Racism, Discrimination and Migrant Workers in Canada: Evidence from the Literature

Policy Research, Research and Evaluation Branch

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EXECUTIVE SUMMARY

Canada is celebrated as a diverse, multicultural and inclusive nation, with many accolades to its name, and remains a destination of choice for many immigrants worldwide. It is described, similar to Australia and New Zealand, as a "settlement country," where settlement is an integral part of nation building and immigration an intrinsic component of the national heritage (Organisation for Economic Co-operation and Development (OECD), 2015).[1] In short, despite some challenges, Canada is lauded as a successful immigrant nation, and perceived, in terms of its skilled migration system, as a "benchmark for other countries," as supported by its strong integration outcomes (OECD, 2019). While the literature points to "cracks" in the Canadian immigration model, including "skilled" migration, overall it is widely considered as a model to be emulated by other Western industrialized nations – a phenomenon otherwise known as Canadian "exceptionalism" in the context of multiculturalism and immigration policymaking (Triadafilopoulos, 2021).[2]

When it comes to examining racism and discrimination within the Canadian immigration system as a whole, authors point to certain areas that need particular attention, one of which centers, as per the focus of this paper, on temporary migration.[3] Indeed, on the subject of migrant workers, the literature is somewhat more tentative as to Canada's successes. Accordingly, authors raise concerns that there are "two Canadas," one of which is constituted by fault lines within temporary migration and defined by "zones of exceptionalism" characterized by substandard labour and social protections as well as restrictions on workers' mobility.[4] For the majority of authors, "race," "class," "gender," or "geography" (that is, country of origin), but also "skill level" and "entry class" combine with wider historical, and current structures of discrimination to shape the experiences of migrant workers and their migration experience today.

The primary objective of this review is to identify and analyze potential markers of racism and discrimination in immigration policy that impact migrant workers in Canada, most specifically those in the Seasonal Agricultural Worker Program and the Caregiver Streams that are part of the Temporary Foreign Worker Program. The review also examines the International Mobility Program, albeit from a more limited perspective, due to a still nascent, yet fast-growing, literature on the subject.[5] Overall, studies and reports mostly focus on substandard conditions of labour, lack of access, or restricted access, to social services and permanent residence pathways that are typically available to workers from higher-waged and higher-skilled categories. Indeed, most of the literature, including reports from non-profit organizations, and parliamentary committees refer to issues of "abuse and exploitation" in temporary migration programs, including in specific segments of the International Mobility Program.

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[1] People born outside of Canada constitute approximately one-fifth of the Canadian population, one of the highest ratios in Western industrialized countries (Cheatham, Council on Foreign Relations, 2020).

[2] See, as an example, Cheatham (2020) and Ugland (2018) writing on three Scandinavian countries seeking to "borrow from" Canada's immigration policies. See Reitz (2012) and Triadafilopoulos (2021) who point to flaws when it comes to depicting the Canadian immigration system as a "model."

[3] In light of the growing numbers of temporary migrant workers, Hari and Liew describe "temporariness" as a "new norm" of Canadian immigration (Hari and Liew, 2018).

[4] The issue of worker's mobility is tied to the employer-specific worker permit (see Section 3).

[5] The Temporary Foreign Worker Program and the International Mobility Program constitute the two main arms of the temporary migrant programs in Canada. Advocates, like academics, point to the lack of information pertaining to the program compared to the Temporary Foreign Worker Program (Lynch & Aceytuno, 2021). They note, in addition to other issues, that the employer-specific permit represents a source of precariousness in both programs.

While on the surface, it may appear that these references are dissociated from the terminologies and practices of racism and discrimination, they are in fact often articulated in the context of the historical racist genesis of the programs, and also to processes of racialization that may be drawn from systemic racism and discriminatory practices. Indeed, there is meaningful literature on the historical formation of temporary programs in Canada, and its relationship to racism and discrimination as constituted through gender, geography, and class. Most scholars suggest that these historical formations are key to understanding the situation facing migrant workers in Canada today as they continue to inform the shape and contents of policy. This is sometimes referred to as history's "ongoing effects" or "lasting impacts."[6] In this light, the federal government recognizes that historical practices continue to drive processes of stigma and discrimination for racialized peoples (Public Health Agency of Canada (PHAC), 2020). In the case of migrants, for example, some scholars have drawn connections between systems of indentureship – described as a discriminatory practice – and temporary migration programs. Others point out that the seasonality of the Seasonal Agricultural Worker Program stems from the racist assumption that racialized peoples cannot adjust to the Canadian climate, nor "assimilate" to Canada due to their inherent nature, as another example.

In addition to the above considerations, scholars argue that it is key to be cognizant of the factors surrounding the global movement of migrants[7] from the (mostly poorer) global South to the (mostly richer) nations of the global North,[8] which is marked by migrants remitting to countries of origin; their separation from families; and isolation in their communities in Canada due to long hours of work; live-in arrangements (living with, or in close proximity to, employers), as well as language based, and other, barriers in accessing social benefits, labour protection information and compensation, legal aid, and settlement services. Relatedly, the literature refers to the "race"-based and gender-based barriers experienced by migrant workers. Authors point out that these unequal global realities may be replicated within nations, but also within households, for caregivers who still "live-in."

As noted, evidence of exploitative practices abounds within these programs, whether for migrant agricultural workers or caregivers. Caregivers, for example, experience downward social mobility in Canada, tied to the absence of the recognition of their foreign credential experience, but also barriers which prevent further study and/or employment choices. In this context, authors depict racism as a structural barrier and the "gendered, racialized, and classed immigration system" that feed into the downward mobility of female care workers (Lightman et al, 2021). There is also a gendered toll on caregiver mothers whose experiences – not unlike those of migrant mothers in temporary agricultural programs – illustrate the importance of examining these issues with an "intersectional" lens.

