

Engaging migrant careworkers: examining cases of exploitation by recruitment agencies in Quebec, Canada

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Abstract: Private, for-profit recruitment and employment agencies are key intermediaries connecting migrant workers from abroad to employers in Canada. Despite this, there is a lack of effective regulation of recruitment agencies by the Canadian federal and provincial governments. The objective of this article is to provide a snapshot of the problem, based on the empirical analysis of the casework of PINAY, a community organisation in Montreal, Quebec, highlighting the multiple compounding effects of this type of exploitation and to highlight the role that community-based organisations play in supporting migrant workers faced with them. Our analysis identifies three types of exploitation: exploitation of financial need, exploitation of immigration precarity, and exploitation of relationships. We conclude the article by discussing community level responses to the exploitation migrant workers face in their interactions with recruitment agencies and reflect upon the implications of Quebec's recent amendment of its labour standards.

Keywords: carework; caregivers; live-in caregivers; recruitment agencies; employment agencies; Canada; community organisations; advocacy; casework; migrant workers.

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1 Introduction

In 2013, 70% of all international migrants over the age of 15 engaged in migration for the purposes of employment. Of these, 11.5 million were migrant domestic workers or careworkers, accounting for roughly 7% of all international migrants (International Organization for Migration, 2018). These growing numbers developed alongside an increasingly complex network of labour migration pathways and programs, actors, and conventions, each playing a role in facilitating the movement of workers across the globe.

Canada has been an active participant in this process. While labour migration has long been a part of Canada's immigration story, there has been a considerable influx in temporary labour migration programs in Canada aimed at facilitating the temporary immigration of workers from abroad to be employed in understaffed labour sectors across the country (Faraday, 2012). The number of migrant workers residing in Canada through these programs has increased from about 140,000 workers in the mid-1990s to nearly 545,000 in 2016; of these, about 3% entered to work as live-in caregivers (IRCC, 2017). The Caregiver Program (until recently known as the Live-in Caregiver Program) is promoted as a mutually beneficial program that provides care solutions to Canadian families struggling to meet caregiving demands, as well as a path to permanent residency for migrant careworkers who would otherwise be excluded from or face long delays under processes immigration process. Research suggests that the benefits truly afforded by the Caregiver Program, and other temporary foreign worker programs (TFWPs), are at best asymmetrical, as accounts of worker exploitation and denials of fundamental human and worker rights are numerous (Hanley et al., 2017a; Tungohan, 2017).

One area of growing criticism is the role that private, for-profit recruitment agencies play as intermediaries connecting migrant workers from abroad to employers in Canada (Choudry and Henaway, 2012; Faraday, 2012; Gesualdi-Fecteau, 2014; Fudge, 2011). There is a considerable lack of coordinated regulation of recruitment agencies by the Canadian federal government, despite the integral role they have come to play in managing the migration of hundreds of thousands of workers into Canada through federal immigration programs annually and attempts by international organisations to coordinate an effective response to the issue. Individual provinces that recognise the exploitation of

migrant workers by recruitment agencies have begun to introduce regulations that mitigate the problem (for example, Quebec, 2018); however, without overarching federal support within the country, and the acceptance of binding agreements between the Canadian federal government and migrant sending countries internationally, provincial regulation is relatively limited as a tool for constraining the actions of recruitment agencies (Fudge, 2011). Given this, community organisations and labour rights advocates have endeavoured to increase visibility surrounding the pervasive problem of third-party for-profit recruitment agencies in the organisation of temporary labour migration in Canada (Faraday, 2012; Migrant Workers Alliance for Change, 2018).

Although recruitment agencies play a role in the recruitment of workers for nearly all temporary labour programs, this article will focus primarily on recruitment agencies in the context of the former Live-in Caregiver Program in the city of Montreal, Quebec in Canada. The gendered nature of this program, its particular requirements, and the overall context of caregiving create a unique set of problems for migrant careworkers using recruitment agencies (Fudge, 2011; Stasiulis and Bakan, 2005). The objective of this research is to provide a snapshot of the problem based on the casework of one community organisation in Montreal, PINAY, in order to highlight the multiple compounding effects of this type of exploitation and to highlight the role community-based organisations play in supporting migrant careworkers. We will begin by introducing recruitment agencies as actors within the international migration industry, providing an overview of the Caregiver Program and Canada's temporary labour migration context and the role that recruitment agencies have played within this context. We will then outline our methods and our findings, in which we identify three types of exploitation: exploitation of financial need, exploitation of immigration precarity, and exploitation of personal relationships. While acknowledging that exploitation can take many form (Strauss and McGrath, 2017), in this article, we focus on how agencies take advantage of power differentials between themselves and workers, using the personal or structural vulnerabilities of workers for their own financial gain.¹ We conclude the article by discussing community level responses to the exploitation migration workers face in their interactions with recruitment agencies and reflect upon the implications of Quebec's recent amendment of its Labour Standards in terms of their effectiveness in addressing the specific problems encountered within transnational agency relationships.

