

Third, as part of Saskatchewan's immigration strategy, a bilateral agreement through a Memorandum of Understanding (MOU) has been developed between the province and the Philippines government. (Fudge 2011: 252). This MOU "ensure[s] foreign workers recruited from the Philippines receive adequate protection from the time of recruiting by promoting 'sound, ethical and equitable recruitment and employment practices'" (Fudge 2011: 252). MOUs work in conjunction with the SINP, meaning that caregivers in Saskatchewan are not eligible for protections under these bilateral agreements. Although caregivers are subject to the labour

standards legislation of Saskatchewan, there remains a variety of immigration and labour policy gaps that may increase the potential for labour rights abuses. It is for these reasons that Saskatchewan is attractive and worthwhile to study.

1.5 Methodology and Chapter Outline

I answer the question surrounding whether or not Saskatchewan live-in caregivers' labour rights are adequately protected under current SINP and labour standards policies through investigation of several elements:

- The structural elements of the federal Live-in Caregiver Program within the Temporary Foreign Worker Program;
- Saskatchewan immigration and labour policy: Memorandum of Understanding with the Philippines, Bill 83 (An Act respecting Foreign Worker Recruitment and Immigration Services), and the *Saskatchewan Employment Act*; and
- Available case studies, secondary interviews, and survey data regarding labour rights violations faced by caregivers.

It is important to note that while Saskatchewan has been chosen as a case study, the secondary interview and survey data presented in this analysis were collected from other parts of Canada, primarily Quebec. I chose to utilize interview data from Quebec PINAY surveys rather than conducting interviews with Saskatchewan live-in caregivers for three principal reasons: Quebec provided a significantly larger sample size than Saskatchewan, Quebec had no caregiver-specific protections legislation or regulations set forth by the provincial government at the time of the surveys, and the content of the surveys was profoundly insightful. I found the PINAY surveys beneficial to the analysis of the potential for abuse in Saskatchewan due to the large

sample size offering a broad range of the scope of abuse caregivers living in provinces without any protections may encounter. I chose to forego interviews with provincial government officials as well due to the lack of caregiver advocacy groups as well as the lack of caregiver-specific regulations in Saskatchewan. The significantly smaller sample size any interviews I may have chosen to conduct through Saskatchewan caregivers may not have accurately reflected the spectrum of issues caregivers may face. Although caregiver interview surveys are not abundant in government and scholarly literature, the PINAY survey content delved into specific contract terms with participants. The detailed nature of the interview questions offered unique insight for potential contract issues that Saskatchewan caregivers may experience. It is for these reasons that the PINAY surveys were chosen over primary interviews.

While the Quebec PINAY surveys provide useful data and insight into caregiver labour precariousness in provinces with no live-in caregiver regulations, the surveys also present weaknesses that may create a margin of error. Firstly, the surveys are subjective which increases the chances of misreporting. For example, the possibility exists that some participants may have responded untruthfully to questions or chose to deny responding out of fear, which may have skewed results. Secondly, the potential for a gap in perception exists. Although some working conditions may be unacceptable by Canadian standards, the participants may perceive them as a large improvement compared to working conditions of their home nations. However, the studies remain relevant and integral to my research on Saskatchewan. The data expressed in this thesis are thus used in conjunction with Saskatchewan immigration and labour policy to highlight the *potential* for abuse in the province. As results highlight vulnerabilities for caregivers in Saskatchewan, the alternatives that follow may prove useful in preventing caregiver labour rights violations in the province.

My discussion of policy alternatives is framed through Nancy Fraser's model of recognition and redistribution. Fraser's framework outlines the entrenchment of traditional gender roles such as child-rearing, cleaning, and domestic work relative to identity construction. She acknowledges neoliberal political economy as the force that projects social roles and redistributes them to the economic level; this is observed through Canadian immigration policy in terms of the LCP.

Fraser argues that through recognizing women's traditional work as domestic and inherently 'private' sphere oriented, labour markets foster the creation of gendered sectors of employment; this renders identity recognition and economic distribution inseparable (Fraser 2000: 117). I apply her theory to live-in caregivers through interpreting policy gaps that provide little to no governmental regulation of employer contracts or recognition of the home as a place of work within Saskatchewan.

Fraser's theory suggests an approach involving economic redistribution and recognition of identity and gender roles in society. She contends that both appropriate social perceptions (recognition) and economic redistribution must be attained in order for women and marginalized groups to be fully equal in society (Fraser 1995: 87). I feel that her work provides a clear pathway for immigrant women caregivers to attain rights in Canada through several elements illuminated through a series of policy alternatives. This namely includes 'deprivatizing' the private sphere by bringing paid work within the home to the attention and regulation of the government as public work is. The alternatives I present in this thesis are derived from Ontario and British Columbia caregiver initiatives that include caregiver-specific labour legislation through registries and labour standards conducive to foreign caregivers. Recommendations for Saskatchewan include: recognition of the home as a place of work within the *Saskatchewan*

Employment Act, inclusion of caregivers into MOUs and SINP regulations, a provincial caregiver registry that mediates employer-employee contracts, and the potential for caregivers to unionize.

1.5.1 *Chapter Outlines*

This thesis is divided into five chapters that address the issues, legislation, policies, and potential alternatives affecting caregivers in Saskatchewan.

Chapter 2 highlights the positives and negatives of the LCP, and I ultimately argue that Canada should retain the program. This is followed by several secondary interviews, case studies, and survey data from across Canada to exemplify the scope of abuse caregivers can encounter.

Chapter 3 discusses the legislation and subsequent issues of Saskatchewan labour and immigration policy and seeks to examine how caregivers are excluded from provincial temporary foreign worker protections. The chapter begins by outlining temporary immigration streams and gives a short history of the LCP in Canada. The focus then shifts to Saskatchewan immigration policy, giving a brief history from 1991-2002, years prior to the SINP, then discusses the current SINP policy, streams of entryway, and numbers of caregivers that have been residing in the province. Legislation designed to offer temporary foreign workers protections is discussed in the form of MOUs and Bill 83, all of which exclude caregivers or fail to recognize their unique labour situations.

Chapter 4 examines Fraser's model on recognition and redistribution of inequality by integrating radical feminist political economy into labour market analysis. The model provides useful insight into explaining the potential for caregiver labour rights violations in the province. The chapter begins with a brief explanation of radical feminist theory and discusses Fraser's

model of inseparability of socio-cultural perceptions of gender and women's roles. Fraser concludes by calling for the rebranding of women's roles in the home and redistribution of some caregiving responsibilities to the state. Following an outline of Fraser's work, the chapter discusses several policy alternatives that aim to decrease the potential for caregiver labour abuses in Saskatchewan. Using Fraser's work, several options for consideration such as recognition of the home as a place of work within the *Saskatchewan Employment Act* are recommended. Several options that require the redistribution of power to the province are also suggested for consideration, such as the creation of a domestic workers registry that requires all employers and caregivers to register, provincial mediation of employment contracts to ensure fair wages and hours, and the potential for unionization of caregivers.

Chapter 5 reviews the main points presented and states the limitations to alternatives. In addition, ideas for further research are explicated.

Chapter 2

Canada's Live-In Caregiver Program

Introduction:

This chapter explores the history of the Live-in Caregiver Program, focusing on its strengths, weaknesses, and arguments for abolition and retention of the program. Although abolition has not been proposed officially, scholars such as Langevin and Belleau (2000) highlight several deficiencies with the LCP. After assessment, I argue that retaining the program remains an important option for Canadian labour market demands for caregivers, but is significantly beneficial for foreign caregivers themselves. However, the current program does possess weaknesses, as represented through Ontario and Quebec survey data. Although the program

provides a path for foreign women to come to Canada who are ineligible for other immigration streams, concerns such as physical/emotional abuse, wage discrepancies, and isolation are present. This chapter illuminates the issues caregivers encounter and provides insight into areas where immigration and labour policy gaps may lie.

2.1 Strengths of the LCP

It is imperative to note why this thesis favours the retention of the LCP over its elimination. The analysis has centered on the need for live-in caregivers beyond nannies or mother-figures. After 1992 the LCP policy increased the level of education that caregiver applicants must obtain due to the expanded definition of ‘caregiver’. The scope of work-related duties includes daytime babysitting or caring full-time for an ill, elderly individual. As live-in caregivers may be needed for elderly care, disabled person care, or for immunocompromised children that cannot attend public daycare, the benefits of retaining the federal program outweigh its abolition.

Those in favour of retention derive their positions from considerations beyond caregivers themselves and seek to illuminate how the LCP may be beneficial for the families of caregivers. They argue that with major improvements the LCP could be a working organism that acts as one of the very few ways that socio-economically disadvantaged women can immigrate to Canada (Khan 2009: 34). It is worth noting that while 63 percent of live-in caregivers held a baccalaureate degree or higher in 2009, social circumstances such as perceptions of women in the workforce in home countries often prevent women from gaining the relative experience necessary to enter Canada independently of the LCP (Kelly et al. 2011: 12; Langevin and Belleau 2000: 34). The LCP is one of the few programs that aids women from developing countries, particularly the Philippines, in accessing the opportunity to apply for Permanent

Resident Status in Canada. In addition, the LCP helps women send money home to their families, indirectly helping the economies of their home countries (34). Once a caregiver receives Permanent Resident Status, she can begin the process of sponsoring her family members to come to Canada, making the program an appealing choice for not only the women themselves but also their families. Furthermore, the LCP is a program that possesses the potential for employers and caregivers to experience much mutual kindness. Many genuine employers abide by fair work contracts and caregivers can grow closely with the families they work with. A number of positive experiences such as inclusion of the caregiver on family vacations, extra pay for the caregiver to send to her family members, and gifts on behalf of the family are a few of the extensions of generosity that caregivers can encounter due to the close working and living proximity.

2.2 Weaknesses of the LCP

Although many caregivers come to Canada, work for an employer, and achieve permanent residency without any turmoil, the program does have weaknesses. Some critics argue that the program should be abolished altogether. Abolition advocates believe that due to the isolated working environment with little living privacy, abuse is more difficult to report (Langevin and Belleau 2000: 37). Furthermore, abolitionists contend that the current LCP has created a ‘job ghetto’ that maintains poor working conditions in comparison with ‘public sphere’ employment or work outside the home.

The program has also faced significant criticism with regards to the live-in component. Requirements for caregivers to live within the home of their employer may make contractual and personal grievances difficult to prove. The live-in component, although imperative to the job, may yield a higher risk for “unpaid or excessive working hours, violations of privacy, greater

dependence on employers, sexual harassment and sexual assault” (Langevin 2011: 195). As such, CIC informs potential LCP candidates of the possibility of encountering abuse through an employer in its information brochures (Langevin 2011: 195). Vulnerability and dependency of caregivers on employers is possible due to current policy involving work spaces and employer contracts. Due to entrenched notions of government intervention in the home/”private sphere” certain issues such as filing complaints or finding support sources may be difficult to access (Khan 2009: 29). The program has led to documented instances of no overtime pay; forced 24 hour on-call work not agreed upon in the initial contract; being assigned duties beyond caregiving work, such as pet-care or housecleaning; prevention from leaving the employer’s residence; and confiscation of identity/travel documents (Singh 2012: 21).

Theoretically, the scope of potential abuse that caregivers face in the current policy context is broad and multi-levelled. The following section examines studies that suggest that such labour rights violations do actually exist within the LCP.