The questions underpinning this study, as related to immigration policy, include: What are the commonly accepted definitions of racism and discrimination? What is the historical backdrop that informs Canada's temporary migrant programs? What do we know about racism,

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[6] IRCC's Associate Deputy Minister Caroline Xavier, in a panel discussion on racism and discrimination organized by the Privy Council, spoke of the significance of examining history and its impacts (Privy Council, 2021)

[7] See "globalization" in Section 3, footnote 56.

[8] This is not meant to be read as an over-generalization of "poor" and "rich" nations: some countries of the global South are richer than others (it is not a monolithic entity), while even rich nations of the global North contain deep pockets of concerning poverty and disadvantage. When it comes to migrant workers, countries of origin, their economic situation, as well as other factors, may be overwhelming considerations in their decision to leave their countries and seek employment in countries of the global North, such as Canada. Tungohan (2020) cautions against narratives that ignore how structural adjustment programs position countries like the Philippines in a "dependent relationship" with more affluent nations and push Filipino nationals to seek better opportunities overseas.

discrimination and migrant workers? What kind of challenges are encountered by migrant workers on the grounds of "race," class, gender and other identity factors? The intent of this paper is not to arrive at a fixed conclusion as to whether racism and discrimination exist within these programs, but rather to raise awareness of the debates within the literature and among experts. Having said this, there is a wide consensus in the literature that questions of "race," "gender," "class," "geography" are inevitable factors that impact policies regarding migrant workers whether in the Temporary Foreign Worker Program or the International Mobility Program.

There is also a wide consensus that, in the case of the Seasonal Agricultural Worker Program and the Caregiver Streams, their unequivocal rootedness in racism and discrimination inform the current nomenclature of immigration policies. In other words, though racism may no longer sustain or substantiate these programs, they may not be free of racism, due to the fact that they arose from racism. Some scholars point out that racism and discrimination are an intrinsic part of the matrix that make up these programs, depicting it as "institutional racism." Others note that the rootedness of racism within these programs cannot be ignored, and that though explicit racist ideas may no longer sustain them, they may still have a discriminatory impact that prevents the full "humanization" of racialized migrants.

Most authors, and organizations such as the Ontario Human Rights Commission, explain that discriminatory impact is to be assessed by the disproportional outcomes experienced by a social group, in this case, migrant workers. Are they mostly racialized? Do they mostly originate from the global South? Do they experience differential treatment with adverse and disproportionate effects on their health, participation in their communities, places of work and broader experiences? Are their contributions to the Canadian economy and society proportionally recognized? Depending on how one answers these questions, a thoughtful pause on how Canada addresses potential discrimination in temporary migration, may well be warranted.

ACKNOWLEDGEMENTS

ACRONYMS

CCR:	Canadian Council for Refugees
CPR:	Canadian Pacific Railway
ESDC:	Employment and Social Development Canada
GBA+:	Gender-based Analysis Plus
HUMA:	Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities
IB-SST	Immigration Branch - Temporary Resident Policy and Programs
ICT:	Intra-company Transfer
IEC:	International Experience Canada
IMP:	International Mobility Program
IRCC:	Immigration, Refugees and Citizenship Canada
LCP:	Live-in Caregiver Program
LMIA:	Labour Market Impact Assessment
NAFTA:	North American Free Trade Agreement
NIEAP:	Non-Immigration Employment Authorization Program
NOC:	National Occupational Classification
OECD:	Organisation for Economic Co-operation and Development
OHRC:	Ontario Human Rights Commission
PHAC:	Public Health Agency of Canada
SAW:	Seasonal Agricultural Worker
SAWP:	Seasonal Agricultural Worker Program
TBS:	Treasury Board of Canada Secretariat
TFW:	Temporary Foreign Worker
TFWP:	Temporary Foreign Worker Program
TIEDI:	Toronto Immigrant Employment Data Initiative
UFCW:	United Food and Commercial Workers Union

The impact of the nine-and-a-half minute video of George Floyd being murdered by a police officer in May of 2020, cannot be understated. It was a significant moment in the history of "race" relations—not just in the United States, but internationally as well, including Canada.[9] In response, the leaders in the federal government, federal public service, and senior executives at Immigration, Refugees and Citizenship Canada (IRCC) renewed their commitment to addressing racism and discrimination in very clear terms:

- But we also have work—lots of work—left to do in making our own institutions free of systemic racism and bias.
  —Ian Shugart, Clerk of the Privy Council and Secretary to the Cabinet

- Respect and inclusion are essential to who we are as an organization and what we expect of you as individuals. Fostering an environment that allows everyone to engage fully and authentically is an important part of that inclusion. That is important to uphold across the public service, but there are few corners in this institution where a commitment to racial equality is as important as here at IRCC.
  —Catrina Tapley, Deputy Minister of IRCC
  —Caroline Xavier, Associate Deputy Minister of IRCC

- As a Department and as a sector, we have the privilege of serving a diverse clientele from all walks of life, and from all corners of the globe. With that privilege comes a profound responsibility to ensure that racial and social justice are present in everything that we do: from how we treat our clients, how we staff our teams, to addressing systemic barriers that exist in the programs we manage…GBA+ analysis is not a box we get to check and move on; it's a responsibility we have as policy makers to bring inclusivity by design for all groups and people we may impact. This is an ongoing and iterative process that we need to engage in with open hearts and minds, consistent with our shared values of mutual respect, equality for all peoples, compassion and inclusion.
  —Marian Campbell Jarvis, Assistant Deputy Minister, Strategic and Program Policy Sector
  —Natasha Kim, Former Associate Assistant Deputy Minister, Strategic and Program Policy Sector

The space for this report was, in large part, created as a result of the words above, and the initiative of a few members of the Research and Evaluation Branch.