2 Recruitment agencies as actors in the international migration industry

As a relatively new area of study, much of the empirical research surrounding recruitment agencies has been focused on uncovering the activities of a little-known, unregulated industry and documenting its impact on migrant workers, as well as considering the impact of having non-state actors take on such vital roles in the management of international migration. Recruitment agencies, alongside other non-state actors such as privatised detention centres, border controls or transporters, for example, form part of an international 'migration industry' (Gammeltoft-Hansen and Sørensen, 2013). Broadly speaking, the 'migration industry' refers to the non-state actors, networks, and organisations that facilitate and control migration across borders while interacting with migrants, employers, and states, offering a range of formal or informal services, often for profit (Cranston et al., 2018). In taking on these roles, they become vital actors in shaping and controlling the phenomena of international migration. Around the world, states rely

on this formal or informal infrastructure, but also struggle to regulate it both for the best interests of the state and state sovereignty and for the protection of migrant workers (Cranston, 2018; Farbenblum and Nolan, 2017). Far from being a cohesive body of actors, the industry is splintered and varied, taking the form of relatively small businesses, large transnational corporations, and individual brokers mobilising personal networks. Across Asia, where the recruitment industry is most dense, there are hundreds of thousands small licensed agencies, where the most common first contact is made through a friend or family member who will then facilitate a relationship with a potential employer abroad (Farbenblum and Nolan, 2017).

While fulfilling a key role in the migrant process for many migrant workers, the agencies themselves are increasingly associated with worker exploitation. These concerns arise across Asia (Goh et al., 2017; Rother, 2017; Samantroy, 2014), as well as being documented, for example, in Europe (Sporton, 2013), Central and North America (Anderson, 2019; Basok et al., 2015; Gesualdi-Fecteau, 2014). These concerns have long drawn the attention of international organisations, such as the International Labour Organization (ILO), who have pushed for transnational agreements to protect the rights of migrant workers from problematic recruitment practices. One early example is the ILO's *Private Employment Agencies Convention*, 1997 (No. 181) and Recommendations (No. 188) which aims to set minimum standards and guidelines for the regulation of third-party agencies in order to protect migrant workers, encouraging, for example, use of licensing and bilateral agreements between member states (International Labour Organization, 2000; Melnyk, 2015). The convention was ratified by few states, with key migrant-receiving states notably absent. These principles continue to be promoted by the ILO – for example, in their recent launch of the 2014 *Fair Recruitment Initiative* (International Labour Organization, 2015). With the support of the governments of the UK, USA, Canada, Australia, Switzerland, and the European Union, the initiative aims to enhance global knowledge on national and international recruitment, improve policies to promote fair recruitment, promote fair business practices, and empower and protect workers.

Canada has often been recognised internationally as a leader in fair immigration policy, with the state perceived to be taking an active role in creating policies and programs that are both in the interest of the labour needs of the country and addressing the needs of migrant workers. For example, the Caregiver Program, one of Canada's most enduring temporary labour migration programs, has undergone two major reforms in the last five years that are purported to address many of the critiques levied against the program². Furthermore, we see in recent years an increase in provincial-level legislation aiming to tackle the issue of unfair recruitment practices by third-party agencies – most recently in Quebec (2018). Nonetheless, the ways state migration regulations continue to contribute to the vulnerabilities experienced by migrant workers are well documented. Given this tension between policies that delineate extensive legal rights for migrant workers and the inability of many migrant workers to exercise these rights, unpacking the role of recruitment agencies in the migration trajectories of migrant careworkers coming to Quebec provides an interesting opportunity to understand the challenges faced by these workers and both state and community responses.

3 Canada's Caregiver Program and the role of recruitment agencies

The number of migrant workers accepted to work in Canada on temporary permits has risen exponentially due to an evolving constellation of temporary work programs. By 2008, the number of temporary migrants admitted into Canada exceeded the number accepted with permanent residence. This was largely accomplished by easing regulation for employers looking to hire migrant workers, expanding the existing programs for hiring migrant workers, and introducing new migrant worker programs (Lenard and Straehle, 2012). The Caregiver Program (formerly the Live-in Caregiver Program until 2014, reformed again in 2019) is one of several temporary labour migration programs in Canada, such as the Seasonal Agricultural Worker Program and the high-wage, low-wage, and agricultural streams of the Temporary Foreign Worker Program (TFWP) meant to address labour market needs for a range of labour sectors.

The Caregiver Program allows Canadians to hire migrant careworkers from overseas to provide direct care within the context of the home to children or to elders and persons with disabilities (IRCC, 2014). Under the former Live-in Caregiver Program established in 1992 and the 2014 reforms, migrant careworkers were provided with work permits that tie them exclusively to a single employer. Careworkers who complete two years or 3,900 hours of direct care work through this program are then eligible to apply for permanent residency in Canada for themselves and their immediate families, pending health and background checks and fulfilment of other eligibility requirements. Changes to the Caregiver Program have taken place incrementally, largely due to targeted and persistent advocacy efforts by migrant workers themselves and the communities that support them (Koo and Hanley, 2016; Migrant Workers Alliance for Change, 2018; Tungohan, 2017). For example, as a result of ongoing pressure, the live-in requirement for migrant careworkers under this program was lifted in 2014. Other changes included the creation of two separate streams for child care and high medical needs care, caps of 2,750 permanent residents accepted in each stream, and increased levels of language proficiency required for permanent residency (IRCC, 2014). As of 2014, the province of Quebec has opted out of the Caregiver Program altogether, instead using alternate pathways. In February 2019, the IRCC announced a further set of reforms to the Caregiver Program, including the removal of closed single-employer worker permits in favour of open sector specific permits and allowing careworkers to bring their spouse and children with them while working in Canada (IRCC, 2019), both of which are major victories for careworker advocates, changes that could significantly improve their experience as migrant workers in the country³.