2.2.1 Caregivers and Labour Rights Violations: Interviews, Surveys, and Statistics

The experiences caregivers encounter are seldom brought to light beyond the household. Fear of deportation or fear of failing to attain permanent residency due to work permit processing times from changing employers are two primary items that silence live-in caregivers. Organizations such as the Philippine Women Centre (PWC) and the National Alliance of Philippine Women in Canada (NAPWC) work to gather information on the unique experiences of live-in caregivers. The organizations have worked closely with many Filipina women caregivers and have found repeated incidences of contractual and labour standards violations: 24-

hour on-call; no overtime pay; isolation to the employer's residence; confiscation of identification documents; and physical and sexual assault (Singh 2012: 21).

a) Contract violations and unregulated employment

Contract violations such as 24 hour, seven days a week on-call and performing duties outside of initial employment contracts often constitute a violation of provincial employment standards legislation. According to a 2004 PINAY survey of 119 live-in caregivers conducted in Quebec, contractual violations are often mixed with 'multi-tasking' duties and are difficult to prove in a non-public, non-regulated setting. For example, typical live-in caregiver contracts in the survey included cleaning (88 percent) and childcare (83 percent) (Oxman-Martinez et al. 2004: 11). However, many of the caregivers surveyed reported performing tasks not specified in their contracts such as cooking for the family (66 percent), house sitting (61 percent), pet care, tutoring children, and driving the family to locations. Further, a 2008 PINAY survey of 148 Quebec caregivers found that while 22.1 percent of caregivers report that their employers always respected the contract with their employees, 25 percent reported that they did not even sign a contract delineating work terms and conditions (Brickner 2010: 314). Quebec labour standards legislation states that "a live-in caregiver's duties should only include tasks that directly relate to the care of the person or persons in question" (Oxman-Martinez et al. 2004: 11). Federal legislation in accordance states if tasks such as pet-care, tutoring or snow-shovelling are performed, the caregiver should be considered a 'domestic' (a separate federal immigration stream) and collect higher minimum wages and shorter work-weeks.

The 2004 survey also highlighted minimum wage discrepancies: 24 percent of respondents reported being paid less than the minimum wage and 28 percent reported that they

were not paid proper wages for working on holidays (Oxman-Martinez et al. 2004: 14). In comparison, the 2008 PINAY caregiver survey found that 43 percent of women stated that they were not paid overtime, 30 percent reported that they paid for work supplies with their own money, and 34 percent reported that they watched the children they were caring for without getting paid (Brickner 2010: 314). As the results of the survey indicate, many caregivers report inadequate and in some instances, illegal wages.

In addition to blurred boundaries of work duties caregivers face, hours worked and overtime remain solely contingent upon employer discretion, rendering unpaid wages difficult to prove. More than 56 percent of the previously mentioned 2004 PINAY survey respondents reported working 49 hours or more per week, with some reporting working more than 60 or 70 hours (Oxman-Martinez et al. 2004: 13). Results regarding a focus group of caregivers who had been paid overtime at some point during their contracts (always, frequently, or sometimes) found that many often report working more hours than their contracts stipulate (Oxman-Martinez et al. 2004: 13). Of these extra hours, 45 percent responded ‘yes’ to receiving overtime pay after 49 hours, 8 percent gave no response, 7 percent responded ‘sometimes’ receiving overtime pay, and 40 percent responded to never receiving overtime pay (14 percent). In circumstances that required caregivers to specifically take care of children, paying caregivers for 24 hour care of a child when the parents were away would prove very expensive for employers. Instead, many of the caregivers claim they were given gifts, such as hand-me-down clothes or other used items, in lieu of cash.

This system is problematic not only due to contract/employment standards violations, but may extend the amount of time a caregiver must work under the LCP. Before a caregiver can apply for permanent residency, she must request the ROE and pay slips from her employer. If

she is working hours that have not been documented and subsequently paid, she must then work until her records state that she has fulfilled the 24 month/3900 hour requirement. This may become detrimental to her chances of attaining permanent residency within the allotted time period.

Extreme cases, while (hopefully) rare, demonstrate the potential vulnerabilities of these women. In an interview with a caregiver from Thailand who came to Canada under the LCP, Valiani recounts how employment contracts are easily tailored to the benefit of the employer and are not mediated by government. The caregiver signed an employment offer when she resided in Thailand for a salary of \$300 per month (Valiani 2009: 18). Furthermore, the contract included a clause that cited rude behaviour would be cause for her deportation from Canada and repatriation in Thailand. The caregiver was unaware that her contract was illegal and that her wage was below the poverty line as contracts must offer at least the provincial minimum wage standards. However, she was “intimidated with the ‘repatriation clause’ even after she realized how small her salary was” (Valiani 2009: 18). As such, she was unable to prove that she completed 24 months of work without the proper ROE forms that her employer was required by law to produce. This severely stalled her permanent residence application as her employer refused to produce the documents. As this unique case highlights, low pay coupled with permanent residence fees may potentially thrust some caregivers into poverty upon attaining permanent residency.

b) Exploitation, violence, and isolation

Caregivers in Canada are particularly vulnerable to sexual and physical violence experienced at the hands of their employers. The framework of the LCP “is undermined by

global socio-economic inequalities. Likewise, there is no recognition, let alone counterbalancing, of the heightened vulnerability to exploitation that characterizes this truly unique transnational employment relationship, engaging citizens of disparate economies” (Khan 2009: 29). The domestic sphere exists of a space of which traditional governmental/regulatory intervention remains exempt. Lack of contract mediation fosters an environment that contains workplace abuse within the home.

Again, the use of an extreme case illustrates the caregiver’s vulnerability. Valiani depicts the physical violence that a caregiver encountered with her male employer. Her employer was violent towards her, his own wife, and their children. For one year the caregiver faced isolation as she was not able to leave the home under any circumstances and her employer physically assaulted her when she asked for time off (Valiani 2009: 16). Her employer refused to give her sufficient amounts of food and forced her to work long hours. When she attempted to leave her job, the employer called the police and accused her of theft. The caregiver was owed \$8,000 in unpaid wages from her employer and sought the aid of an Employment Standards Branch, which settled the case for \$6,800. She had to be referred to a women’s assault support group to help deal with post-traumatic stress (Valiani 2009: 16).

Respondents of the 2004 PINAY study evoked the most interesting responses to workplace abuse and discrimination, with the highest percentage of caregivers choosing to not respond to the questions. Sixty-five percent of women surveyed claimed that they have never been subject to discriminatory practices in their workplaces (Oxman-Martinez et al. 2004: 16). Furthermore, 65 percent of those surveyed reported that they have never suffered abuse in the workplace. However, these sets of questions generated the highest refusal to respond rates, with 24 percent unresponsive to the question of discrimination and 14 percent unresponsive to the

question of abuse (Oxman-Martinez et al. 2004: 16). Those who chose to answer ‘yes’ to discrimination in the workplace (11.8 percent) and workplace abuse (18.5 percent) reported instances of “working outside of job description[s], low salaries, unpaid overtime, long hours, racial discrimination, verbal abuse, sexual harassment, and ‘slave-like conditions’” (Oxman-Martinez et al. 2004: 16).

To supplement the results of the discrimination and abuse questionnaires, researchers compiled a focus group comprised of 23 members, all of which were “either currently or recently working under the LCP program or were the adult children of LCP workers” (Oxman-Martinez et al. 2004: 10). All focus group members were Filipino and currently residing in Canada. The focus group was present to offer feedback and analyze the information in accordance with their personal experiences.

Participants in the focus group maintained that the instances of abuse reported in the survey were congruent with their personal experiences. Furthermore, some group participants believed “that the reasons so few survey respondents reported ‘discrimination’, ‘abuses’, ‘lack of respect’, and ‘unfair pay’ are related to the definitions associated with these terms and live-ins past work experiences” (Oxman-Martinez et al. 2004: 16). Due to caregivers’ past work-related experiences in other nations/their home countries, their experiences in Canada may be much more improved. In addition, the focus group determined that in many nations, women are unequal to men in the workplace and not afforded the same rights and protections. Therefore, the abuses and discrimination related to the LCP may pale in comparison and may not be perceived as actual abuse to these women (Oxman-Martinez et al. 2004: 16). According to the researchers, the result may yield “an acceptance of the dire situations mentioned above because of a feeling

of exclusion from certain rights. These comments from the focus group raise the issue of the social construction of rights, discrimination and abuse” (Oxman-Martinez et al. 2004: 17).

Conclusion:

This chapter has been essential in examining the scope of labour rights abuses that live-in caregivers may encounter. The precariousness of live-in caregiver work and living arrangements act as a precursor for potential abuse. This is imperative in examining the central question of if caregiver labour rights are adequately protected through the combination of federal immigration policy, and Saskatchewan immigration and labour policy. Given the case studies, interviews, and statistics, it is clear that while the LCP is essential to the livelihood of many foreign women, employment contracts and legal procedures may not always be properly enforced. Therefore, if suggestions to secure caregiver labour rights in Saskatchewan are to be developed, it is essential to analyse the immigration and labour policy gaps amongst federal immigration, provincial immigration, and provincial labour standards.

Chapter 3

Saskatchewan Immigration and Labour Policy, Live-in Caregivers, and Policy Issues

Introduction:

This chapter briefly examines federal economic immigration policy with focus on the TFWP and provides a history of the important changes that have occurred to the LCP and its participants. As this thesis uses Saskatchewan immigration and labour policies as a case study, the Saskatchewan Immigrant Nominee Program’s (SINP) history, policies for temporary foreign workers, and labour standards will be examined. This analysis includes provincial MOUs with

the Philippines as well as Bill 83, a temporary foreign worker protections bill. The chapter argues that amongst federal immigration, Saskatchewan immigration, and Saskatchewan labour standards, significant policy gaps pertaining to live-in caregivers exist for Saskatchewan LCP participants. These gaps, I further argue, increase the likelihood for wage discrepancies, isolation, and abuse. The suggestions for consideration to these problems are multifaceted but include recognition of the home as a place of work in the *Saskatchewan Employment Act*, inclusion of caregivers into provincial immigration protections agreements, establishment of a domestic workers registry, and discussion for unionization potential. By addressing these gaps, relations between caregivers, employers and the government of Saskatchewan will significantly improve.

3.1 Federal Legislation: *Immigration and Refugee Protection Act (2002)*

In 2002, the *Immigration and Refugee Protection Act (IRPA)* was passed that divided applicants into three immigration streams: the economic class (comprised of investors, entrepreneurs, skilled workers, self-employed persons, provincial nominees, and temporary foreign workers), the family class, and the refugee class. The economic class also sought to fill labour shortages in the Canadian economy by introducing the Temporary Foreign Worker Program (TFWP) and its subcategories: the Seasonal Agricultural Worker Program (SAWP), the LCP, the Stream for Lower-Skilled Occupations, and the Stream for Higher-Skilled Occupations (Pang 2013: i). Although driven by market fluctuations, skilled workers and business applicants must adhere to a point system. The point system is comprised of items such as experience, age, finances, and family members in Canada. Applicants need a minimum of 67 out of a possible 100 points in order to be able to come to Canada (Waldman 2013: 72-74).

Unlike other immigration programs, quotas do not govern the TFWP. Rather, the TFWP is employer driven. Due to the direct relationship between the employer and the employee, employers are required to apply for a Labour Market Opinion (LMO) and demonstrate that they are unable to find suitable Canadian workers. Workers in turn must apply for a limited term work permit that delineates their terms of employment. Until 2012, employment offered by the TFWP had to be full time and at 'market wage' levels set by ESDC (Foster 2012: 25). However, amendments to this procedure in 2012 currently allow an employer to pay a foreign worker 15 percent less than market wages (Foster 2012: 25). Foreign workers are generally covered by basic provincial employment legislation but are usually not eligible for settlement services and cannot pursue education/training while in Canada (Foster 2012: 3). Except for live-in caregivers, most temporary foreign workers are ineligible for permanent residency.

The TFWP has created controversy in recent years, particularly in Saskatchewan. The case of Brother's Classic Grill in Weyburn, Saskatchewan allegedly firing two Canadian servers in favour of hiring two temporary foreign workers caused community and national outrage. After working for the establishment for 28 and 14 years, servers Sandy Nelson and Shaunna Jennison-Yung were handed termination notices in March 2014 (Leo 2014). The establishment owners assert that all employees were given notice about restructured working hours that included significant shift cuts and that "some employees accepted the changes to their schedules while others did not" (Canadian Broadcasting Corporation 2014). The company defended their decision, insisting that they did not hire any new temporary foreign workers since the terminations. However, the company did employ temporary foreign workers who chose to comply with the new hours. According to the Canadian servers, the employer wanted them "to start claiming EI [Employment Insurance benefits] and then he would maybe see if he could get

[them] two or three shifts a week" (Canadian Broadcasting Corporation 2014). The servers asserted that the minimal shifts, even coupled with EI, were not enough to live in an oil boom-town in southeast Saskatchewan.

The case raised concerns with policy experts on regulation of employer usage of the TFWP. Naomi Alboim, Chair of Queen's University's School of Policy Studies, argued that "[i]t would certainly be against the spirit, the intent of the program and likely it would be against the letter of the regulations to bring people in and then subsequently displace people as a result of bringing those folks in" (Leo 2014). She has also asserted that employers were not examining the labour market thoroughly enough before bringing temporary foreign workers to Canada. This in turn has the potential to create animosity on behalf of Canadians in need of work.