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[9] "Race" is used in quotation marks throughout the text to highlight its socially constructed nature (see Section 1).

INTRODUCTION

This paper is premised on bringing together an extensive literature spanning decades of research pertaining to racism, discrimination and migrant workers in Canada. Its primary objective is to identify potential markers of racism and discrimination in immigration programming and policymaking that impact migrant workers in Canada, most specifically participants in the Seasonal Agricultural Worker Program (SAWP), the caregiver streams and the International Mobility Program (IMP).[10] Accordingly, its overall purpose is to present and analyze the findings of the literature on migrant workers, racism and discrimination, in order to support the work of IRCC's Anti-Racism Task Force, particularly as it relates to reviewing racism in IRCC policies and programs. The paper is not a "literature review" in the strict sense; however, it strives to provide an accurate summary, and analysis, of the findings and evidence within much of the literature on migrant workers.[11] It was important to equip the text with quotes in order to illustrate the specific phrasing used in the wider literature given the nature of the subject-matter under study.

In terms of the structure of this paper, racism and discrimination are explored in Section 1, but readers who are already familiar with these concepts may wish to begin with Section 2 as they may find the explanations in Section 1 redundant. Section 2 explores racism and discrimination in Canadian immigration history, and the last section focuses on migrant workers, also within the lens of racism and discrimination. It bears mentioning that retracing the continuum of racism in the history of immigration policies provides the tools for grasping present-day biases, and the legacies of racism, that may underpin current immigration policies and programs, including those related to migrant workers in Canada. The review concludes with a summary of key messages embedded in the wider literature.

In alignment with the above purpose, the paper grounds current perspectives, and subsequent findings, on longstanding and established peer-reviewed research, as well as recent findings by academics, including social scientists, governments and non-governmental organizations, provincial human rights commissions, parliamentary committees, journalistic sources and other stakeholders. Accordingly, it uncovers key debates, while being consistent with the literature's findings as a whole. Much of the literature suggests that this approach is a reasonable one, although there may be other ways of approaching this review. Indeed, this work neither seeks to be an endpoint, nor does it intend to provide any proposed way forward.

In order to examine racism and discrimination as they relate to migrant workers, it is important to provide a description of both racism and discrimination in order for the reader to have clarity about the findings in this paper. The aim of this approach is not to unpack the debates and the current consensus on definitions of racism and discrimination merely for the purpose of debating these issues – as crucial as this is – but rather, to establish a framework to explore how the literature approaches racism and discrimination as related to migrants, historically and today. In light of these considerations, all the complexities and breadth of racism and "race" cannot be fully addressed by this review.

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[10] The term "migrant workers" or "migrants," in this work, refers exclusively to individuals who are commonly identified as temporary foreign workers in Canada, that is, individuals working in Canada on a time-limited basis, either under the TFWP or the International Mobility Program (IMP), who are not permanent residents or Canadian citizens. Of note, the caregiver streams may be referred to as "Live in Caregiver Program" (LCP) or "Caregiver Program" in the wider literature. In this paper, "caregiver streams" will be used to refer to the changes made to the LCP post-2014.

[11] This research piece will be referred to as a "review," "paper," or "report" throughout the text.

It is important to note that while specific aspects of racism have been clearly defined in much of the literature on "race"[12] (see for instance, scientific racism, stereotypes and other concepts described in Section 1), the debates on racism are ever-evolving. Therefore, society's understanding of what constitutes racism will, in all likelihood, continue to evolve.

It has been, however, clearly established that racism is composed of certain descriptions that are now widely accepted[13] at the same time as consultations, data collection, research and analysis unfold. Accordingly, racism in Canada is a social phenomenon that adversely impacts diverse populations: it is a lived reality for Indigenous, as well as Black and other racialized peoples,[14] as acknowledged by the federal government, Canadian courts, Canadian historians, as well as social scientists.

> The Government of Canada has an ongoing commitment to diversity and inclusion, and working towards the elimination of racism and discrimination.
> Canadian Heritage.

It is important to add that while this review refers to Indigenous peoples (that is, First Nations, Inuit and Métis peoples as defined in section 35 of the Canadian Constitution of 1982) in certain instances, its scope does not allow for a detailed description of the unique characteristics and experiences of this population, particularly as related to the historical intersection of immigration and Indigenous policy in Canada.

Although some of the impacts of the pandemic are mentioned, this report does not cover the theme of COVID-19 and migrant workers with a depth of analysis due to time, scoping, and other constraints.[15] The amount of literature on this topic is likely to grow in light of the pandemic's significance for immigration policy, with its particular relevance to migrant workers.

In addition, the author is cognizant that by focusing on racism, with references to gender, class, migrant status, and geography, there is an inherent lack of focus on other grounds that can be the basis of discrimination, such as age, religion, ability status, sexual orientation, and others. The intent is not to undervalue the importance of these other grounds, as the literature certainly contains examples of discrimination on the basis of these grounds in IRCC's policies and programs. However, in order to keep the scope of this work within the time constraints of the project framework, it is directed specifically at racism, with explicit acknowledgement that the characteristics of intersectionality will enrich the analysis and provide some indications of the issues that arise from discrimination based on a broad set of grounds.

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[12] "Race" is used in quotation marks throughout the text to highlight its socially constructed nature.

[13] These descriptions and principles are entrenched in universally accepted standards and international human rights instruments which Canada has ratified, for example. The federal government also abides by anti-racist principles (see Canadian Heritage).