While these cumulative reforms have improved some of the labour and migration conditions of the program for migrant careworkers, other concerns have been left unaddressed or have emerged due recent changes (Banerjee et al., 2017; Hanley et al., 2017a; Migrant Workers Alliance for Change, 2018). The removal of the live-in requirement was a much-needed reform, but power imbalances within the employment relationship often mean that the employer has disproportionate power over this decision. The requirement that workers remain within one of the newly divided child care work and high medical needs care work employment streams limits careworkers' employment options when looking for a new job and creates confusion when the work does not fit neatly into a single stream. Additionally, the rising language proficiency requirements have been a considerable barrier for careworkers to access permanent residency (Migrant

Workers Alliance for Change, 2018). While the 2019 reforms also include important changes, at this point, it is unclear whether these issues will be meaningfully addressed.

The exploitation recruitment agencies exert over workers, therefore, is still largely unresolved. The Caregiver Program, as well as the high-wage, low-wage and agricultural streams of the TFWP, operate on the basis of unilateral Canadian policy and are therefore open to migrant workers from around the world. There is no formal process in place to connect migrant workers in these programs with employers in Canada. In the case of the agricultural stream of the TFWP, some of this work is done through the International Organization for Migration, which operates as a state-sanctioned, or government-approved, mediator between employers and workers in many source countries, albeit one that has faced many denunciations (Gesualdi-Fecteau, 2014; Preibisch and Hennebry, 2012), while other employers rely on a host of other formal or informal agencies and networks. The lack of formal process has created space for third-party for-profit recruitment agencies, either quasi- or non-sanctioned, to emerge to fill this role (Fudge, 2011).

Recruitment agencies facilitate the recruitment of careworkers from abroad, often through overseas offices or networks, and the matching or placement of careworkers with employers in Canada and other migrant-receiving countries around the world. Under the former Live-in Caregiver Program and the 2014 reforms, a careworker is not eligible to come to Canada and work without first securing a work contract from an individual Canadian employer (IRCC, 2014). There is no mechanism internal to the Caregiver Program to help Canadian employers find a suitable careworker from abroad to work for them, and vice versa. Private employment agencies have therefore risen to fill the gap left between the Caregiver Program and private employers in the application process. Services provided by recruitment agencies may include screening of potential careworkers, negotiating the work contract, assisting Canadian employers with submitting the proper paperwork, and providing assistance and information to the worker during the immigration process.

4 Regulation of recruitment agencies and jurisdictional issues

As a federalist state, the regulation of both immigration and labour in Canada involves coordination between overlapping federal and provincial jurisdictions. The federal government has primary authority over immigration established through the *Immigration and Refugee Protection Act* (2001), and makes the key decisions regarding immigration programs and procedures. As of the 1990s, through negotiations with the federal government, the provinces and territories have become increasingly more active in determining certain forms of immigration to their own regions, in addition to overseeing settlement and integration services with funding from the federal government (Paquet, 2014). Furthermore, while assessments of the labour market impact of immigration, including migrant workers, are conducted at the federal level, provincial and territorial governments retain exclusive authority over labour regulations and social welfare within their jurisdictions. Labour regulation and enforcement of labour standards happens differently in each province, and when involving migrant workers, must involve coordination with the federal government to be effective (Fudge, 2011). Thus, while temporary labour programs themselves are managed by under the authority of the federal

government, the labour standards governing their work, including recruitment, are provincial jurisdiction.

Because recruitment often happens transnationally for migrant workers, recruitment agencies can have a significant role in assisting with the immigration process. At the federal level, Bill C-35, originally introduced as the *Cracking Down on Crooked Immigration Consultants Act*, amended Canada's *Immigration and Refugee Protection Act*, so that since June 2011 only a registered immigration consultant, lawyer, or other authorised representative can charge a fee for providing assistance during the immigrant application and process. A prospective Canadian employer or migrant worker may still choose to use an unauthorised immigration consultant or other third party; however, in the absence of an authorised representative, Employment and Social Development Canada (ESDC), the federal agency jointly responsible with Immigration, Refugees and Citizenship Canada (IRCC) for Canada's temporary labour migration programs, will communicate solely with the direct applicants. Furthermore, ESDC policy specifies that all fees incurred by an employer when hiring a third-party agency must be paid by the employer; however, the policy is less specific regarding fees charged by agencies to workers for related services (ESDC, 2018).

Further regulation around recruitment agencies is at the discretion of individual provinces. The provinces of Alberta, British Columbia, Manitoba, Nova Scotia, Ontario, Quebec, and Saskatchewan each have different systems in place for registering some or all parties involved in labour migration arrangements, including recruitment agencies, employers, or migrant workers. The effectiveness of this legislation in providing protection to migrant workers is a major concern – for example, Ontario's *Employment Protection for Foreign Nationals Act* adopted in 2010 specifies that it is illegal for agencies or employers to charge workers fees for recruitment; however the enforcement of this regulation relies on workers filing formal complaints and a 2014 survey of careworkers in Toronto indicated that two thirds were still paying fees averaging \$3,275 despite the protections afforded under this legislation (Migrant Workers Alliance for Change, 2018). In contrast, the *Worker Recruitment and Protection Act* in Manitoba has been widely viewed as a “best practice model” [Faraday, (2012), p.69] for provincial legislation protecting migrant workers (Fudge, 2011). It is a proactive approach to recruiter and employer accountability and greater security for workers, establishing a clear role for the province in facilitating a positive recruitment process.

