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## Dealing with an Imperfect System

Canada's immigration system is far from being perfect.

Aside from stating the obvious, this reality was further confirmed by a couple of news items that were published in recent weeks.

The first news item is the Auditor General's report raising serious problems with Canada's immigration programs. In particular, the Auditor General raised concerns "about the integrity of the program and the protection of temporary foreign workers". Below are some excerpts from the report:

"Various studies and reports over the years have recognized that lower-skilled temporary foreign workers entering Canada may be vulnerable to exploitation or poor working conditions, usually because of their economic conditions, linguistic isolation, and limited understanding of their rights."

"There is a risk that live-in caregivers may tolerate abuse, poor working conditions, and poor accommodations so as not to lose the opportunity to become permanent residents. The program's requirement that the caregiver reside in the employer's home can put them particularly at risk. A number of CIC internal reports, some dating back as far as 1994, raised serious concerns about abuse of this program by employers and immigration consultants, as well as risks to individuals."

"(T)here has been no systematic follow-up by either CIC or HRSDC to verify that employers are complying with the terms and conditions under which the LMO application was approved, such as wages to be paid and accommodations to be provided."

"Furthermore, we noted that the pilot project for occupations requiring lower levels of formal training was launched with limited analysis of risks and without any formal goal, objectives, or basis on which to evaluate its success, nor has it been formally evaluated since then. It has been a pilot for seven years. Combined with live-in caregivers, temporary foreign workers under this pilot project now account for more than half of all temporary foreign workers in Canada."

The Auditor General's findings are nothing really new to foreign worker advocates, and to those who have gone through the temporary foreign worker program, including the Live-in Caregiver Program. It is well known that widespread abuse and exploitation occur within these programs, which is further aggravated by the fact that there is no effective monitoring of the employers' treatment of these foreign workers. What would likely be more alarming and less known is the fact that foreign workers in occupations

requiring lower levels of formal training (commonly know as "low-skilled" occupations) and live-in caregivers comprise a majority of temporary foreign workers in Canada.

We know that a huge number of Filipino migrants obtain entry to Canada via these "low-skilled" and live-in caregiver work permits. Therefore, it is only reasonable to conclude that temporary foreign workers from the Philippines end up being disproportionately affected by the problems raised in the Auditor General's report and will continue to be so as these programs continue to grow in popularity among aspiring Filipino migrant workers.

The second news item dealt with the recent decision of the Ontario Court of Appeal which ruled that sponsors who signed sponsorship undertakings should not be automatically held responsible for repaying the social assistance debts of relatives whom they sponsored as immigrants. Instead, the court has ordered the creation of a process through which sponsors can explain their personal and financial circumstances and potentially avoid payment of social assistance debts.

Incidentally, this involves another popular route of entry for Filipino migrants to Canada. That is, many Filipinos are admitted to Canada as sponsored family members and the sponsors undertake to provide for their sponsored family members' needs. Therefore, the sponsor will be financially obligated to return any payments received by the sponsored family member in the form of welfare benefits from the government. What the Ontario Court of Justice ruling did was to prevent the government from automatically enforcing these "sponsorship debts" without allowing the sponsor to explain their specific circumstances. It does not necessarily render void the sponsorship undertaking but only allows the government to exercise discretion in "deserving" and "exceptional" cases.

Nonetheless, this is an important legal victory in that it tempers the government's ability to enforce these "sponsorship debts" automatically and unreasonably, even many years after the family relationship may have broken down or when the sponsor truly has no means to pay.

The immigration system in Canada has been described as "one of the least controllable aspects of government activity" not only because it is "fraught with bureaucratic discretion, but also because its subjects are assumed to be politically powerless."

But as these recent developments show, it may just be a matter of time before the government authorities will finally realize that their exercise of discretion need not be inconsistent with reasonableness and compassion, in the same way that migrant workers will not necessarily remain politically powerless in the face of recurring injustice and exploitation.

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