[14] The paper uses the term "racialized" to reflect the wide usage of this word by the literature, and the socially constructed nature of racialized categories. Statistics Canada (2015) refers to the term "visible minorities": The *Employment Equity Act* defines visible minorities as "persons, other than Aboriginal peoples, who are non-Caucasian in race or non-white in colour." The visible minority population consists mainly of the following groups: South Asian, Chinese, Black, Filipino, Latin American, Arab, Southeast Asian, West Asian, Korean and Japanese." Treasury Board of Canada Secretariat (TBS) Canada (2021) acknowledges that the term "visible minorities" has flaws and is being phased out. TBS points out that the term "visible minorities" does not recognize the specificities of communities, and adopts "whiteness" as the norm. TBS favors the term "racialized": "Racialized acknowledges that race is a social construct, leading to racism, and racial prejudices [and systemic discrimination] being applied to certain groups of people."

[15] For further readings on migrant workers and COVID-19, see Landry et al (2021); Migrant Rights Network (2020); Triandafyllidou and Nalbandian (2020).

GENDER-BASED ANALYSIS PLUS (GBA+)

IRCC (2021b) explains, "GBA+ is an analytical tool that enables public servants to achieve the best possible outcomes for clients: Canadians, permanent residents (including refugees), **temporary residents**, prospective clients (people interested in coming to Canada) and our IRCC colleagues".

This review adopts a Gender-Based Analysis Plus approach. IRCC (2019) explains that a GBA+ analysis:

- Is an evidence-based process to assess the impact of policies, programs, legislation, and service delivery on diverse groups of women, men, girls and boys;
- Is an analytical tool for gender equality that recognizes that equal opportunity does not necessarily mean equal results; and
- Ensures that the intersections between gender and other diversity factors are considered, including ethnicity, religion, nationality, class, age and sexuality.

IRCC (2021b) acknowledges that the importance of the "plus" in GBA+ is indeed not solely about gender. The "multiple identity factors" that intersect include (see more in Section 1 on intersectionality):

- age
- race
- gender
- levels of education
- religion
- socio-economic status
- mental or physical disability
- ethnicity
- gender identity
- sexual orientation

The review focuses on "race" and "gender," but also refers to other identity factors. For instance, "gender" may be more of a consideration for caregivers, who are disproportionately women. Of note, scholars also consider "migration status" and "geography" to be two of the identity factors that differentially impact migrants' lives, migration experiences and integration outcomes (Spitzer, 2006). Similarly, "levels of education" and "social-economic status," as identified by IRCC, and also "skill level," constitute factors that may also impact the experiences of migrant workers in Canada, in relation to their migration process and potential discriminatory practices (see Section 3). GBA+ is central to the federal government's endeavours to redress inequalities and to place gender and other diversity factors into its policies and programs.

SEARCH STRATEGY

Pertinent academic sources, that is, peer-reviewed journal articles, book chapters and books were obtained from online databases. Searches were conducted in the following databases: The R&E digital library, JSTOR, Social Science Research Network, The Sage Political Science Abstracts, Google, Google Scholar, and the MigrantWorkersRights online database, which contains a multiplicity of peer-reviewed academic and non-academic sources on migrant workers, specifically. Key articles located throughout the searches provided additional relevant references. In addition, the researcher attended, and used recorded, online symposiums, conferences and presentations on the subject-matter while preparing this report. Presentations included the IB-SST led Expert Series.

The Library of Parliament provided a key publication on migrant workers, and the main characteristics of the Temporary Foreign Worker Program (TFWP), and reports from Standing Committees also provided data for this review. In addition, government publications, and other data, were obtained via government websites (such as Canadian Heritage, Department of Justice, IRCC, Public Health Agency of Canada (PHAC) and/or Statistics Canada) and organizations such as the OHRC, the Migration Policy Institute, the Wellesley Institute, the Canadian Museum of Immigration at Pier 21, and the Canadian Council for Refugees, among others.

Approximately 160 peer-reviewed articles, books and book chapters were reviewed, or cited, in addition to about 20 NGO and non-profit organization publications, as well as approximately 15 journalistic sources. Some of the keywords that guided this review included: "race," "racism," "discrimination," "migrant workers," "temporary foreign workers," "discriminatory immigration history," "racism in immigration policies," "SAWP," "Live-in caregivers," "IMP" and "Canada."

Evidence collection methodologies rested primarily on sources such as peer-reviewed academic articles; books; documentaries; reports by federal departments and agencies, parliamentary committees and the not-for-profit sector; experts' presentations and interviews; government officials' statements; journalistic reports, which provided the foundational material for the analysis of contents. Sources, therefore, included both academic text as well as, more broadly, "grey literature." Quantitative data, as related to the demographic characteristics of migrant workers, were located in government and non-governmental publications, including IRCC's, peer-reviewed articles or presentation of research findings by experts, and referenced whenever applicable to the contents of the report.

PART 1: RACISM

History of racism or scientific (biological) racism

Scientific, or biological, racism is an ideology that has been crucial in shaping current debates and understanding of "race." With its roots in Enlightenment thought, scientific racism supports the belief that there is a hierarchy of "races" with one "race" being superior to others, and that "races" are fundamentally different.[16] Accordingly, scientific racism lends credence to the belief that racial classifications and differences are biologically real, and it is predicated on the tenet of the inherent inferiority and superiority of specific "races" (Miles, 1982; Li, 2001).[17] Racial differences, such as skin colour, stature, eye shape or head shape, were arbitrarily chosen to justify racial classification resulting in a hierarchy of human value based on race (Backhouse, 1999; Bolaria and Li, 1988; Fleras, 2017; Nestel, 2012; Satzewich, 2011). In the same vein, Clair and Denis (2015, 857) pinpoint, "Bundled up with eighteenth century classifications of various racial groups were assertions of moral, intellectual, spiritual, and other forms of superiority."[18]