In Quebec, until recently there was no regulation of agencies recruiting migrant workers from overseas for Canadian contracts. With the adoption of Bill 176 – *An Act to amend the Act respecting labour standards and other legislative provisions mainly to facilitate family-work balance* (Quebec, 2018) in June 2018, new regulations are set to be put in place to protect workers engaging with both temporary employment placement agencies and recruitment agencies to find work. These agencies will now be required to have a permit issued by the Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST), the provincial body overseeing labour regulation, in order to lawfully recruit migrant workers from overseas (art. 33). Agencies that operate without a permit from CNESST, as well as employers who use them, will face financial penalties ranging from \$600 to \$6,000 for a first offence and \$1,200 to \$12,000 for subsequent offences. Furthermore, it is now mandatory for employers to inform the CNESST of migrant workers' arrival dates and to report back if the labour relationship is terminated before the end of the worker's contract, a provision that was objected to by advocates worried that this would lead to immigration denunciations. The Bill also forbids the

agency or employer from apprehending the personal documents and belongings of workers and from asking for fees related to recruitment (art. 33). In the event of a complaint, CNESST can now represent a worker throughout the process.

Recruitment agencies find ways around these regulations and strategically exploit loopholes that emerge, in part, due to “the conundrum of jurisdiction” (Fudge, 2011). The international nature of labour migration means that throughout their immigration and employment trajectory workers, and recruitment agencies, are confronted with a number of different regulations and laws from different states, and at different levels. For instance, recruiters know that if they engage with Filipina workers while they are working in another third country, it is very difficult for Canada or the Philippines to meaningfully regulate that interaction. The movement of workers across various borders and jurisdictions makes them particularly susceptible to exploitation, especially when unregulated agencies are the only transnational intermediaries.

One re-occurring issue has been that recruitment agencies continue to charge fees to migrant workers. Fudge (2011) draws on a case from British Columbia to show how recruitment agencies use loopholes to illegally charge migrant careworkers fees, circumventing provincial legislation. In other cases, recruiters will misrepresent what the fees are for and charge, for example, an exorbitant fee for services related to resume writing (PINAY, 2016). In addition to charging fees, other documented ongoing abuses of migrant workers include: recruiting for employment positions that do not exist, forcing workers to accept offers of employment that are different from the contract agreed upon prior to entry, providing false information regarding the working conditions and responsibilities, demanding bribes to obtain contracts, having workers sign contracts that deny basic human and labour rights, and confiscating travel documents and passports (Gesualdi-Fecteau, 2014). Involvement of private for-profit recruitment agencies in the management of migration, and the legislative gaps that allow them to, have been widely argued to increase the vulnerability of migrant workers and perpetuates injustices and discrimination in Canada’s immigration system. (Gesualdi-Fecteau, 2014; Preibisch and Hennebry, 2012; Stasiulis and Bakan, 2005).

This article contributes to this body of work, using original data that aims to unpack the multiple and intersecting ways in which private recruitment agencies exploit migrant workers, and migrant careworkers in particular.

5 Methods and data collection

Data collection for this article was done in the context of a broader study titled *Placement and recruitment agencies: Silent partners in migrant employment*, funded through Canada’s Social Sciences and Humanities Research Council (2013–2018). This project included a longitudinal component consisting of nine interviews with 40 migrant or immigrant workers employed by temporary employment agencies in Montreal over the course of three years. In conjunction with this, a casefile analysis of two migrant-serving organisations in Montreal, the Immigrant Workers Centre and PINAY, was completed in 2016, with a focus on cases involving complaints about third-party overseas recruitment and temporary employment agencies. These organisations were included as research partners on this project due to the key role they play in advocating for migrant workers in the Montreal area.

This article focuses on the data collected from one of these community organisations, PINAY, a non-profit, grassroots Filipina women's organisation founded in 1991 and dedicated to supporting and advocating for the rights of Filipina domestic workers and careworkers (PINAY, 2013). Their work includes legal information clinics, providing referrals and resources, accompaniment services, unofficial translation services, and other workshops and educational activities. Ultimately, these activities are complementary to PINAY's principal goal of organising the Filipina caregiver community and collectively advocating for their rights. All services are provided free of charge to members and funded through annual membership fees or provided by volunteers.

Analysis of these files focused on the types of recruitment agency-related problems migrant careworkers sought help for, the types of interventions that were engaged in, the results of those interventions (when available), and broad demographic information. Overall, over 200 files were reviewed, 82 files contained reference to a recruitment or employment agency, and 44 cases were identified as seeking community intervention to manage a problem directly related to a recruitment or employment agency. This analysis is drawn from this third group of casefiles, with the majority from 2014 to 2016. The workers represented in these casefiles were mostly female (two were male) and ranged in age from mid-20s to mid-50s. The majority of workers arrived in Canada between 2004 and 2014 (one arrived in 1989); however, for 11 workers their issues with the agency prevented them from coming to Canada and they had a friend or relative in Canada working with PINAY on their behalf. All of the workers came originally from the Philippines; however, only three workers were recruited directly from there. Just over half of workers (23) had come in contact with recruitment agencies while working in other countries abroad, such as Cyprus, Hong Kong, Israel, Saudi Arabia, Singapore, Taiwan, and the United Arab Emirates. Almost a quarter of the workers (9) connected with their recruitment agency while in Canada and needing to find a new employer under the Live-in Caregiver Program or after falling out of status. The vast majority of workers connected to their agencies through referrals from friends or family members, while only seven found their agencies through advertisements and recruiting events abroad. The casefiles mention 33 individual recruitment and employment agencies, many of which have two different company names, or in other cases the name of an individual broker is listed. Of these, 12 different agencies located in or around Montreal were implicated specifically within the complaints registered by the worker, with complaints against two agencies representing the majority of cases. While each agency had a Montreal area location or representative, they appeared to make frequent international trips or engage in frequent communication with representatives or extended networks around the world.