3.1.1 *The Economic Class and TFWP Policy*

The TFWP aims to increase labour migration through a variety of different programs. The LCP and the SAWP are two high-demand programs that often recruit caregivers from the Philippines and agricultural workers from Latin America (Valiani 2012: 7). In addition to the SAWP and LCP, the federal government created a series of projects in the early 2000s that became permanent programs. The 2002 Low Skilled Pilot Project was created in response to employee shortages in apprenticeship occupations in the 1990s (Valiani 2012: 7). Under the Project, National Occupational Classifications (NOC) were established such as NOC "C" level requiring high school education or two years job-specific training. The NOC also created "D" levels requiring no education or training (Foster 2012: 26). The creation of "C" and "D" levels allowed for lower-skilled migrant numbers to skyrocket.

The temporary foreign workers program caters to labour market shortages by using a foreign

national's skills for a short time until they are no longer needed. However under current policy, eligibility for permanent residency has only been available to high skill workers. Although permanent residency has been awarded to successful LCP participants, this is only offered after 3,900 hours or 24 months of full-time employment (Citizenship and Immigration Canada 2013). Taylor et al. (2012) claim that since the early 2000s, the scheme has been widely accepted on the part of employers to fill labour shortages. All of the TFWP streams offer several economic advantages for employers: increased flexibility to find skilled workers; appealing to promote temporary instead of permanent immigration; temporary work applications are rapidly processed as compared to permanent residency applications; and temporary foreign workers are willing to do 'undesirable' work that Canadians are unwilling to perform for low pay. Due to closer conditions with employers compared to government staff, employers are often able to more thoroughly assess the transferability of a worker's foreign capital (Taylor et al. 2012: 1-2). Live-in caregivers fall into this scheme as well, offering a labour force for positions that Canadian workers do not want to fill for low pay.

3.2 Canada and Current Live-in Caregiver Program Policies

3.2.1 Live-in Caregiver Program: Federal Legislation and Policy Since 1992

The Foreign Domestic Workers Program (FDM) preceded the LCP. The FDM was created in 1981 following reports of abuse of domestic workers and from collective bargaining efforts from immigrant women caregiver's rights groups that demanded greater protections and the option for permanent residency (Langevin and Belleau 2000: 22). The FDM successfully introduced the option to apply for permanent residency after two years of live-in service which was carried over when the LCP replaced the FDM in 1992. In addition, caregivers were subject

to an exam to prove their ‘personal suitability,’ ability to adapt, and ‘self-and financial sufficiency’ that included an overview of the applicant’s education, finances, and language skills (Hsiung and Nichol 2010: 768). Prior to the FDM, caregivers had been only permitted to Canada on a temporary work visa and made to return to their home nations after their visas expired.

In 1992, the FDM was replaced by the LCP and provided employment opportunities for those determined suitable and were willing to work and live within their employer’s home (Kelley and Trebilcock 1998: 400). From 1993-2009, approximately 52,493 caregivers immigrated to Canada through the LCP (Kelly et al. 2011: 5). Over two decades, policies surrounding admissibility requirements and working contracts have affected the number of women coming to Canada under this stream.

The LCP differed from the FDM as it expanded the definition of caregiving beyond that of nannies and housekeepers, encompassing caregiving duties to include caring for those with disabilities or the elderly (Pang 2013: 4). Formerly, the FDM had hired foreign women primarily for childcare (Langevin and Belleau 2000: 22). Since 1992, before hiring abroad potential employers must adhere to a series of procedures to ensure they are eligible to hire a foreign live-in caregiver. Requirements include demonstrating a significant effort to hire a Canadian; possessing adequate income to pay the caregiver; providing acceptable accommodation within the employer’s home; demonstrating that the job offer is primarily care giving duties for a child, elderly or disabled person; and submitting an application for a Labour Market Opinion with the employment contract to Employment and Social Development Canada (formerly stated as Human Resources and Skills Development Canada) (West Coast Immigration 2014).

Applicants under the LCP must meet additional criteria before being granted entry into Canada. CIC guidelines specify that applicants successfully complete the equivalent of Canadian secondary school; undergo specific screening procedures by a CIC visa officer; complete six months classroom training for care giving (or one year related work experience within the last three years and six months under the same employer); demonstrate competent ability to speak, read and write English or French; pass medical, security and criminal clearances; and sign a written contract with an employer in Canada (West Coast Immigration 2014).

In order to obtain permanent residency, the caregiver's employer must sign a form acknowledging her completion of one of two options: 24 months of full-time employment within four years (increased from three years in 2010) of the date the caregiver enters Canada; or the completion of 3,900 hours within a 22 month minimum (with a maximum of 390 hours of overtime) within four years of the date the caregiver enters Canada under the program (CIC 2012: Guide 5290).

Some federal policy areas of the LCP have become more favourable for caregivers in recent years. In 2009 the LCP was amended to require employers to pay for: travel costs of caregivers to come to Canada; medical insurance until caregivers become qualified for provincial coverage; workplace safety insurance; and any fees to a recruitment agency (CIC 2009). Further changes have also exempted caregivers from a secondary medical examination as part of permanent residency applications. Termed the "Juana Tejada Law" after the caregiver who was denied permanent residency after developing cancer and failing her second medical examination, the law prohibits denial of permanent residency to caregivers who have completed their requirements but developed an illness due to extenuating circumstances (CIC 2009). Policy

surrounding dismissals and work permits also made progressive developments. Previous legislation prohibited caregivers from working during the period while applications were being processed, which affected eligibility for permanent residency if the designated hours within the set time-frame were not achieved. Participation in employment during this period typically resulted in a removal order from Canada. As of 2011, caregivers may apply for open work permits while their applications for permanent residency are being processed (CIC 2011).

As of 2010, caregivers facing abuse are able to apply for emergency work permits that guarantee prompt processing times. CIC maintains that “[I]ive-in caregivers who are victims of abuse by their employer or someone in the employer's home may be eligible for emergency processing of the new employer's LMO and the LCP work permit application to facilitate the fastest possible transition to a new employer” (ESDC 2014).

Although several aspects of the LCP have changed, several aspects remain the same: “the temporary legal status of the worker, an employer-specific work permit, and the requirement of two-years obligatory live-in service in order to qualify for permanent residence in Canada” (Khan 2009: 27). The policy resulting from the demand to keep domestic employees working in the caregiving sector has in turn created an environment where caregivers are solely reliant on their employers. In these cases, employers are individuals/families as opposed to a company or public business. Although federal policies have aimed to help caregivers facing labour abuses, steps to rectify the abuse entail multi-step procedures and are limited because government does not typically intervene within private homes. For example, although prompt processing is guaranteed for emergency work permits (which are granted in the instance of abuse), it is the caregiver’s responsibility to find a new employer and have that prospective employer apply for an LMO before she can leave her current employer (CIC 2013). The caregiver must provide

proof of abuse by verification of a health professional or law enforcement officer. Records of employment (ROE) must be obtained from the employer, which outline the number of hours worked, gross earnings, and the caregiver's reason for leaving (CIC 2013). Only employers may obtain and complete ROEs and are required by law to do so upon request.

As demonstrated through the TFWP, Canadian immigration policy in the last 30 years has shifted from permanent standard employment to non-standard temporary foreign work as mentioned in Chapter 1. Federal changes to immigration through the TFWP have had large implications for provincial labour market recruitment as well. For example, the SINP has implemented a series of unique programs to offer permanent residency to traditionally 'low-skilled' employment sectors, a non-existent option for federal 'low-skill' applicants. In addition to nuanced policy, a series of agreements between the Philippines and Saskatchewan have been devised to ensure temporary and permanent migrant rights. Effectively excluded from several provincial protections legislation because of its designation as a federal program, caregivers remain tied to employers and are insufficiently monitored by the provincial government. As temporary workers with intent to become permanent residents, caregivers in Saskatchewan remain in a potentially precarious work environment.

3.3 The Saskatchewan Immigrant Nominee Program

Saskatchewan remains unique for the study of caregivers for three reasons. Firstly, there is an increase in the need for caregiving accompanied with higher numbers of caregivers coming to reside in the province under the LCP. Secondly, the potential for caregiver labour rights abuses in Saskatchewan has yet to be studied. Thirdly, Saskatchewan has implemented recent legislation such as a Memoranda of Understanding (MOU) with the Philippines to ensure the recruitment and labour rights of Filipino temporary foreign workers. In addition, Bill 83 has been

enacted to secure the rights of migrant workers through measures to increase employer accountability. Saskatchewan as a case study is imperative because, unlike provinces such as British Columbia and Ontario, Saskatchewan does not currently employ any caregiver-specific legislation. Examining how the SINP, provincial temporary foreign worker protections legislation, and Saskatchewan labour standards intersect with the federal LCP aids with the understanding of the role that provinces possess in regulating temporary foreign worker policy and protections.

3.3.1 *History of the SINP and Immigration Categories*

Due to a historically underdeveloped immigration policy, annual numbers of immigrants remained low in Saskatchewan throughout the 1990s. The number of immigrants arriving in Saskatchewan has trailed Alberta and Manitoba in both attraction and retention. Only 20,013 immigrants settled in Saskatchewan between 1991 and 2001 with a 57 per cent retention rate (Kordan 2012: 61). Alberta received seven and half times more immigrants than Saskatchewan from 1991 to 2001 with 150, 669 immigrants and an 86 per cent retention rate (Garcea 2006:15). Finally, Manitoba more than doubled Saskatchewan's immigration rate with 41, 640 immigrants from 1991 to 2001 with a 78 per cent retention rate (Garcea 2006: 15). In comparison to Alberta and Manitoba, Saskatchewan's difficulty attracting and retaining immigrants suggested that there was room for a revamped immigration policy. This was also reflected in the net difference of outflow versus inflow migration for Saskatchewan; almost a 136,000 person loss between 1984 and 2002 (Kordan 2012: 63). The response to issues of population and labour shortages resulted in a number of policy and legislative changes in the late 1990s and the early 2000s. Amongst these changes was an expansion of labour categories under the SINP.

The Romanow NDP government attempted to create a more diverse immigration policy system to attract and retain immigrants. In 1998 the Saskatchewan and federal governments signed the “Canada-Saskatchewan Immigration Agreement” that expanded recruitment efforts and immigrant settlement programs to Saskatchewan. The agreement represented the origins of the SINP, which is currently used in Saskatchewan and has helped in attracting increased numbers of immigrants to the province (Kordan 2012: 61). Under SINP, Saskatchewan companies can contact and recruit immigrants directly. The initial implementation of these efforts failed to attract substantive numbers of immigrants, with only four provincial nominees in 1999, 35 in 2000, and 46 in 2001 (Garcea 2007: 137).

The NDP remained in power after 1999, but selected a new leader in 2001 named Lorne Calvert. Under Calvert, the government was faced with a series of circumstances that pushed immigration to the top of the provincial agenda. The combination of an economic boom, baby-boomer retirement, and high levels of out of province migration led to a job explosion and decreased the number of labourers available to work (Kordan 2012: 62). Thirty per cent of out-migrants were in the 15-24 age range, indicating many Saskatchewan young adults were investing in other provinces. Of this 30 per cent, 58 per cent of this category had moved to Alberta. As a result, Saskatchewan’s population declined below one million, which created a need to increase the population through an immigration agenda. Apart from a strategy on Aboriginal labour market integration, it was apparent that an effective immigration strategy was needed to meet labour market demands.

The Calvert government made changes to the SINP in 2003, which included categorical expansions based on Saskatchewan-specific labour needs. The signing of the Canada-Saskatchewan Agreement in 2005 aimed to attract larger numbers of immigrants to meet sector-

specific labour needs. For instance, the SINP implemented new categories for family members, “healthcare professionals, long-haul truck drivers, welders, and farm owners/managers” (Kordan 2012: 63).