While much of the literature on this subject points to a degree of divergence of viewpoints as to the causes of racism, it nonetheless posits that such notions have had real and devastating impacts (Fleras, 2017, 39-41; Henry, 2004; Nestel, 2012). Scientific racism is believed to have culminated in, as worded by Henry (2004), "discriminatory practices." Racial classifications, scholars explain, provided the ideological rationale justifying slavery, the seizure of First Nations' lands, the treatment of Asian immigrants to Canada in the 19th century, and the Holocaust (Aiken, 2007; Arat-Koc, 1997; Clair and Denis, 2015; Goldberg, 2002; Joppke, 2012; Nestel, 2012; Spoonley, 2019; Thobani, 2007). Particularly relevant for this review, Bolari and Li (1988, 7) suggest that racial classifications justified the association of specific "races" with free or cheap labour, and in so doing, sanctioned labour systems such as slavery and indentureship (also known as indentured labour).[19] According to the federal government, these are not solely regrettable historical events with no links to our current context. For instance, PHAC (2020) recognizes that these historical practices continue to drive processes of stigma and discrimination for racialized peoples.[20]

Race as a social construct

The belief in scientific racism shifted in the 1950s and 1960s, in the aftermath of the Holocaust, and the establishment of the United Nations and its international agencies. For instance, in a series of statements on "race," signed by notable scientists, United Nations Educational,

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[16] See also eugenics and social Darwinism for further readings.

[17] In reality, there is more diversity within racial groups than there is between racial groups (McChesney, 2015).

[18] Of note, a handful of contemporary authors continue to staunchly defend biological, or scientific, racism by attributing fixed characteristics to groups, such as different skull and brain sizes depending on one's "race," (Rushton, 1995; see also D'Souza, 1995 for his ideas on inherent abilities embedded in "race"). In so doing, they argue for the inherent inferiority of specific "races" based on fixed biological traits. Such views, nonetheless, are no longer considered socially acceptable, and have been widely criticized for their non-scientific and racist underpinnings (Graves, 2002; Turkheimer, 1992).

[19] In line with this argument, Montagu notes (cited in Satzewich, 2011, 25-26.), "The idea of race was, in fact, the deliberate creation of an exploiting class which was seeking to maintain and defend its privileges against what was profitably regarded as an inferior social caste."

[20] This point related to discrimination is expanded upon in Part 2.

Scientific and Cultural Organization (UNESCO) asserted that "race" is a social construct and not a biological phenomenon (Nestel, 2012; Satzewich and Liodakis, 2007, 11; Spoonley, 2019, 485). These efforts have been described as a major shift in thinking about "race" throughout much of the literature.[21]

> "Race" is biologically meaningless. However, racial differences are still perceived to be real. Racialization is the socio-political process that attributes social significance to "race" by giving meaning to physical characteristics. Therefore, "racialized" people are defined in relation to a dominant (White) norm.

However, despite the urgent need to discredit theories of racial hierarchy in the aftermath of Nazism and the genocide of World War II, much of the literature contends that it is still alive and well (Satzewich and Liodakis, 2007, 11). Rex (1983) argues, "Racism may have originated as a scientific error, but it has taken a life of its own, filtering down into everyday thinking and behaviour, and also into the operations of our social institutions." In other words, "race" may not "make sense" biologically, but the belief that it is real still persists. In the same vein, Fleras (2017, 36) explains, **"…race matters not because it's biologically real, but because people perceive it to be real or act as if it were real, with often deadly consequences**." (For more details on the continuing relevance of "race," see Clair and Denis (2015, 857); Galabuzi (2006); Kendi (2016 & 2019); Li (1998); Satzewich and Liodakis (2007)).

Social scientists have coined the term "racialization" to better reflect the social construction of the term "race," and its continued use as a marker of current social and economic conditions (Markus and Moya, 2010; Miles, 1989, 76). Li (2001, 78) depicts the use of the term racialization as follows: "The term racialization is often used to highlight the social process of attributing social significance to phenotypical[22] features of people and designating those so signified as 'racial.'" In this sense, diversity refers to non-Whites (see also Thobani, 2007, 158).

> A stereotype is the attribution of certain characteristics (whether negative or positive) to a whole group of people. Much of the literature reveals that it constitutes an intrinsic part of racism.

Additionally, much of the literature points to the fact that "race" continues to be expressed through the assertion of prejudices, such as stereotypes, that is, the attribution of fixed characteristics to social groups. Satzewich (2001, 2) explains that behind stereotypes such as "Asians are good at maths," or "Black people are good at basketball" lies the belief that "race is an inherent human characteristic," invoking scientific racism (see also Rex, 1983). Some authors posit that the importance of stereotypes cannot be undermined in the creation and perpetuation of racism. For example, Spoonley explains (2019, 484), "Stereotypes remain an important part of the vocabulary and practice of racism." Stereotypes, like the concept of xenophobia, are related to "prejudices" in the literature on racism insofar as these beliefs can inform attitudes and set ideas about racialized peoples.

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[21] See also the term "ethnicity" that emerged in the 1940s to reflect "ancestry, culture, religion, language, and geographic location relevant to a particular time" rather than phenotype, e.g. skin colour and supposed biological expressions of group inferiority as related to "race" (O'Loughlin, 1999 in Nestel, 2012, 5).

[22] Phenotypes are physical characteristics, such as head shape or skin colour, used in the past to justify racial classifications and certain groups' inferiority.

Modern forms of racism in Canadian and international literature

This review continues by examining four aspects of racism: a) Canadian racism, b) the post-racial narrative, c) the subtlety of racism and d) systemic racism. Sub sections b) and c) are quite crucial in understanding systemic racism, as the latter stands opposed to conceptions embedded in the post-racial narrative. The post-racial narrative is also best laid out in the context of the Canadian racism debate and its features.