There are limitations to this method of data analysis that should be noted. This data is entirely comprised of migrant careworkers who sought help for and made complaints specifically about their experience with their recruitment agency. As such, it does not include migrant careworkers who had an issue with an agency but did not come forward for help or migrant careworkers who had a relatively satisfactory experience with their agency. As was apparent in the files, many of the migrant careworkers who opened files with PINAY used recruitment agencies, but came to the organisation to address other issues pertaining to their employment or immigration. As such, this data should not be considered representative of all migrant careworker experiences with recruitment agencies; however, it does provide an illuminating snapshot of the variety and complexity of exploitative practices and problems migrant careworkers experience with agencies and how community organisations have worked to support them.

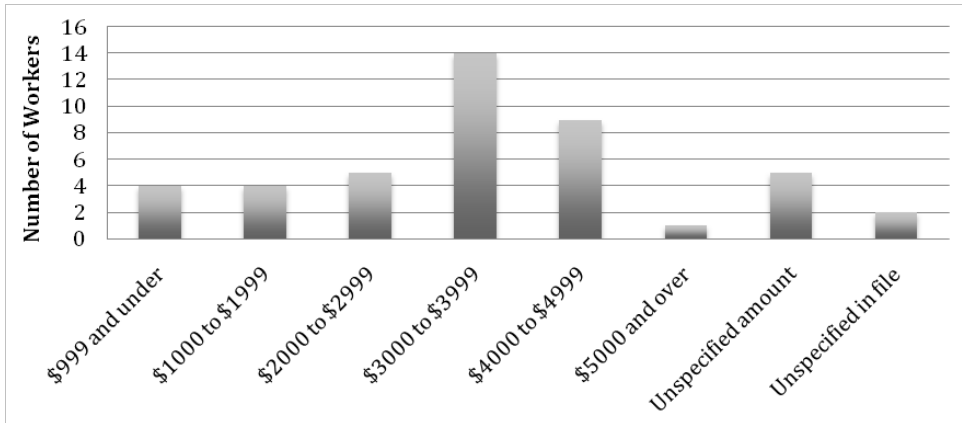
6 Findings

Recruitment agency exploitation is not just a matter of employment, or immigration, but rather it affects a whole range of issues related to migrant workers’ lives and well-being – the multiple compounding effects of exploitation. Without undercutting the interconnectedness of these issues and their effects, the complaints and problems identified by workers with recruitment agencies in the casefiles can be organised into three themes: exploitation of financial need, exploitation of immigration status, and exploitation of personal relationships. Additionally, the casefiles offer a snapshot of the multiple formal and informal ways that workers, often together with community advocates, respond and resist this exploitation.

7 Exploiting financial need

Recruitment agencies capitalise on workers’ need for steady, adequate income, advertising their services to help workers in weak economies, such as the Philippines, to find jobs overseas and help them with the immigration process for, sometimes, exorbitant fees (Stasiulis and Bakan, 2005). Payment of recruitment fees is one of the key ways agencies exploit the financial needs of migrant workers. Despite it being largely prohibited in Canada, according to federal policies and increasingly provincial labour regulation (ESDC, 2018), as well as contrary to established international norms, for any third party to charge a fee to a worker to connect them to an employer (employers are to incur the costs), all but two casefiles disclosed that workers paid fees ranging on average from \$500 to \$5,000, and in one exceptional case above \$11,000 (see Figure 1).

Figure 1 Fee amounts workers paid to agencies (n = 44)



These fees include both cases where migrant careworkers were overseas and looking for work in Canada and cases where a migrant careworker was already in Canada but needed to be connected to a new employer. Careworkers overseas looking to come to Canada are faced with a daunting system. There are a number of bureaucratic steps that a careworker must take in order to apply to work in Canada. Furthermore, there is no other formal mechanism in place for connecting careworkers with potential employers in Canada.

Recruiters in many ways provide a service that is in demand. A number of the casefiles (7) describe careworkers connecting with recruiters through advertisements or recruiting events in places like Hong Kong, Taiwan, Singapore; however, more often, careworkers were referred to recruiters by family members and friends (32). There is a clear contrast between fees charged to workers who are overseas looking to come to Canada (27), who paid an average of \$3,775, and those already in Canada looking to connect to a new employer (9), who paid an average of \$1,075. In addition to these amounts, workers pay application fees required by the Canadian Government to begin the immigration process or renew work permits. Currently, workers applying for or renewing their work permit pay \$155 and an additional \$200 if their previous permit expired. Fees for a permanent residency application are \$1,040, plus additional fees for spouses and children (IRCC, 2018). casefiles also mentioned additional payments to immigration consultants recommended by the agency and for airfare, despite travels costs explicitly being the employer's responsibility in Canadian regulations.