Immigrants arriving to Saskatchewan have increased since 2005 in part due to the expansion of the SINP (Saskatchewan Ministry of Advanced Education, Employment and Labour 2007: 2). SINP changes were accompanied by a 28.9 per cent increase in new immigrants was achieved between 2006 and 2007 (Government of Saskatchewan 2008: 11). Total immigrants to Saskatchewan increased 125 percent from 1,564 in 1998 to 3,517 in 2007 (Saskatchewan Ministry of Advanced Education, Employment and Labour 2007: 2). Of these 3,517 immigrants, 1,839 (52.3 per cent) were provincial nominees under the SINP (Saskatchewan Ministry of Advanced Education, Employment and Labour 2007: 3). Furthermore, since 2005, “immigration to Saskatchewan has jumped by 66.8 (per cent). The... [SINP] has accounted for 97.3 [per cent] of this growth” (Saskatchewan Ministry of Advanced Education, Employment and Labour 2007: 3). This denotes a trend towards the increasing importance of provincial immigration initiatives opposed to federal ones. Increased provincial autonomy has allowed Saskatchewan to tailor its labour demands to immigration policy, providing less need for federal programs. In 2005, 77.8 percent of all immigrants that landed in Saskatchewan used the federal class system, whereas only 47.7 per cent used federal classes in 2007 (Saskatchewan Ministry of Advanced Education, Employment and Labour 2007: 4). Of immigrants that came to Saskatchewan via the SINP in 2007/2008, skilled workers comprised 51 percent, family members 35 percent, health professionals four percent, international students four percent, truck drivers four percent, and entrepreneurs three percent (Ministry of Advanced Education, Employment and Labour 2008: 23). Since the mid-2000s, the SINP (and provincial

other strategies) have proven successful as a provincial immigration program.

3.3.2 *The SINP and Permanent Residency Opportunities: Where do federal caregivers fit in provincial policy?*

The SINP program has undergone significant categorical expansions in order to attract permanent immigrants. As of August 2014, there are three main SINP categories, all of which offer either direct permanent residency or the option of permanent residency. These include: the Skilled Workers Category, the Saskatchewan Experience Category, and the Entrepreneur and Farm Category (Saskatchewan Immigration 2014). Skilled workers consist of managers or professionals with full-time, permanent employment offers from Saskatchewan employers. Successful applicants must obtain at least 60 out of 100 points based on age, language fluency, education, work experience, and ability to integrate (Government of Saskatchewan 2014). The Saskatchewan Experience Category is for migrant workers currently living and working in Saskatchewan and consists of: the Existing Work Permit Sub-Category (a stream for workers to apply for nomination for permanent residency who have been working in Saskatchewan under a closed work permit for at least six months); Health Professionals Category (doctors, nurses, aides); Long Haul Truck Drivers; the Student Subcategory; and the Hospitality Sector Pilot Project (food/beverage servers, kitchen staff, housekeeping/cleaning staff) (Saskatchewan Immigration 2014). Finally, the Entrepreneur and Farm Category, consisting of the Entrepreneurs Sub-Category and the Farm Owner/Operators Sub-Category, is based on the applicant's ability to invest in Saskatchewan.

Due to federal-provincial immigration agreements, Saskatchewan now possesses the power to create programs to cater to local economic demands. The Hospitality Sector Pilot

Project, for instance, was created through SINP and was designed to cater to the market demand for designed ‘hospitality sector’ jobs, which includes food/beverage servers, kitchen attendants, and cleaning/housekeeping staff (Saskatchewan Immigration 2013). The temporary foreign work process of approved SINP categories and sub-categories states the following:

Workers in these categories must first begin working in Saskatchewan on a temporary foreign work permit for a company that has been *approved by the Saskatchewan Immigrant Nominee Program (SINP)*. If an approved business offers the worker permanent employment, *after a minimum of 6 months employment* the worker may apply to the SINP for permanent resident status (Government of Saskatchewan 2014).

As noted above, authority to develop categories that cater to provincial labour demands and offer the opportunity of permanent residency within a short amount of time are valuable assets afforded to the province since the mid-2000s. Furthermore, the option for temporary foreign workers considered to be “low skill” to obtain permanent residency is a feature of the SINP which is not part of the federal TFWP (except for the LCP). Federal programs, such as the Stream for Lower-skilled Occupations of the TFWP, only permit those with NOC (C) or NOC (D) skill levels (high school diploma or two years job-specific training) to stay in Canada for a 24 month maximum (ESDC 2013).

The SINP has arguably proven to be a successful immigration program. The number of permanent residents in the province has vastly increased over the last four years. In 2003, only 1,668 immigrants attained permanent residency in the province. In 2008, this number increased by 4,835 to 6,503 (CIC 2013: 32). The largest jump in Saskatchewan permanent residency attainment occurred between 2011 and 2012, in which 8,995 permanent residents were admitted (CIC 2012: 32). This equalled a 19.9 percent increase (an increase of 2,222 applications) from the previous year. The success of the SINP can further be exemplified by comparison to total

federal permanent residents in recent years. While the number of Saskatchewan permanent residents continues to climb, federal levels have remained relatively stable. With the exception of 2010 (280,689), the total number of permanent resident applications approved in Canada ranged from 252,172 in 2009, 248,689 in 2011, and 257,887 in 2012 (CIC 2012: 6).

In conjunction with rising permanent resident rates, Saskatchewan has experienced significant rises in TFWs. Out of the 213,573 foreign workers admitted to Canada last year, 5,076 were destined for Saskatchewan (CIC 2012: 75). This is a significant increase (30.8 percent) from 2009 (3,923), 2010 (3,020), and 2011 (3,513) figures. These records not only demonstrate that more temporary migrants are destined for Saskatchewan, but are in turn staying in the province. Out of the 338,221 TFWs living in Canada as of 01 December 2012, 9,354 resided in Saskatchewan (CIC 2012: 77). Compared to total temporary workers present in the province in 2007 (2,940), 2008 (4,306), 2009 (5,920), 2010 (5,865), and 2011 (6,986), 2012 figures show an exponential increase in temporary foreign workers residing in Saskatchewan.

3.3.3 *Saskatchewan and LCP Trends*

Trends regarding the number of caregivers residing in Canada have also fluctuated in recent years. Although the number of caregivers residing in Canada increased 192 percent in 2010 (23,930) from 2002 levels (11,997), there has been a slight downward trend since 2007 (Alboim and Cohl 2012: 46). The peak for LCP entries was in 2007, with 12,955 accepted applications into Canada and this has declined to 4,671 admitted in 2013 (CIC 2012: 62; ESDC 2015). The number of caregivers coming to Canada has declined primarily due to the federal government accepting fewer applications per year and increasing processing times. For instance, “the acceptance rate last year fell to 57 per cent compared to 73 per cent five years ago, according to

the Association of Caregiver and Nanny Agencies Canada” (Keung 2011). Although these numbers have decreased in Canada due to restrictions with processing and admittance, these numbers are not congruent with Saskatchewan numbers.

While the numbers of caregivers entering Canada have fluctuated, they have been rising continuously in Saskatchewan due to the demand for home-based care. While just 31 live-in caregivers came to Saskatchewan in 2002, this number has risen in the last decade with 43 in 2003, 49 in 2004, and 69 in 2005 (Valiani 2009: 4). Numbers of caregivers in Saskatchewan continued to grow in the midst of the 2008 global economic crisis, ranging from 155 in 2005, 190 in 2006, 235 in 2007, 245 in 2008, 190 in 2009, 250 in 2010, 200 in 2011, 205 in 2012, and 105 from January-June 2013 (only partial data available for 2013) (ESDC 2013). These numbers indicate that the demand for live-in caregivers in recent years has grown in Saskatchewan whereas numbers have diminished federally overall. However, as the LCP is a federal program, the SINP does not address issues that LCP participants may encounter. With growing numbers of caregivers in Saskatchewan, inclusion into an effective provincial strategy is essential.

3.4 Saskatchewan Temporary Foreign Worker Protections Initiatives

Due to the LCP’s designation as a federal immigration stream, LCP participants in Saskatchewan are unable to obtain permanent residency after six months of full time work compared to their SINP temporary foreign worker counterparts. Although caregivers may apply for permanent residency after 24 months/3,900 hours of full-time employment, they are exempt from provincial benefits of the SINP and SINP-oriented protections policies simply due to federal designation.

3.4.1 Saskatchewan-Philippines Memorandum of Understanding

In 2006, the Government of Saskatchewan signed a Memoranda of Understanding (MOU) with the Philippines that aimed to enable the recruitment of temporary workers with specific skill sets (Government of Saskatchewan 2006). Recruits were to be employed through the SINP in high-demand labour market areas such as welding, metal fabrication, long-haul trucking and health care sectors (Garcea 2007: 137). As part of the MOU, employees would receive English language training and an orientation to the culture and lifeways of Saskatchewanians (Garcea 2007: 137-138).

The MOU with the Philippines resulted in immigrant increases from 2.6 percent in 2005, to 7.1 percent in 2006, to 33.6 percent in 2007 (Saskatchewan Ministry of Advanced Education, Employment and Labour 2007: 9). The MOU was renewed in October, 2013 and aimed to offer better protections for Filipino foreign workers in the province. Reforms “explor[ed] arrangements for skills upgrading, skills gap training and mutual recognition of qualifications of professional and trade workers” (Saskatchewan Ministry of Advanced Education, Employment and Labour 2007: 9). These changes were designed by the provincial government to ensure workers applying through third-party countries are adequately protected by Saskatchewan and Philippine legislation. In addition, changes established increased accessibility of Filipino workers to justice systems and supported integration initiatives (Republic of the Philippines Department of Labor and Employment 2013).

3.4.2 *Bill 83*

In 2013, the government of Saskatchewan followed its MOU with the passage of Bill 83, the *Foreign Worker Recruitment and Immigration Services Act*. The legislation aims to “protect immigrants and foreign workers from exploitation and mistreatment while they are in the process

of immigrating to the province” (Government of Saskatchewan 2013). Bill 83 aims to “[protect] all foreign nationals coming to Saskatchewan through both provincial and federal immigration streams. This includes foreign workers, students, visitors, and family class, as well as refugees and self-employed foreign nationals” (Government of Saskatchewan, 2014). The Bill requires registration of employers, assurance of job legitimacy, and fines for penalties. The provincial government acts as a regulator and a mediator for temporary workers as well as providing the opportunity of permanent residency for some workers. Through an increase in staffing, expansion of SINP categories, and provincial initiatives, Saskatchewan has been successful in attracting both permanent and temporary migrants to the province.

The Act also seeks to help vulnerable migrants in Saskatchewan who may be subject to exploitation due to language barriers, or lack of knowledge about provincial laws and culture. From 2008 to 2013, the “Program Integrity Unit within the Ministry of the Economy... received a total of 353 case files... [m]any of these cases are related to issues regarding the legal rights and responsibilities of foreign workers and employers. [However], about 30 percent of the cases were not covered by existing federal or provincial legislation” (Government of Saskatchewan 2013). Bill 83 requires several facets of employer accountability and penalties including: requiring immigration recruiters/consultants to be licenced and sign transparent contracts with employers and foreign workers; employers of all foreign (federal and SINP streams) to be registered with the province; ethical conduct to foreign workers by employers (withholding documents, property, or threatening deportation is considered to be unethical); foreign workers to seek compensation if “they incur costs that are considered illegal”; and fines up to \$50,000 for an individual and \$100,000 for a corporation and up to a year in prison for those who violate the terms of the Act (Government of Saskatchewan 2013).

3.4.3 *Are there Policy Gaps in Bill 83 and the Philippines-Saskatchewan Memorandum of Understanding?*

Although the MOU protects Philippine foreign nationals who come to the province through the SINP, LCP participants are ineligible for such protections. For instance, pursuant to S.B., the definition of “Worker” refers to “a Filipino national who has signed or intends to sign an employment contract with an employer to work in, and/or immigrate to, Saskatchewan under the SINP” (Government of Saskatchewan 2006: 2). As many caregivers come to Saskatchewan through the federal program instead of the SINP, many are exempt from MOU protections legislation even though the vast majority come from the Philippines.

Since caregivers and employers are the only parties on work contracts, each must rely on one another for the proper enforcement of contract conditions (Khan 2009: 29). Caregivers under the LCP are ineligible for bilateral agreements protections between Saskatchewan and the Philippines, making unionization difficult. For example, the workers under the Seasonal Agricultural Workers Program, (a sister stream of the LCP in the TFWP), benefit from bilateral agreements specific to farm work among Canada, Mexico, and Caribbean nations, with some farms winning unionization rights (Khan 2009: 29). However, the Philippines-Saskatchewan MOU only pertains to those entering Canada through the SINP. Exclusion of caregivers from Philippines-Saskatchewan agreements does not ensure employer accountability, entailing no “multi-stakeholder administration of their labour migration program” and no workplace inspections. Caregivers are at risk for inadequate housing, such as failure for the employer to provide a lock on the employee’s door, or lack of a private space from workplace duties.