> Racism and xenophobia… often overlap. Racism is an ideological construct that assigns a certain race … to a position of power over others on the basis of physical and cultural attributes, as well as economic wealth...
>
> Xenophobia describes attitudes, prejudices and behavior that reject, exclude and often vilify persons, based on the perception that they are outsiders or foreigners to the community, society or national identity. As a sociologist puts it, xenophobia is an attitudinal orientation of hostility against foreigners in a given population.
>
> International Organization for Migration, International Labor Organization, United Nations

Canadian racism? Myths, politeness and denial

Canada has been described as having its own brand of racism. What does the literature indicate as to the current debates on Canadian racism?

Vucetic (2014) suggests, "Race is a taboo topic in contemporary polite society." In the same vein, Cole (2020) points out, "Canada keeps being surprised at its own racism." It often comes as a surprise to learn that slavery existed in Canada, that Canada had its Ku Klux Klan,[23] and an exclusive White immigration policy well into the 1960s. Thobani (2007, 151), citing McLaren's work (2004), indicates that theories of scientific racism have not only guided state policies in Germany, but also in other Western nations, including Canada (see Section 2):

> As a partner in the Allied forces fighting fascism, Canada claimed moral superiority over Germany along with its allies in defeating Nazism. But embarrassingly enough, the racial science used by the Nazis could be also found informing Canadian state policy. The heightened association with scientific and biological racism discredited this form of racism so thoroughly that every western nation-state, including Canada, was thereafter compelled to distance itself from the use of such racist science to determine state policy. The continued public use of overtly racialized policies, or the eugenicist values shaping public policy, and of the scientific theories of racial supremacy … become impossible to defend publicly, except among the most extreme sectors of these societies and the overtly apartheid regimes.

For some scholars, the silences surrounding racism may be telling. Speaking of racism in Canada, scholars note, may seem contradictory in light of its multicultural and equalitarian fabric. After all, Canada is known for having one of the most diverse populations in the world; yet, racism still persists (Dauvergne, 2013; Fleras, 2017; Li, 2001 Teelucksingh, 2021). The coexistence of racism with multiculturalism has been described as "cognitive dissonance" (Dauvergne, 2013), a "Canadian paradox" (Fleras, 2017), a "Canadian myth" (Block and

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[23] Sismondo, 2017. For the 'Kanadian Knights of the KKK,' refer to Backhouse (1999, 280) and Chapter 6 of her book *Colour Coded*.

Galabuzi, 2011), or as "ambivalence" (Triadafilopoulos, 2021).[24] As such, the rhetoric of inclusiveness, it is observed, does not always match social and economic reality for racialized groups (see also Galabuzi, 2001; Nakhaie and Kazemipur, 2013; Schimmele (IRCC), 2016).

In the aftermath of George Floyd's killing by police in the United States, several public figures commented on the absence of systemic racism in Canada. In sharp contradistinction to these claims, Walcott (2020) observes, "… denial is part of the system of systemic racism… There are these myths that we are so radically different from the US" (see also Maynard, 2017; Miller, 2020). Similarly, Sandy Hudson (see Bridges, 2020), one of the co-founders of the Black Lives Movement in Canada points out that what really separates Canada from the US in relation to racism is its denial: "The thing that is very different about Canada is the denial that we are faced with when we tell people outside of Black communities that this is a problem that needs to be addressed." Catrina Tapley (2021), Deputy Minister at IRCC, voices that systemic racism often goes unacknowledged, when it actually needs to be addressed. She states (2020), "if you don't call it out, nothing is going to change."

The Commission on Systemic Racism in the Ontario Criminal Justice System (1995, ii) similarly observes that racism has "a long history in Canada" and "remains a defining feature." While the focus of this study was on criminal justice, the commissioners note, "Racism has shaped immigration to this country and settlement within it…" The Supreme Court of Canada (2005), likewise, acknowledges that racial prejudice is an indisputable and notorious social fact in Canada.[25]

Cannon (1995) reflects upon the idea underlying the politeness, and even gentleness, of Canadian racism, "Canadian racism is, on the whole, more genteel than its American and European counterparts… Because it is more refined, people have a tendency to dismiss racism in Canada, to ignore it, or to forgive it. But that opens the door to more dangerous, more violent forms of racism, and those forms are alive in Canada too" (see also Aiken, 2007, 66 and Ryerson University Symposium, 2021).[26]

Henry and Taylor (cited in Satzewich and Liodakis, 2007, 156) infer that Canadians easily reject the overt "in-your-face" manifestations of racism, and token gestures are regularly made in order to celebrate diversity and inclusion. However, these authors suggest that these gestures mask, rather than address, the root of the problem, especially if the celebration of diversity is used simply as a measure to tick a checkbox to claim that substantive anti-racist actions are being taken. To expand on this concept further, "checkbox diversity" often acts as tokenism and fails to examine the solutions needed to address systemic issues of racial inequality, by presenting demographic representation as the panacea. Anand (2019) explains, "Tokenism is the act of making surface-level tweaks to issues of marginalization that are performative and lack in veritable efforts to reduce inequality." **In other words, diversity, on its own, is not equivalent to equity**. McGirt (2019) sheds lights on Anand's ideas: "if you look to check boxes and simply expect the non-majority culture person to assimilate, you've missed the beauty of their presence. Because they walk through the world differently than you, they see opportunities and problems differently than you. That's the gift." In sum, while Cannon

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[24] Triadafilopoulos (2021, 4) writes, "Canadians' support for multiculturalism, while real, is also paradoxically marked by ambivalence and, at times, outright hostility to racialized and religious minorities, generally, and Muslims, in particular." He also notes, "Strong support for multiculturalism has not prevented an increase in racist discrimination and violence."

[25] *R v. Spence* [2005] S.C.R 458, para 5.