Half of the casefiles (22) included complaints against recruitment agencies that accepted fees but did not provide any services. These casefiles showed instances where applicants or their family members or friends paid an agency to find an employer and/or file immigration paperwork and upon receiving the fees, the agency did not follow through, often avoiding contact, and refused to reimburse their clients. In these instances, workers or their friends or family members paid an average of \$2,850 and received zero services. Supported by community and advocacy organisations like PINAY and the Centre for Research-Action and Race Relations (CRARR), 16 casefiles indicate applicants or their family members or friends pursued legal action against agencies to reclaim their paid fees. The casefiles show only one case where the worker was successful in small claims court. Other outcomes were either not recorded or cases are still ongoing.

For those whom agencies did match with an employer, workers experienced pressure to take jobs with poor working conditions, to work outside their contract, and to work while without a valid work permit. Four cases show workers being placed in jobs where employers were withholding wages, not paying overtime, engaging in harassment, providing poor living conditions, refusing to provide a contract, and assigning the worker to work in multiple houses. In one of these cases, the employer failed to reimburse the agency for the worker's airfare, so the agency began to pursue the worker for these funds. As others have demonstrated, migrant workers often feel compelled to stay in jobs with poor working conditions because they are motivated to meet the requirements for permanent residency as soon as possible in order to reunite with their families and access other employment or education opportunities, have families that depend on them for remittances, and recognise that quitting their job means not only losing their means of income, but also their housing and immigration status in Canada (Banerjee et al., 2017; Stasiulis and Bakan, 2005). Three of these workers had filed formal complaints against their employers with the Quebec labour standards board. For one worker, this caused ongoing harassment by the agency pressuring her to drop her claim. Casefiles also show that agencies sometimes find work for migrant workers without filing the appropriate immigration paperwork. Workers might be between jobs or found the job promised to them no longer available when they arrive in Canada (as discussed below), and are keen to find work as soon as possible to support themselves and their families. Fifteen casefiles specified a work situation where there was no contract. Workers, pressed by financial need and pressure from the agency, will take the risk of working these jobs

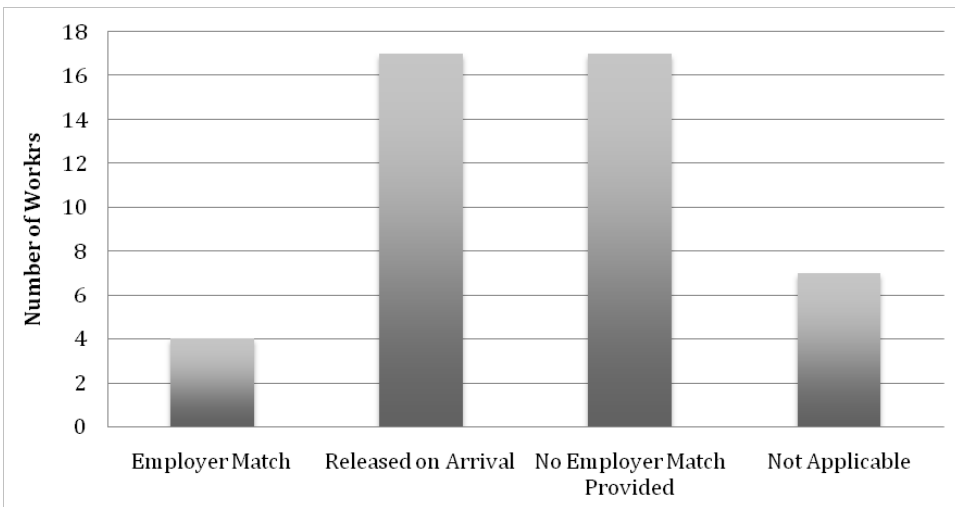
under the table. In at least two of these cases, the agency managed the workers' wages and took a cut of 20%.

These actions of recruitment agencies not only exploit financial need but exacerbate it. As numerous casefiles indicate, fees are often paid by loans from family members or friends (17). Migrant workers feel pressure not only to send remittances back to family members but also to pay off debts to family, friends, and the agencies. Given this, they may be more willing to overlook certain abuses and bad work conditions.

8 Exploiting immigration precarity

Under the Caregiver Program, along with most other TFWPs, migrant workers were given closed work permits that makes their presence in Canada conditional on their employment with a single designated employer⁴. If that arrangement breaks down, migrant careworkers needed to find a new designated employer and file new paperwork in order to maintain their worker status in the country. This is a vulnerable time for migrant workers and they are at risk of losing their temporary worker status in Canada and becoming deportable. One of the most common ways that immigration precarity is intensified for migrant workers is to fall out of status.

Figure 2 Worker-employer matches (n = 44)



Analysis of the casefiles confirmed that some migrant careworkers fall out of status immediately upon arrival (see Figure 2). Despite having a pre-arranged contract with an employer, as arranged by the agency, 17 casefiles showed instances where upon arrival in Canada migrant careworkers found out their jobs were no longer available. This means their employment and their means of financial support, their planned place of residency, and their immigration status are all compromised. For migrant careworkers who have paid exorbitant fees, often including the cost of airfare, and who then find themselves in an unfamiliar country with no job or home, this is quite an unsettling experience. One casefile shows that it took seven months for the agency to find a new employer for the worker; in the meantime, she had little choice but to work under the table in a job she

agency had arranged for her. In another case, the agency shirked its responsibility to find a replacement contract and a migrant careworker was detained by the Canadian Border Security Agency (CBSA) when she tried to enter the country. As conversations with pre-arranged Canadian employers revealed (as noted in the casefiles), the agency was often aware that the job was not available but kept this information from the worker and encouraged them to come regardless, before another contract could be arranged.