Exclusion from bilateral agreements, unionization, and third party mediation of employer contracts contributes to the potential for abuse that caregivers may face. Without access to union representation or a party with which to relay work-related grievances, abuse may go unreported due to fear of deportation or intimidation. Fear of failing to achieve permanent residency within the two-year time frame as processing times for emergency and open work permits may also hinder the caregiver's decision to disclose the abuse.

Saskatchewan's MOU excludes caregivers from the agreements, yet lacks the appropriate provincial employment standards legislation to ensure labour rights of caregivers are protected. Critics argue that the lack of inclusion is rooted within traditional notions of interference within the home, leading to a neglectful system at best:

This negation of the need for transnational governance of international employment schemes seems to apply uniquely to the unskilled occupation of live-in caregiving, a migrant category that has been explicitly excluded from recently adopted bilateral agreements between the government of the Philippines and the governments of Saskatchewan and British Columbia that provide for joint governance of migration for employment. The absence of similar co-governance efforts for caregiving labour suggests that the LCP is designed to operate with little interference from the international community, securing the productivity of Canadian households at the risk of violating the human and labour rights of the migrant caregivers they employ (Khan 2009: 32).

In addition to immigration policy, it is vital to examine Saskatchewan labour legislation in order to understand the unique work relationships caregivers face and offer suggestions to help lessen the potential for abuse.

3.5 Addressing Policy Gaps in the *Saskatchewan Employment Act*

The *Saskatchewan Employment Act* pertains to rules and regulations governing standard employer-employee relationships. Conditions of the Act surrounding employee workplace justice

continue to be based on public sphere work, or work performed outside the home. However, precarious employment such as living and working within an employer's home has not been addressed thoroughly. Conditions on termination of employment, payment of wages, inspection of ROEs, and penalties for violators pertain to provincially regulated work are subsequently ignoring forms of justice for caregivers with labour rights issues.

Pursuant to Part VII (Employees' Wages) s. 60.1(2)(a), wage assessments may be conducted "against an employer where the director has knowledge or has reason to believe or suspects that an employer has failed or is likely to fail to pay wages as required by this Act" (Government of Saskatchewan 2013: 35). Wage assessments are significantly easier to prove in public establishments or businesses where ROEs must be maintained and regulated to provincial standards. Those engaging in private unmediated employment contracts, such as caregivers, would rarely have wage assessments conducted against their employers for unpaid wages due to contract privatization and the lack of government intervention in the home.

The regulations of the Saskatchewan Employment Act may entail justice for those who are able to prove abuses in their workplaces. However, caregivers may be reluctant to report abuses out of fear, lack of representation/advocacy, or coercion. Ultimately, the definition of a "workplace" or "establishment" is non-existent in the Act. Pursuant to Part II (Employment Standards), Division VI (Administration) s.2-83(1) "Inspection" provides the closest definition. It states that an "an employment standards officer may enter any premises, place of employment, workplace, or any other place where records of employment are kept and conduct an inspection" (Government of Saskatchewan 2013: 55). As no official definition of a workplace or establishment is given, the Saskatchewan Employment Act does not directly recognize the

household as a place of work. Due to the lack of specific mention of the home as a workplace, caregiver-specific issues are not fully recognized through legislation.

The Act continues to be public sphere-centric despite providing a transparent definition of a workplace. Under Part III (Occupational Health and Safety), Division 10 (Inspections, Inquiries, and Investigations) s.3-63(2)(b) states that an occupational health officer can conduct an inspection at any time “the occupational health officer has reasonable grounds to believe that a situation exists that is or may be hazardous to workers” (Government of Saskatchewan 2013: 101). Further, Part II (Employment Standards), Division 6 (Administration) s. 2-83(3)(b) allows the Minister to “inspect and make copies of any books, records, papers or documents or of any entry in those books, records, papers or documents required to be kept by this Part” (Government of Saskatchewan 2013: 55). Again, problems arise pertaining to investigation of caregiver employers. Although Saskatchewan regulations state that persons hiring foreign caregivers must register with the Ministry of the Economy—Immigration Services, there is no official domestic workers registry to help address and rectify the unique grievances that caregivers may have such as isolation or wage/hour discrepancies that are more accessible to those working in public settings (ESDC 2014). The lack of a domestic registry of Saskatchewan caregiver workers and employers makes it virtually impossible for the Ministry to execute an inspection of an employer without direct contact of the caregiver herself. Furthermore, unmonitored work environments may provide little incentive for employers to maintain proper ROEs, even as is required by law.

Lastly, pursuant to Part III (Occupational Health and Safety), Division 12 (Offences and Penalties), s.3-79(1) states that “[e]very person who is guilty of an offence...is liable on summary conviction to a fine not exceeding \$2000” (Government of Saskatchewan 2013: 54). Proving violations and finding employers guilty of an infraction is of particular difficulty for

caregivers. Firstly, there may be a lack of witnesses to support the claims of abuse. Secondly, the complaint-based system does not ensure labour-related justice for caregivers as domestic registries and caregiver advocacy groups are sparse in Saskatchewan.

3.6 Conclusions

The examination of federal and provincial immigration pertaining to temporary foreign work and caregivers is imperative. While Saskatchewan certainly has a successful immigration program and offers protections legislation, they are arguably geared towards those who apply directly through the SINP and who do not work and live within the same space. In addition, Saskatchewan labour standards legislation offers protections for workers and employers alike, but does not derive any caregiver-specific components that recognize work within a home. Moreover, previously mentioned survey and interview data reiterate the recurring theme of a lack of effective enforcement or provincial strategies aimed at protecting caregiver rights. Alternative policy suggestions can be formulated now that the gaps and inadequacies within labour and immigration legislation have been highlighted.

Chapter 4

Recognition, Redistribution, and Recommendations for Saskatchewan

Introduction:

Women in the LCP face uncertain futures, which are exacerbated by the ties between transnational migration, gender, and the nature of the labour performed. The potential for abuse can be at least partially attributed to socially constructed norms surrounding the private sphere/the home, which also doubles as a workspace. Nancy Fraser's work in two fundamental areas, recognition and redistribution, offers insight into the structures that contribute to caregiver

issues. Recognition dimensions correspond to status, social orders, and patterns associated with value, roles, and things deemed ‘normal’ in a particular culture (Fraser 2000: 117).

Redistributive dimensions entail the economic structures that distinguish persons by their ability to accumulate resources (117). Fraser’s work illuminates the LCP as an example of a program that reinforces gendered notions of women’s traditional roles under neoliberal capitalism.

Fraser’s theory calls for the combined restructuring of perceptions and political economic practices that subordinate women, ultimately providing a framework for which to view and remedy the issues surrounding the LCP.

This chapter seeks to highlight the alternatives to address situations that may render caregivers vulnerable to abuse in Saskatchewan. These alternatives are formulated using Nancy Fraser’s radical feminist lens for recognition and redistribution. Comprised of over 95.5% women, aspects of the LCP such as the live-in component alone create several issues with respect to privacy, sexual abuse, and fair records of hours worked (Khan 2009: 29). Fraser’s work aids in answering the question, ‘how, using the elements of recognition and redistribution, can alternatives to secure caregivers’ labour rights be formulated?’ Fraser’s radical feminist political economy, or economic deprivatization, with the reconstruction of identities and entrenched perceptions of normativity, aids in remedying the potential for caregiver abuse. This chapter uses the concept of ‘deprivatization’ as a means of restructuring the processes which render caregivers vulnerable to exploitation, such as provincially unmediated private employer work contracts. I argue that in order for caregiver labour rights to be secured, it is imperative for the provincial government to make redistributive changes such as: addressing avenues for successful unionization, contract mediation, establishing a registry for domestic workers and including caregivers in provincial MOUs with the Philippines. These changes are contingent

upon essential recognition of the home as a place of work in Saskatchewan labour legislation. In so doing, government can assist in redistributing employer power by more closely monitoring private employer-caregiver work contracts.

The possibility of caregiver-specific legislation is possible for Saskatchewan using the elements of recognition and redistribution. Caregiver-specific reforms in British Columbia and Ontario are discussed and aid with providing a foundation for Saskatchewan reforms regarding a domestic workers registry and inclusion into labour standards legislation. Legislative improvements to traditionally private sphere work, unionization, and provincial regulation strategies for Saskatchewan caregivers subsequently allow for the potential for abuse to be decreased. As provinces have been granted increased power to shape immigration policies to emphasize specific programs, Saskatchewan has the opportunity to recognize caregiving as a profession in need of appropriate provincial protections. This section does not advocate for the elimination of the live-in component, however. The Government of Canada maintains “that ‘should the live-in requirement be eliminated, there would likely be no need to hire TFWs’” since the domestic supply of willing workers would increase (Bickner and Straehle 2010: 316). Instead, once changes at legislative levels have been made, policy relating to unionization and inclusion into SINP MOUs consequentially will better address issues of workplace injustice and give these women better protection on the job. A combination of an approach of economic redistribution and re-thinking recognition through legislation would aid in assembling a provincial protections policy for caregivers in Saskatchewan. Situated on reducing the amount of labour rights violations under the LCP, private employer powers, provincial legislation, and immigration policy in Canada requires a restructuring that seeks to economically reform LCP policy as well as the interpretation of domestic work behind it.

4.1 Radical Feminist Theory and Fraser's Framework

Nancy Fraser's work on recognition and redistribution pertaining to women, work, and the home is derived from contemporary radical feminist theory. Contemporary radical feminists explore the public-private dichotomy in several respects: the household as an integral factor in maintaining the entirety of capitalism by reproducing class and gender relations, the relationship of women to social class, and the role of the family in the ideological socialization of children (Elliot and Mandell 2001: 29-30). Under the public-private dichotomy, there exists a 'sexual division of labour' which ascribes females to home-based (traditionally unpaid) work such as childcare and cleaning and males as breadwinners outside the home. Dorothy Smith notes that for "both traditionally and as a matter of occupational practices in...society, the governing conceptual mode is appropriated by men and the world organized in the natural attitude, the home, is appropriated by (or assigned to) women (Smith 1972: 9). Smith asserts that these spheres, while both imperative to the functioning of society, are unequal (Smith 1972: 7). Under neoliberalism, male social supremacy continues to oppress women because women continue to be the primary caregivers of children while also performing most of the household work (Elliot and Mandell 2001: 30). Although women's work is traditionally rendered as unpaid and invisible to the public, activities in the private sphere ultimately are crucial to instilling the roles and values surrounding gender and class for subsequent generations (Elliot and Mandell 2001: 29).

The socialization of men, women and children reinforces patriarchal ascribed (or traditional) labour roles for each gender. Such socialization is vital to the maintenance of current capitalist structures. Men are traditionally encouraged to become aggressive, competitive, rational and independent whereas women are socialized to become nurturing, caring, and gentle to raise children and keep the family together (Elliot and Mandell 2001: 30). However, radical

feminism argues that in order for this inequality to be overcome, the patriarchal social status quo must be challenged, especially regarding gender roles within the workplace. Concepts such as child rearing and working outside the home need to become less gender-specific, either through governmental intervention or a restructuring of power relations between the sexes.

Gloria Steinem's work on women, the home, and gender roles expresses similar notions. She notes that traditional unpaid work within the home has been and continues to be perceived as unvalued or undervalued despite more women entering the public workforce (Steinem 1995: 184). Steinem claims that although increasing amounts of women are working outside the home, the labour force is male-defined. For example, Steinem states women face questions surrounding their motivations for working out of the home that are less directed towards males:

Faced with this determination of women to find a little independence and to be better paid and honored for [their] work, experts have rushed to ask: "Why?" It's a question rarely directed at male workers whose basic motivations of survival and personal satisfaction are taken for granted...[E]ven [their] own families may still ask salaried women the big "Why?" If [they] have small children at home or are in a job regarded as "men's work," the incidence of such questions increases (Steinem 1995: 185).