[26] During a Ryerson University Symposium on Discrimination (2021), the Consul General of Germany in Toronto stated, "Discrimination in its various forms and racism are by no means an exclusive problem of Canada's Southern neighbour."

conveys that Canadian racism is more "refined" or "polite," and while celebrations of diversity and inclusion are important manifestations of multiculturalism, the impacts of racism remain deeply seated in steep inequalities constructed along "racial" lines (See Part 2, Statistics).

Debates proliferate on the extent to which racism shapes Canadian society. Indeed, not all authors agree on the extent to which racism persists (Satzewich and Liodakis, 2007, 156). Nonetheless, while commentators and scholars disagree on the extent and breadth of racism in Canada, whether in policies, laws, and as a general persistent trait of Canadian society, and while racism is complex and multifaceted, much of the literature highlights that it continues to be impactful. In other words, much of the literature coheres on the point that it exists, has a negative impact on racialized peoples, and needs to be taken seriously.

> The literature, while disparate on the degree to which racism prevails within Canadian society, nonetheless highlights that racism remains a feature of Canadian history, including its centrality to Canadian immigration history.
>
> Canadian courts have recognized that racism exists in Canada.

Post-racial narrative

A feature of Canadian racism, referred to in much of the literature on "race," is known as "the post racial narrative." This narrative underpins the idea of a society that is "past the race debate" and is "colour-blind." This concept suggests that because we are all biologically one species, and benefit from a society legally built around assertions of equality and fairness, racism cannot exist. Ku et al (2019, 293) skillfully sum up this concept, "if race, when defined solely as "biological," is obsolete, then there is neither race nor racism."

This position, coined "democratic racism" by Henry and Tator (2005), includes some of the following features:

- Colour-blindness: peoples are all the same, despite appearances and underneath various shades of skin tones. Therefore, racism cannot exist.

- Discourse of equal opportunity: it maintains that if everyone is treated fairly and "the same," all peoples benefit from the same level-playing field. Therefore, no-one is disadvantaged. There are no barriers to accessing opportunities. This thereby leads to the discourse on blaming the victim (see below bullet).

- Discourse on blaming the victim: racialized peoples are making insufficient efforts to partake in a fair and meritocratic Canadian society.[27] As such, racial disparities[28] (see Part 2, Statistics) exist, but they are the result of the "bad apple" metaphor, e.g. isolated racist incidents or sporadic outbursts. According to this rationale, minorities are responsible for their own problems and lack motivation, or the aptitudes, to succeed.

According to this narrative, it is not society that has to change and become less racist, but rather racialized individuals' behaviour, temperaments, work ethics and overall efforts. In addition, a handful of racialized people, who attains positions of relative power, can be celebrated as

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[27] Meritocracy: Rewards in society go naturally to those who are the best performers. It says that positions of achievements of individuals in a society depends on their abilities and effort they put in and does not depend on class, race or other group advantages (Rose, 2019).
[28] Reskin (2012) explains that disparities refer to any difference in an outcome.

"successful" and/or as living proof of the existence of a meritocratic society. Others are, therefore, held responsible for their own predicaments (Satzewich and Liodakis, 2007).

> According to the post-racial narrative, all human beings are equal. If there are differential outcomes, it is the result of racialized individuals' lack of efforts, motivations or ability.

In sum, while those abiding by the post-racial narrative believe in racial equality in principle, or that exclusions may persist, these, according to them, are more so the result of the actions (or inactions) of racialized individuals, rather than structural or institutional. Accordingly, the post-racial, or colour blind, narrative proposes that, "Race based disparities reflect the function of perceived cultural inferiorities and moral flaws rather than structural barriers or inaccessible opportunities structures" (Byrd, 2001, 1,005-1,017).

> Overt forms of racism are likely to be strongly condemned and considered unacceptable and reprehensible in today's society. However, racism is increasingly subtle and less identifiable.

The subtlety, or insidiousness, of racism

Much of the literature has shown that blatant racism has been replaced by more subtle and complex forms. Clair and Denis (2015, 857) argue, "while overt forms of racism are now widely condemned, one challenge for social scientists is to conceptualize and measure its more subtle and diffuse manifestations and lasting effects… Contemporary approaches to racism center on explaining the well-documented persistence of racial inequality and racial discrimination in an era of declining overtly racist attitudes." Similarly, Li (2001, 77 & 79) asserts that "racial messages are often articulated subtly in a democratic society," and remarks on the challenges of "measuring" subtle racism.

> **Implicit/Unconscious bias and microaggressions**
>
> Implicit bias refers to negative unconscious prejudices, stereotypes, or beliefs held by a person that they may be unaware of having … Microaggressions are the everyday verbal, nonverbal, and environmental slights, snubs, or insults, whether intentional or unintentional, which communicate hostile, derogatory, or negative messages to target persons based solely upon their marginalized group membership. In many cases, these hidden messages may invalidate the group identity or experiential reality of target persons, demean them on a personal or group level, communicate they are lesser human beings, suggest they do not belong with the majority group, threaten and intimidate, or relegate them to inferior status and treatment.
>
> Derald Wing Sue, 2010, Howard University Law Library

In the 1980s and 1990s, new conceptual frameworks, such as "implicit bias," suggested that racism had transformed itself into more subtle, covert, forms. Deputy Minister Quan-Watson (2020) sums up this idea of subtle racism, by conveying that racism is not necessarily about "obvious outbursts and the spectacular," or "the burning of a cross or the shouting of a racially-based insult," but is rather more "like an iceberg to a ship travelling at night," that is, racism is increasingly still and subtle, difficult to detect, and potentially quite damaging.

As noted, while the decline of biological racism has succeeded in stamping out overt forms of racism as unacceptable, racism still exists, albeit subtlety. Li (2001, 79) argues that is precisely because scientific racism has been discredited, that its expression is more subtle. And while it is "easier" to identify and condemn overt racism, the challenge in identifying its subtle forms is

not as yet resolved. Current forms of racism are likely to be less identifiable. The literature reveals a gap in detecting these subtle, contemporary, forms of racism.