The second way migrant careworkers fall out of status, as reported in the casefiles, is when agencies paid to file a migrant worker's immigration paperwork, for example to renew their work permit, fail to do so. Due to the complexity of the immigration process, many migrant careworkers seek out agencies not only to help find an employer but also to help with the immigration process and keeping documents up to date. According to Canadian law, only recognised and registered immigration consultants and lawyers can charge a fee for this service. The casefiles show 20 examples of workers whose work permits were misfiled and applications for permanent residency not filed. This resulted in increased precarity, as workers were then compelled to work under the table, were unable to access their health coverage, were at risk of deportation, and lost significant amounts of money in fees to the agency. In other instances, migrant careworkers filed the paperwork themselves, but received and followed poor immigration advice from the agency, which increased their precarity. For example, several casefiles show instances where the agency instructed a careworker to apply for a student visa, a new work permit, or make a refugee claim when the worker was actually eligible for permanent residency. In each case, this advice maintained or intensified the precarity of the worker and kept them dependent on the agency. At least two workers failed to meet their requirement of 24 months of caregiving work within a 48-month period due to paperwork not being filed or being misfiled by the agency they paid to help them and, with the help of PINAY, filed claims to stay in Canada on humanitarian and compassionate grounds.

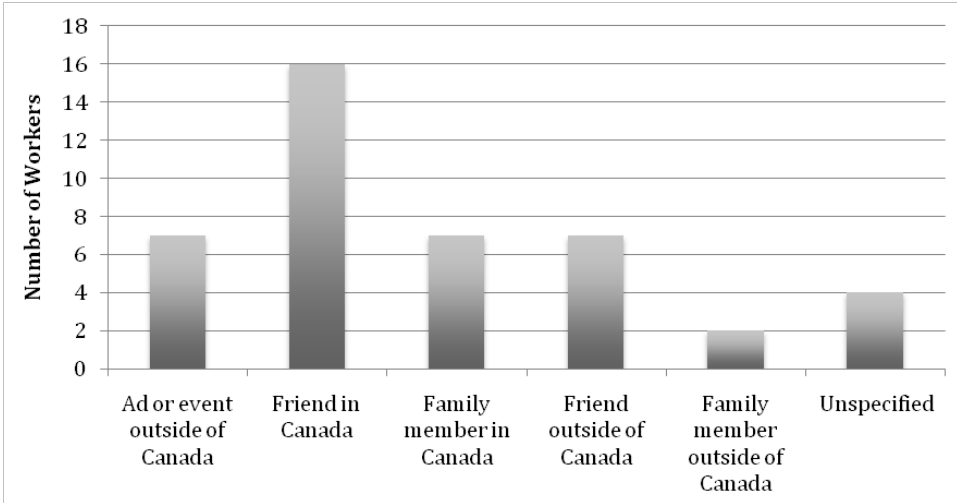
9 Exploiting personal relationships

Finally, personal and social networks can play a significant role in connecting migrant workers to jobs and other resources (Koo and Hanley, 2016; Perry, 2013). For example, in 32 of the casefiles, workers first connected to their recruitment agencies through referrals from friends (23) or family members (9) who were already permanent residents or citizens in Canada or working as careworkers in other countries (see Figure 3). Sometimes recruitment agents were members of the community who were known to have helped others immigrate. The existence of trusting relationships helps explain why workers and their friends and family members might trust a recruiting agent with such large amounts of money without pressing for formal contracts (as discussed above).

Another way that recruiters exploited trusting relationships was by requesting personal loans. Six of the casefiles outline instances where representatives of recruitment agencies manipulated workers, or former careworkers, into lending money, a situation that is quite incredible given the reason why the workers were approaching the agency in the first place was because of their need to earn income. In one instance, the request was made to help with a family health emergency, but in other cases on record the agency asked for loans to help them assist another migrant careworker in need. Through this kind of emotional manipulation, recruiters were able to extract thousands more dollars from their clients – two cases show exceptional amounts totalling \$18,000 and \$27,000. In

each case, the agency had promised to reimburse this money but was now avoiding contact with the worker. In some cases, small portions of the amount owing had been paid back or cheques had been issued for repayment but bounced when recipients tried to deposit them. In all but one of these cases, those who lent money to an agency had taken legal action to reclaim the funds; the results, however, are either pending or unspecified in the casefiles at the time of review.