Steinem argues that women entering the public workforce cannot alone diffuse socially entrenched ideas of gender normativity. She believes that "the real work revolution won't come until all productive work is rewarded—including child rearing and other jobs done in the home—and men are integrated into so-called women's work and vice versa" (Steinem 1995: 184). This integration includes the establishment of protective legislation for all forms of work, whether it is within or outside of the home. Politically, radical feminism "calls for a redistribution of responsibility ties in the family and a redistribution of economic and social power" (Lorber 2005:

83). These theories suggest that structural reforms will call for the state to play a large role in traditionally private sphere endeavours such as childcare/elderly care (Lorber 2005: 84).

Through her work on the intersection of cultural perceptions of identity and political economy, Fraser incorporates elements of radical feminism and argues that any changes to perceptions of male/female labour roles in society must include transformations of both economic and cultural perceptions of gender and class. She notes that with any form of change and “modernization, the (official) economic and state systems are not simply disengaged or detached from the lifeworld; they must also be related to and embedded in it” (Fraser 2013: 33). It is with respect to this entrenchment of ‘norms’ derived from gender that Fraser seeks to explain maldistribution and misrecognition within neoliberal globalized society.

4.2 Fraser, Gender, and the Politics of Recognition and Redistribution

As previously stated, Fraser’s work is centered on remedying the injustices associated with recognition and redistribution. Misrecognition, or “status subordination, [is] rooted in institutionalized patterns of cultural value” (Fraser 2000: 117). Corresponding with socio-political economic patterns, maldistribution entails “economic subordination, rooted in structural features of the economic system” (Fraser 2000: 117). These elements and their injustices cannot separate completely from one another as the status associated with recognition is deeply tied to the status associated with economic resources, as is the ability to accumulate these resources. The intertwining of maldistributive and misrecognitive injustices helps to explain the exclusion of caregivers from legislation in Saskatchewan. As caregivers live/work within a private home, notions surrounding the unacceptability of government interference within the

home where traditional ‘women’s work’ is conducted yields the potential for abuse of workers as this space remains free of regulation.

Fraser’s analysis of redistribution and recognition serves as a framework that addresses the neoliberal reinforcement of gender through policy towards immigrant women caregivers in Canada. Entrenchment of gender-roles and increased stereotypes of ‘domestic’ work being performed by Southeast Asian women have been institutionalized through immigration policy. The home with respect to the LCP represents a “contradictory space”—“as both a place away from work for some and a place of work for others—is significant in framing the relationship of the household to the market in the global capitalist system” (Bakan and Stasiulis 2012: 209).

The LCP has become an example of a policy unique to this phase of capitalism. Women from developing countries are migrating to Canada as paid domestic workers who are able to replace Canadian women entering the workplace and in some instances allow Canadian women to re-enter the workforce. For working mothers specifically, the LCP helps to alleviate the ‘double day’ dilemma. The ‘double day’ resulted from female recruitment into factory jobs during the second world war that were traditionally held by men. Connelly and MacDonald assert that during the War, “[l]abour demand was high and employers and the government had no choice but to turn to women. At first they did not call on married women. However, as time went on it became necessary to activate the reserve army [of labour] of married women” (Connelly and MacDonald 1983: 49). During this time, women, often working long hours in the factories, were faced “with what [could] seem like a second shift at home” or a ‘double day’ (Cobble 2003: 63). The LCP yields a new option for not only working mothers attempting to alleviate themselves from a double day, but for persons requiring home-based care by a professional. In addition, it also requires new policy pertaining to the public-private dichotomy. The LCP makes

the home a workplace and it is this unique component that requires policy makers to devote specific attention.

4.3 Caregiver Registries and Proposed Changes to the SINP: the British Columbia and Ontario Reforms

Caregivers fit within the recognition-redistribution framework as they are paid to come to Canada under immigration policy to perform traditional women's work such as cooking, cleaning, and raising children. Fraser recognizes that cultural norms, although potentially biased or unfair to specific groups, are institutionalized by the state and the economy, creating an imbalance between the public and private spheres (Fraser 2013: 72-73). Notably, the governments of British Columbia and Ontario have introduced legislation aiming to recognize work within the home and offer increased protections. The two provinces require both caregivers and employers to register with a domestic workers employment branch. Such registration assists in the elimination of undocumented caregivers. Ontario has implemented the largest amount of caregiver protections with eligibility for maternity leave, paid public holidays, vacation time, and notice of employment termination (Brickner 2010: 316). British Columbia represents a unique case as the only provincial jurisdiction in Canada that requires employers to register themselves and caregivers to a Domestic Workers Registry (Khan 2009: 32). Similar changes in Saskatchewan would create a better environment for caregivers to safely work.

4.3.1 British Columbia's Domestic Workers Registry and Guide to Employment Standards for Domestic Workers

Since 2011, British Columbia has implemented a domestic workers registry and a set of employment standards for domestic workers that specifically reside in the homes of their

employers. A Guide to the *Employment Standards Act* for Domestic Workers and their Employers delineates wages, hours, and work duties as well as requiring employers to register themselves and caregivers to the Employment Standards Branch Domestic Workers Registry (Government of British Columbia 2011). The British Columbia government considers live-in caregivers and domestic workers synonymous and defines “domestic” as a person who “is employed at an employer’s private residence to provide cooking, cleaning, child care or other prescribed services, and resides at the employer’s private residence” (Government of British Columbia n.d.).

According to S.14 the regulations, contracts are to be negotiated between the caregiver and employer and must follow employment standards regarding minimum wage, overtime, work duties, and room and board deductions of no more than \$325 per month (Government of British Columbia n.d.). The regulations state that domestic workers must have at least eight hours off between shifts and 32 consecutive hours free from work every week. Furthermore, employers are required to keep track of hours worked per day, pay wages at least twice per month, keep track of the amounts and purposes of any pay deductions, and retain ROEs for two years after the caregiver has stopped working for him/her (Government of British Columbia n.d.).

The British Columbia system, although caregiver-specific, is not immune to criticism. Scholars such as Fudge note that while the registry addresses the unique aspects associated with the program such as working and living in the same space as the employer while also documenting caregivers through a registry, employers still possess unchecked powers. Fudge states that employers are not required to submit a copy of the caregiver’s contract to the Employment Standards Branch. Therefore, “there is no way of verifying whether the contract the department responsible for immigration requires in order for the live-in caregiver to obtain a

work permit corresponds to the contract required by British Columbia” (Fudge and Parrott 2013: 81). The issue resides with contract discrepancies without requiring the employer to submit a contract to the Employment Standards Branch. Therefore, there remains no avenue to verify items such as fair wages and overtime. However, the organization of the registry and caregiver-specific regulations has resulted in the Employment Standards Branch successfully responding to many complaints made by live-in caregivers (Fudge and Parrott 2013: 82). At the very least, the British Columbia regulations for caregivers creates a system of documentation and recognizes the uniqueness of the live-in workplace in its labour standards regulations.

4.3.2 *Ontario: Caregiver Labour Standards Legislation and Practices*

Since 2010, Ontario has implemented caregiver-specific legislation that delineates employment policies for caregivers regarding charging of fees, work hours, and leaves of absence. The *Employment Protection for Foreign Nationals Act (Live-in Caregivers and Others)* (EPFNA) was devised to clarify the rights of Ontario foreign live-in caregivers. The EPFNA recognizes that the live-in component can create unique issues for caregivers such as long hours being improperly documented. For example, the EPFNA maintains that “[the caregiver] must have at least 11 consecutive hours off work each day, and 24 consecutive hours off work each week, or 48 consecutive hours off work in every 2-week period” (Government of Ontario 2010). As the employer’s home is also the caregiver’s work place and home, the legislation aims to address circumstances where caregivers may be working ‘off the clock’, such as when a member of the household is sick on the caregiver’s night off and she provides care for the person without pay.

The EPFNA covers caregiver issues ranging from pre-employment, unlawful employer practices during employment, and termination/absence issues. Pursuant to S.7-8.(1)(a) (Protective Measures), it is prohibited for agencies or individual employers to charge/collect fees from the caregiver “in the course to arranging to become or attempting to become an employer of the foreign national as a live-in caregiver” (Government of Ontario 2010). Sections 9 and 10 state that employers cannot retain passports and work permits of caregivers and cannot intimidate or penalize the caregiver because he/she inquired about her rights, wages, or made a complaint. The EPFNA also provides a set of penalties for employers who are caught violating the employment rights of their caregiver. S. 13.(1) (Director’s Authority to Publish Names of Offenders) notes that if an employer is convicted of an offence pertaining to a live-in caregiver, the Director of Employment Standards can publish the offender’s name, offence description, and date of conviction (Government of Ontario 2010). Lastly, S.41(a-c) (General Offence) states that if employers of caregivers are found guilty of any punishable offence in the EPFNA, they are liable to a fine of \$50,000 or imprisonment of not more than one year or both.

In addition to the EPFNA, the Ontario *Employment Standards Act* and the Government of Ontario Ministry of Labour’s website specifically outlines foreign live-in caregiver specifications regarding pregnancy leave, vacation pay, family leave, critically ill child leave, and medical leave. For instance, the website states that caregivers are eligible for 17 weeks of pregnancy leave and 35 weeks of parental leave—an unpaid, but job securing, measure (Government of Ontario 2014). In addition, specifics regarding ill children and ill family members of the caregiver are outlined. If the caregiver has a family member that is suffering from a serious illness, she can take up to eight weeks of unpaid, job secured, leave. If the caregiver has been employed for at least six months by her employer, she can take up to 37 weeks of unpaid, job-

protected leave to help her ill child. Finally, the caregiver is entitled to two weeks of vacation for every 12 months worked, with four percent of her total earnings as vacation pay (Government of Ontario 2014).

These measures ensure increased transparency between caregivers and employers. The Ontario and British Columbia reforms are active examples of Fraser's concepts of recognition and redistribution: the recognition of caregiver-oriented legislation and policies, as well as redistribution of power to the provincial government to monitor activity through a domestic workers registry. Including legislation specific to work within the home offers not only increased protections for caregivers but also increases equality relative to public sphere protections legislation.

4.4 Suggestions for Saskatchewan Immigration and Labour Policy

4.4.1 Labour Legislation: Restructuring the Recognition of Private Spaces of Work

The LCP is an example of the intersection of identity and economy such that the “private” domestic sphere is now a place of employment without proper policies to secure caregivers' rights. The issue is not simply its designation as a federal program, but also the idea that the work being performed is done within a private home. This raises concerns due to socially constructed notions of government not intervening within the home. Further illuminated by inadequate policies that do not protect caregiver labour rights, the notion currently has become that:

The house as a workplace is both a place “away” from work for the employing family, constituted as “private” space, and simultaneously the “public” workplace for the waged employee. Regardless of whether the private home employs a paid domestic labourer at any given time, the household unit in capitalist society remains at all times

potentially a place of paid employment, depending upon the particularities of work and home life of the resident adult member(s) of the family. This contradictory space of the “home” – as both a place away from work and a place of work for others – is significant in framing the relationship of the household to the market in the global capitalist system (Bakan and Stasiulis 2012: 209).

This raises the issue of federal and provincial immigration and labour policies failing to address potential labour rights abuses of migrant live-in caregivers. Recognition elements are vital to the study of caregivers in Saskatchewan as there is currently no caregiver-specific legislation to recognize the live-in component and no transparency regarding the home as a work place in Saskatchewan labour standards. Responses to economic injustice (redistribution) argue for incremental deprivatization regarding caregiving rather than a radical overhaul of economic and social institutions (Arat-Koc 2006: 86).

The *Saskatchewan Employment Act* fails to explicitly include the home as a place of work. As such, many caregivers and their contracts with employers remain provincially unregulated. Amending the *Act* to include caregivers is certainly possible. Pursuant to Part II, Division VII (Regulations) s. 2-99(p-q), the Lieutenant Governor in Council may make regulations: (p) “prescribing any other matter or thing that is required or authorized by this Part to be prescribed in the regulations”; and (q) “respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Part” (Government of Saskatchewan 2013: 66). Designating the home as a place of work for caregivers would tremendously aid in enforcement or change of regulations of Part X s. 84 pertaining to acceptability of workplace accommodations and requests for records of employees. S. 84 (h) states regulations may be created to ensure that “no employee shall be compelled or required by his employer to live or reside in accommodation that the employee considers

unsuitable, unsafe or unsanitary unless the director approves such accommodation as being satisfactory” (Government of Saskatchewan 2013: 52). Furthermore, s. 84 (p) allows regulations to be constructed “governing the keeping of records by employers for the purposes of this Act” (Government of Saskatchewan 2013: 53). Effectively deprivatizing the private sphere in the form of inclusion into the *Saskatchewan Employment Act* offers many legislative advantages for the security and recognition of caregiver labor rights.

Full recognition of “the home” in the *Saskatchewan Employment Act* would deprivatize traditional notions of government intervention in the private home, legally include immigrant women who work in employers’ homes and subsequently offer caregivers official labour standards protections. Moreover, inclusion of the home as an official place of work may allow increased provincial mediation of work contracts, subsequently decreasing the restrictions for unionization of caregivers in Saskatchewan as their precarious states would be lessened. However, to achieve these ends, further regulation and documentation of caregivers in the province would be needed through the establishment of a domestic workers registry and inclusionary changes in the SINP.

As a federal immigration stream, CIC is not party to contractual terms between the employer and the caregiver, subsequently vesting a considerable amount of power into the hands of employers. A suggestion to remedy the vulnerability of LCP participants and reduce contract violations is to incorporate a third party to mediate such contracts. Exclusion of caregivers from integral protections legislation only further contributes to the isolation and exploitation of Saskatchewan caregivers. Through the concepts of recognition and redistribution of “private sphere” work, deprivatization of traditional concepts of women’s work and government intervention will aid in rectifying exclusionary and exploitative principles surrounding caregiver

work in Saskatchewan. There are several Saskatchewan governing bodies that, if altered appropriately, could mediate contracts to prevent exploitation.

4.4.2 *Establishment of a Registry for Domestic Workers and Amendments to Bill 83*

Another suggestion for Saskatchewan consists of the inclusion of a third party in contracts by establishing a Saskatchewan registry for caregivers and employers. Bill 83, the protections for temporary foreign workers in Saskatchewan legislation, requires all employers hiring a temporary foreign worker to register himself or herself with the province (Government of Saskatchewan 2013). Inclusion of a caregiver-specific registry should ultimately be made mandatory due to the unique live-in component of the work. Clarifying inclusion of caregivers and their employers into Bill 83 would immensely aid in enforcing other provisions pursuant to the Bill. For instance, caregiver employers who were made to register with the province with an official domestic workers registry similar to that of British Columbia would be easier to locate and held accountable if a caregiver lodged a complaint for workplace violations. Employers would therefore possess an incentive to abide by contract terms as the Bill prohibits “unethical conduct against foreign nationals, such as withholding documents or other property, threatening deportation or providing misleading information” (Government of Saskatchewan 2013). Furthermore, if an employer is found guilty of mistreating an employee, he/she faces a personal fine of up to \$50,000. Regulating caregiver employers in this way would aid in regulating legitimate employment offers and ensuring that contract are followed.

A caregiver/domestic worker registry should also be mandated by the province to ensure the documentation of caregivers. The Status of Women Office (SWO) in Saskatchewan aims to “address gender equality gaps in the province by leading work with government ministries, crown corporations, agencies and others to identify changes that will modify and shape programs

and services to respond to the emerging priorities for women and their families” (Government of Saskatchewan Status of Women Office 2013). Addressing caregiver rights concerns to the SWO may aid in the creation of a caregiver registry for the province. Such a registry may relay concerns and vulnerabilities women LCP participants face to policy makers and suggest alternatives to improve their experiences. Without a domestic workers registry, it is difficult if not impossible to determine the exact number of LCP workers in Canada and where they reside. The registry would also help to curb the number of undocumented or informal caregivers vulnerable to physical and sexual abuses in addition to labour rights violations. The incorporation of the SWO into caregiving may foster a safe space for caregivers to acquire information and relay concerns pertaining to their employment.

Provincial regulation and mediation through the Saskatchewan government would allow security of caregiver labour rights and would ensure fair contract terms. The caregiver would be able to switch employers quickly without compromising her chances of permanent residency by waiting for a new work permit to process and succumbing to further abuse (Brickner and Straehle 2010: 316). These entities would advocate for caregiver rights and create a system of documentation that benefits caregivers and employers alike. Caregivers would be documented and offered support while employers would have documentation supporting contractual agreements with the caregiver which increases her accountability to honour the terms of her contract.

4.4.3 *Updating the SINP’s Relationship to Federal Stream Caregivers and MOUs*

The lack of a caregiver immigration strategy requires action to ensure fair construction of employer-caregiver contract terms. The SINP should actively enforce the inclusion of caregivers into bilateral MOUs between Saskatchewan and the Philippines. As previously noted, caregivers

are excluded from recent MOUs in Saskatchewan, which causes barriers to the regulation of the immigration and employment process: analyzing the legitimacy of job offers, reviewing contract terms, and assisting the caregiver in integrating into Saskatchewan society. As caregivers work within a home, the risk of isolation inevitably heightens and it becomes difficult for workers to confront employer power. Inclusion of LCP participants into the MOU would govern initial steps of exploitation before the caregiver lands in Canada, as the conditions of the MOU require mediation of contracts through adherence to the minimum employment standards as set forth by the MOU (Fudge 2011: 252). Caregiver inclusion into MOUs would not require the separate construction of a “Live-in Caregiver” category within the SINP as it is inherently a federal immigration stream. The governance of contracts of caregivers who will reside in Saskatchewan, however, should indefinitely remain within provincial jurisdiction and adhere to provincial employment standards. If implemented alongside a domestic workers registry, caregivers would be provided increased stability in terms of documentation and filing complaints.

4.4.4 *Addressing the Potential for Successful Unionization*

Recognition of caregiving as work within the home in Saskatchewan legislation is theoretically inclusive and provides a foundation for which to construct live-in caregiver-specific policies. However, inclusion into the *Saskatchewan Employment Act* alone is insufficient in ensuring caregiver rights as the *Act* is primarily focused on regulated public sphere employment. The creation of a domestic workers registry and inclusion into SINP MOU protections offer a practical solution for exercising the regulation and documentation of caregivers and their employers. With official documented status in Saskatchewan with contracts arbitrated through the provincial government, the ability to unionize is one such alternative that would allow

caregivers to collectively bargain for wage stability, employer accountability, and safe workplace conditions.

Caregivers, as part of the TFWP, face significant barriers to unionization. However, if the above recommendations were implemented in the *Saskatchewan Employment Act*, the SINP, and the creation of a registry, caregivers, becoming increasingly regulated by these conditions, face improved odds of unionizing successfully. The option for permanent residency under the LCP is an important factor in unionization rights. Extremely high percentages of women participants in the LCP apply for permanent residency, with almost all applicants successful. The Canadian government estimated about 10,000 women caregivers will receive permanent residency from 2009-2019 (Brickner 2010: 312). In addition, about 90 per cent of caregivers in Canada that work the appropriate hours within the allotted time period apply for permanent residency—98 per cent of those applicants achieve their goal (Brickner 2010: 312). Although those who achieve permanent residency will ultimately obtain occupational mobility, unionization should be afforded due to caregivers' precarious and vulnerable statuses.

Temporary Foreign Worker Program streams such as the Seasonal Agricultural Worker Program (SAWP), a stream with no option of permanent residency, have won rights to unionize. Mexican migrant workers won the right to unionize in 2006 on three Quebec farms and one Manitoba farm represented by the United Food and Commercial Workers (UFCW) (National Union of Public and General Employees 2006). Furthermore, labour rights activists won rights to collectively bargain and gained access to union representation on farms in British Columbia Sidhu & Sons Nursery Ltd (UFCW 2010). Procedures to unionize required several levels of intergovernmental input: recognition from the provincial British Columbian Labour Relations Board; collective action from SAWP workers; and UFCW Canada Local 1518 cooperation

(UFCW 2010). SAWP participants who worked together at the same farm were able to collectively gather support from one another and bargain for improved working conditions, an option not as readily available to LCP participants based on work environments.

A defining reason behind efforts to unionize SAWP workers was that “[c]urrently, the workers have no alternative but to accept the wages and working conditions established under an agreement negotiated by the Mexican and Canadian governments” (NUPGE 2006). Mexican workers typically are contracted to an individual farm every season, and are required to return home if they are laid-off or fired. Unionizers claim the workers perform an “essential service” and should have a voice on how they are treated in Canada.

Caregivers face a similar situation, unable to bargain for fair wages under a complaint-based system. Moreover, caregiver contracts exist solely between the employer and the caregiver, unlike Mexican-Canadian bilateral contracts of the SAWP. A similar case may be made for unionization of caregivers on grounds of healthcare demands. As increased numbers of caregivers are supplied to meet a Canadian demand for childcare, elderly care, and sick person care, caregiving is essential in maintaining the health and longevity of persons in need. If unionization has been offered to SAWP participants who are similarly vulnerable to labour rights abuses, caregivers should make a case for unionization as their vulnerability is increased through living in employers’ homes. However, increased access to unionization is primarily contingent upon increased provincial mediation of work contracts, inclusion into labour legislation, and a registry of employers and employees to effectively document unionizing workers.

4.5 Conclusions

This chapter has highlighted the theories and structures that contributed to the lack of government policy within the home. Furthermore, this chapter has analysed how traditional

notions of women in the home have intersected with immigration policy and may contribute to the potential of foreign caregiver abuse.

Deriving from Nancy Fraser's radical-feminist framework surrounding recognition of identity politics and redistribution of political economy, the recognition of the precarious work caregivers perform needs to be reevaluated in terms of who should be responsible for caregiving. As Fraser previously noted, redistribution or recognition alone cannot remedy economic/cultural injustices for live-in caregivers. Congruent with a globalized world, women from economically disadvantaged countries are coming to Canada under an immigration program that offers them the chance for permanent residency. In addition to LCP participants, Canadian women are also given the opportunity to re-enter the work force. However, the potential for labour rights abuses for caregivers remains because of inefficient provincial regulation. The notions surrounding traditional women's work coupled with the taboo of government intervention in the home may unintentionally institutionalize the potential for caregiver abuse through the Live-in Caregiver Program. These notions of women and the home were further mirrored by privatized, non-government regulated contracts. Moreover, as the LCP is paid work within a private home, potential for economic injustice such as low pay or no overtime develops without proper policy protections and employment standards specific to the industry. As such, misrecognition and economic maldistribution are intertwined to produce a transnational program founded on the need of women from developing nations performing traditional women's labour roles whilst becoming prone to low pay, assault, and isolation.

Alternatives aimed at caregiver equality and labour rights security were contingent upon both redistributive and recognition elements. Recognition of the home as an official workplace is vital for caregivers to be granted the same protections under provincial labour standards as public

sphere jobs. Inclusion into legislation does not facilitate any material change alone. Recognition through legislation, specific to foreign live-in caregivers who do not have access to occupational mobility, provides a legal foundation that would make unionization and/or collective bargaining easier as opposed to advocating without any official recognition. Recognition also played an integral role in addressing specific vulnerabilities that women caregivers face, subsequently fostering the need for a redistribution of power.

Redistributive elements aimed at bringing issues within the home to public legislation were aimed at increased social responsibility for caregivers working in private homes. The suggestion for a domestic workers and employer registry as well as provincial arbitration of employer contracts redistributes power to the provincial government. The introduction of the private sphere into provincial governmental jurisdiction coupled with household workplace recognition allows for unionization measures to occur to ensure caregiver-specific labour rights. It is the intertwinement of identity and political economy that called for a reevaluation of the LCP that aimed at restructuring the ideologies of women in the home and redistribution of power. For caregivers, deprivatization of traditional notions of womanhood, the home, and work are vital components in securing the labour rights of caregivers in Saskatchewan.

Chapter 5

Conclusions

Introduction:

This thesis has examined the question: **‘Do the elements that construct Saskatchewan foreign live-in caregiver policy, comprised of the federal Live-in Caregiver Program, Saskatchewan immigration policies, and Saskatchewan labour legislation in combination**

ensure sufficient labour rights protections for these women?’ Using Saskatchewan as a specific case, I have demonstrated that caregivers have been excluded from provincial regulations and there is a potential for these workers to suffer from workplace harassment and abuse. This potential for abuse has been attributed to a precarious work relationship that is shared amongst caregivers and their employers. This relationship is unique as the LCP is the only TFWP stream where participants work and live within their employers’ homes. As the program and the work relationships are distinct from any other immigration stream, policy specific to caregiving and working within the home must be considered.