Figure 3 How workers and agencies connect (n = 44)



Very much intertwined with the experiences of immigration precarity and financial need, another phenomenon revealed by the casefiles is workers being manipulated into signing leases for rooms in buildings owned by their agency. Of the 18 casefiles in which workers described not having employment on arrival, despite paying fees and signing a contract, ten of these workers, who found themselves with no place to live due to these unexpected circumstances, lived in accommodations provided by a single agency. Seven of these casefiles describe migrant workers sleeping on the floors of the agency offices for a number of weeks, and in one case nine workers living in these conditions for five months. Workers had to share pillows and blankets and were instructed not to leave or talk to each other. During this time, they were instructed to clean the agency buildings without compensation. In each case, the workers were then pressured to sign a long-term lease for an apartment in a building owned by the agency. Some casefiles indicate that workers were not given time to read the lease, did not fully understand what the document meant, and were refused a copy of the lease when they requested it. Living conditions in these apartments were poor and overcrowding was the most common complaint, with several casefiles indicating up to 30 women living in an apartment at a given time. Though the casefiles do not indicate how long the workers stayed living in these apartments, on average they each paid the agency \$1,500 for these accommodations. As the workers began to find jobs, they moved out of the apartment but the agency would not let them out of the lease and continued to pressure them through harassment and threats, and filing formal complaints against them with Quebec's Rental Board, even in instances where the worker's space in the apartment was already taken by a new person also paying rent.

10 Responding to and resisting exploitation

The PINAY casefile analysis revealed complaints by migrant careworkers that spoke to three interconnected forms of exploitation. The principal form of exploitation documented was that of financial need – in particular, recruitment agencies charging high fees for service and in some cases failing to provide services once paid. Furthermore, we can see that the exploitation of personal relationships and of precarious immigration status created several persistent issues that have impeded the success of these interventions and present challenges to migrant careworkers claiming their rights. One key problem was lack of formal documentation. Because employment was negotiated through trusting relationships or while under immense stress related to financial need or immigration precarity, workers did not always have invoices documenting the fees they paid or a written contract or record of employment. Furthermore, when they experienced a lapse in immigration status or their work permit, they seemed less likely to want to follow through with a formal complaint, fearing it could impact their immigration process in Canada or have other negative repercussions. Additionally, the length of time it takes to process a complaint or pursue litigation proved to be a barrier.

Each of these workers were supported by PINAY and other advocacy organisations like the Centre for Research-Action and Race Relations (CRARR). Overall, 17 casefiles showed workers or their friends and family pursued legal action; for 16 of them this was specifically to try to reclaim fees. At least eight workers were involved in a class action complaint taken to the Quebec Human Rights Tribunal, while others filed complaints with various other public agencies, such as the Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST) (3), the Régie du logement (Rental Board) (2), and the Canadian Council of Immigration Consultants (2). Casefiles also make mention of other interventions by other community organisations, churches, police, the Canadian Border Services Agency (CBSA), and Quebec's Ministère de l'Immigration, de la Diversité et de l'Inclusion (MIDI). What is evident across casefiles is that careworkers experience challenges using institutions that are designed for citizens and permanent residents and those engaging in standard working relationships.

It is important to note that, for PINAY, such casework goes beyond legal intervention. The plaintiffs receive moral and social support from PINAY members and are encouraged to participate in collective activities in order to meet other careworkers who have similar experiences. They are encouraged to share their experiences in meetings and popular education workshops as a way to help other careworkers learn about how they might avoid situations of exploitation. If the workers are comfortable and it is believed to be safe and beneficial to the case, PINAY also uses media interventions to support workers. On a long-term basis, this community organising grounds the advocacy PINAY engages in, often targeting the same institutions with which careworkers are filing complaints (mentioned above). Such advocacy can take the form of demonstrations, media interventions, and grassroots lobbying of politicians and ministry civil servants.

This transnational aspect of the employment makes it fundamentally different from other employment relationships and other relationships with private, for-profit employment placement agencies. Regulation of private recruitment and employment agencies that work across international jurisdictions with migrant workers require different regulation than other employment agencies. For example, Quebec's 2018 amendments to the *Labour Standards Act* (Bill 176) aim to better regulate recruitment

and employment agencies, but given our findings we can already anticipate that these kinds of issues may still fall through the cracks. As stated above, this amendment formally requires that all recruitment agencies be licensed with the province, that employers only use licensed agencies, introduces financial penalties for agencies operating without a license and for employers who make use of such an agency, requires employers to report arrival and departure dates for workers, and forbids agencies from charging workers fees for connecting them with employment. While the Bill introduces many positive steps, there is still no provision for managing the transnational aspect of the work relationship and worker temporality. The Bill continues to group employment placement agencies and recruitment agencies together, but the transnational aspect of the latter means different jurisdictional issues and different worker vulnerabilities. So far, legislation at the federal and provincial levels (with notable exceptions) has been unable to successfully manage this regulatory challenge, with far-reaching implications for the exploitation of migrant careworkers in Canada, as well as many other migrant workers under TFWPs. Within this gap, non-profit community organisations, like PINAY, play a key role supporting migrant workers to navigate a complex system (often not designed with their experiences in mind) and to speak out against exploitation.

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Notes

- 1 Other forms of exploitation – for example, psychological and sexual harassment or exploitation – may also occur within the bounds of agency relationships (Rogers and Henson, 1997; Hanley et al., 2017b); however, our data did not contain explicit references to such forms of exploitation.
- 2 It remains to be seen whether these reforms will be successful in improving the lives of migrant caregivers; initial experiences are fraught with uncertainty and some elements of the new program appear to make it more difficult for caregivers to obtain permanent status. These reforms have been discussed in more detail elsewhere (ex. Banerjee et al., 2017; Hanley et al., 2017a; Bhuyan et al., 2018). These reforms have not sought to address the difficulties with recruitment agencies.
- 3 At the time of submission, the full impact of these reforms is unclear.
- 4 As mentioned above, this is set to change with the most recent (June 2019) changes to the Caregiver Program.