The LCP has exempted its participants from enjoying the protections that those under other federal TFWP streams, such as the SAWP and those protected under MOUs, have enjoyed. Exclusion from MOUs and lack of acknowledging in-home caregiving work regarding Bill 83 added to the potential for caregivers to experience labour rights violations at the hands of their employers by way of physical/sexual/verbal/emotional abuse, withholding pay/underpaying, or withholding documentation. The scope of labour rights infringements was then highlighted with interviews with caregivers in Ontario and PINAY surveys.

Caregiver labour issues cannot be fully rectified without observing the social and economic models that reinforce traditional female labour roles within global political economy. The issue, however, lingers with socially constructed perceptions of the home remaining free of government regulation. The LCP thus has uniquely injected ideals of the traditional gender roles and perceptions of what is ‘private’ and ‘public’ into federal and provincial immigration and labour policy. Perpetuated through private contracts, lack of governmental contract supervision, and little to non-existent foreign worker protections, a significant amount of power is vested within the hands of the employer until the caregiver qualifies for Permanent Resident Status.

Founded on radical feminist principles, Nancy Fraser's framework on rendering identity and economy inseparable provided a lens to view potential solutions. Ultimately, viable solutions require recognizing the home as a place of work, recognition of unequal employer-employee terms, redistributing contractual powers to the provincial government, creating a domestic workers' registry, improving rights to unionization. These alternatives were shown to be attainable by pointing to similar policy regimes in British Columbia and Ontario. In those jurisdictions, caregivers and employers are required to register with a domestic workers' registry. I argue that this requirement will provide an important level of protection for these precarious and vulnerable workers.

I have also argued that Saskatchewan could provide a meaningful opportunity to secure the rights of immigrant women live-in caregivers even further. The LCP can be included in Saskatchewan labour and immigration policy through recognition mechanisms such as inclusion into Saskatchewan labour legislation and SINP integration regarding MOUs and temporary foreign worker protections, redistribution items such as rights to unionization and contract mediation would become more viable and easy to obtain. Lastly, these mechanisms would aid in increasing protections for the small percentage of live-in caregivers that do not hail from the Philippines.

5.1 Research Limitations

There remain areas that may be subject to contestation with this thesis. Firstly, the fact that research was not conducted on caregivers in Saskatchewan is a limitation. As the data were not representative of live-in caregivers' experiences in the province of Saskatchewan, some of the potential abuses may not have been present had a sample of Saskatchewan live-in caregivers

been surveyed. Conversely, those surveyed from Ontario and Quebec offered a larger sample size than could be produced in Saskatchewan. However, the sample population was ultimately not taken from Saskatchewan and may have produced different results.

Another limitation to the research was the viability of some alternatives presented in Chapter 4. Changes to the *Saskatchewan Employment Act* as well as initiatives to unionize are highly unlikely to occur rapidly—caregiver advocacy groups may firstly need to form in Saskatchewan that can organize operations to capture the attention of the provincial government. Furthermore, access to unionization in Saskatchewan is possible, but there remain barriers. For instance, the *Trade Union Act* of Saskatchewan has been modified so that if a unit wishes to unionize, they must acquire 45 percent of employee support as opposed to the former 25 percent (Smith 2011: 141). This may be problematic for caregivers as some may be coerced by employers into rejecting the application. In addition, union applicants only have 90 days to submit support for an application to become certified as opposed to the former six months (Smith 2011: 141; Saskatchewan Federation of Labour 2007: 1). This time frame may be difficult to address with caregivers as some may be prone to opting out if employers coerce them to do so by way of withholding pay or threat of deportation.

Finally, as the LCP allows women from developing nations an option for permanent residency who would otherwise be unable to come to Canada, questions arise such as “would amendments to federal immigration take place to allow these women to come to Canada another way?” Analysis may include an overview of the specific sectors through which immigrant women from developing nations enter Canada and how potential amendments to Canadian immigration policy would affect their chances of successfully immigrating.

5.2 New Program, New Suggestions?

The new two-stream LCP generates the question of how do the most recent changes to the program (two streams, live-in component optional) potentially alter the recommendations I have proposed for this program? A new grey area is created. Those who choose to live-in face many of the same circumstances. However, those who opt to live-out may face a new series of issues and a set of new questions. For instance, do contract terms become more or less ambiguous? If the caregiver lived away from her employer, she would likely have a more structured environment regarding work hours and “off-time”. However, how would salary terms be affected if her rent is significantly higher outside of the home, or how would this affect her living above the poverty line? Would the caregiver have to live close to her employer in the case of a medical emergency? Due to the two-stream program, would a new set of “home-based” caregiving work need to be incorporated into legislation? I suspect that if Saskatchewan implemented caregiver-specific legislation similar to Ontario, the new program and the live-out component would need to be included and address live-out contracts as well as the live-in component. In addition, I suspect that inclusion into the MOU with the Philippines would remain the same as the MOU covers Filipino nationals (who already perform public-sphere, less precarious, work).

Finally, the new program, particularly the live-out option, still does not solve the issue of home-based care demands in Canada. In addition, does the live-out option cater to those who require constant care? In reality, those who truly require consistent home-based care will likely not apply to the LCP with the live-out component and will opt for the live-in component. In these cases, structurally speaking, the Saskatchewan policy suggestions remain the same: advocacy is needed, and inclusion into legislation with the option to unionize is important.

5.3 Further Research

This thesis has focused on labour rights and barriers that live-in caregivers in Saskatchewan may encounter in the face of exclusionary labour legislation and unmediated employer-employee relationships. This analysis has been conducted within the scope of the current Canadian immigration points system. Further research, especially due to the high education levels of LCP participants, may seek to analyse the Canadian points system. The Toronto Immigrant Employment Data Initiative's (TIEDI) study on education levels of live-in caregivers determined that caregivers are one of the most educated groups of the entire economic class. While 5 percent of caregivers obtained a bachelor's degree or higher in 1993, 63 percent of caregivers obtained a bachelor's degree or higher in 2009 (Kelly et al. 2011: 12). The 2009 figure supersedes that of other economic immigration streams, of which 39.5 percent hold bachelor's degrees on average (12). These figures are important to note, as many of LCP participants possess the education to enter as economic independents and gain access to permanent residency quickly. However, socio-economic circumstances in their home countries have hindered applicants from gaining the experience to fulfil the 67 points needed for permanent residency. For example, some developing nations are not as liberal as Canada when matters of women working outside the home are discussed and may adhere to the traditional paradigm of women working within the home.

Questions such as 'is the Canadian economic immigration point system biased towards those from developed nations?' may be worthwhile to study. Furthermore, 'is the point system gendered due to social circumstances women face in developing nations?' is another research question that may prove useful when analysing women and immigration programs. In light of

analysing caregivers in Saskatchewan, further research may be conducted in the structure of the points system to determine if there is a strong correlation among the points system and LCP participants.

In addition, further research may be conducted on reasons for the lack of Canadian caregivers. Questions such as ‘is there a shortage of Canadian caregivers’ or ‘is the live-in component an aspect that prevents Canadian caregivers from seeking out these positions’? If so, ‘does the live-in component need to be amended or made optional’? Analysis of the repercussions of making the live-in component optional for immigrant women caregivers would prove a useful analysis as the separation of the caregiver’s private home and workplace would be slightly more defined.

Conclusion:

In summary, change is imperative. The LCP requires policy changes to ensure caregiver labour rights are formulated. Temporary foreign workers are needed to fill labour market shortages and are integral to the Canadian economy. This thesis has focused on temporary foreign work with respect to the LCP which is a unique program because of the live-in component and the high percentage of women applicants. It has become a program for women from developing countries to immigrate to Canada with motivation to escape poverty, political turmoil, and support their families. Numbers of live-in caregivers to Canada and specifically to Saskatchewan have risen due to the demand for home-based care. Thus, examining Saskatchewan labour and immigration policy as it pertains to live-in caregivers is important and relevant. Examination of Saskatchewan policy has ultimately revealed that regulations do exist for temporary foreign workers, but these are insufficient for live-in caregivers as they require

regulations specific to working within the home where the state does not typically intervene, living with an employer, and performing duties traditionally executed by women. In order for meaningful change to occur, recognizing caregiver-specific and home-based work through legislation as well as increasing the presence of government in work contracts and administrative means is important. In conclusion, home-based, live-in caregiving is an increasingly important sector in Saskatchewan and is often comprised of foreign women who face the potential for workplace abuse if the program continues to function without sufficient policies and regulations.

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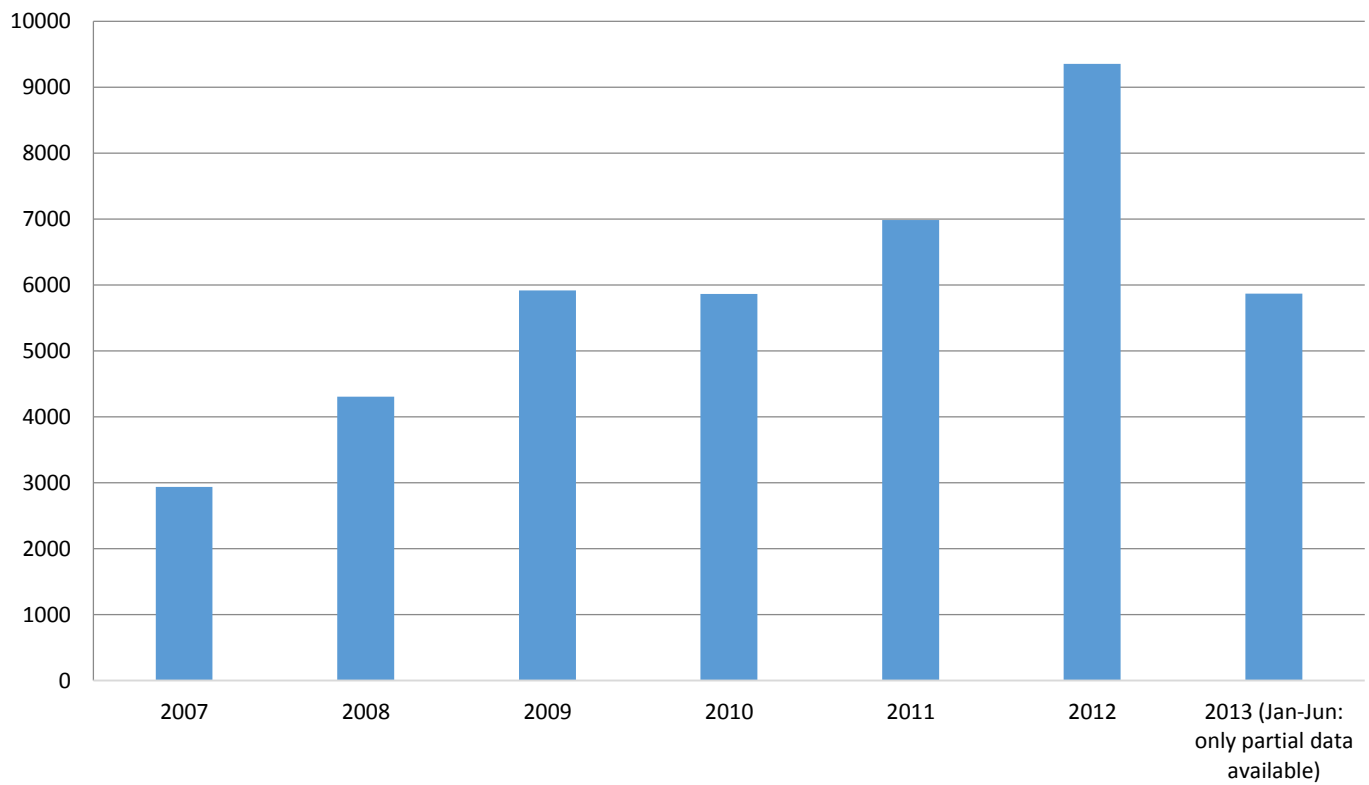
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APPENDIX A: Number of Positive Labour Market Opinions Issued for Temporary Foreign Workers in Saskatchewan, 2007-2013 (Jan-Jun)

(Citizenship and Immigration Canada 2013: 77; Employment and Social Development Canada 2015)



APPENDIX B: Number of Positive Labour Market Opinions Issued for Live-in Caregiver Program Applicants to Saskatchewan, 2005-2013 (Jan-Jun) (Employment and Social Development Canada 2013)