Systemic racism

The core elements of systemic racism (see the box on the following page) are introduced in this section. Systemic racism is further developed in the context of systemic discrimination in Part 2. As conveyed in the definition in the box, and in much of the literature (for instance, Nnorom cited in McDevitt, 2021) systemic racism is made up of interlocking layers. These include an individual, or interpersonal level (personal interactions); an institutional level (organizations and institutions producing rules and policies); and a structural level. The latter constitutes a web connecting all these organizational and ideological structures at the societal (macro) level, with the consequence that compounding effects result in differential, and adverse, outcomes based on "race" (see Part 2, Statistics). Accordingly, Tuyisenge and Goldenberg (2021) define systemic racism as, "the macro-level systems, social forces, institutions, ideologies and processes that interact with one another to generate and reinforce inequities faced by racialized communities."

Systemic racism stands opposed to the "post-racial," "colour-blind," narrative, and points to structural and systemic causes, as opposed to the actions or inactions of racialized individuals, as an explanation for persisting racial inequalities. In this sense, systemic racism underpins the idea that disadvantages, inequalities and exclusions are the inadvertent consequence of systems (read: institutions, organizations) rather than an intentional outcome. The discussion about systemic discrimination in Part 2 explores this concept in more detail.

Additionally, systemic racism exists when institutions, which appear to develop neutral-based rules, consistently and inadvertently exclude racialized peoples because these rules reflect the norms and experiences of the dominant group (Nnorom, 2021; see also Li (1989), cited earlier in the paper). In other words, the norm by which institutions operate was not devised with racialized individuals in mind. In Fleras' words (2017, 36), systemic racism can perpetuate disadvantage by "seemingly benign practices."

> Systemic racism is not a "one-off" process. "The literature on systemic racism is diffuse but coheres on the point that macrostructural processes, or its whole structure, as opposed to individual acts, provide more meaningful explanations on racial inequality" (Clair and Denis, 2015). The process of systemic racism does not occur once, but repeatedly produces disproportionate outcomes for racialized peoples.

Relatedly, Rose (2018) explains that systemic racism is not a "one-off" process: it normalizes and legitimizes a set of policies, practices, and institutional behaviours that do not happen exceptionally, but routinely, and produce cumulative, chronic, and adverse outcomes for racialized and Indigenous peoples. It is much more difficult to identify, and condemn, namely because it has been normalized and framed in ways that render it "invisible." Aiken (2007, 72) argues:

> Race continues to influence the opportunities and experience of racialized peoples in North America, even after controlling for other factors… Depending on the context, institutional racism can be manifested in the form of explicitly racist policies in which the state directly reinforces existing racist biases in society or it can be found in a **systemic form ("systemic racism") and concealed in systems, practices, policies, and laws that appear neutral and universal on their face but disadvantage racialized persons**.

Systemic racism is an interlocking and reciprocal relationship between the individual, institutional and structural levels which function as a system of racism.

These various levels of racism operate together in a lockstep model and function together as a whole system:

- **Individual (within interactions between people) racism.** Structured by an ideology (set of ideas, values and beliefs) that frames one's negative attitudes towards others; and is reflected in the willful, conscious/unconscious, direct/indirect, or intentional/unintentional words or actions of individuals. This is one of the three levels that make up Systemic Racism.

- **Institutional (within institutions and systems of power) racism.** Exists in organizations or institutions where the established rules, policies, and regulations are both informed by, and inform, the norms, values, and principles of institutions. These in turn, systematically produce differential treatment of, or discriminatory practices towards various groups based on race. It is enacted by individuals within organizations, who because of their socialization, training and allegiance to the organization abide by and enforce these rules, policies and regulations. It essentially maintains a system of social control that favours the dominant groups in society (status quo). This is one of the three levels that make up Systemic Racism.

- **Structural or societal (among institutional and across society) racism.** Pertains to the ideologies upon which society is structured. These ideologies are inscribed through rules, policies and laws; and represents the ways in which the deep rooted inequities of society produce differentiation, categorization, and stratification of society's members based on race. Participation in economic, political, social, cultural, judicial and educational institutions also structure this stratification. This is one of the three levels that make up Systemic Racism.

Source: OHRC

PART 2: SYSTEMIC RACISM AND SYSTEMIC DISCRIMINATION

Introductory concepts

Part 2 begins with a presentation of the main processes underpinning systemic discrimination. Subsequently, statistical findings on disparities based on "race," as potential markers of discrimination, will be fleshed out. The last portion will then explore systemic discrimination, and its principles, as expressed by the federal government, the OHRC, the Supreme Court, and social and legal scholars. As in Part 1 of this review, Part 2 highlights the findings of the literature, in recognition that concepts underpinning discrimination are ever-evolving, and that an all-inclusive review of its legal intricacies and complexities cannot be fully uncovered by the scope of this review. Notwithstanding this challenge, much of the current thinking on the core principles underlying discrimination are herein provided, in line with the purpose of this review.

> **Systemic discrimination**
>
> Racial discrimination can result from individual behaviour as well as because of the unintended and often unconscious consequences of a discriminatory system. This is known as systemic discrimination.
>
> **Systemic discrimination** can be described as patterns of behaviour, policies or practices that are part of the structures of an organization, and **which create or perpetuate disadvantage for racialized persons**.
>
> The Commission is very concerned about systemic discrimination. Assessing and tackling systemic discrimination can be complex. Nevertheless, the Commission expects organizations to be aware that their "normal way of doing things" may be having a negative impact on racialized persons.
>
> Formal and informal policies, practices and decision-making processes can result in barriers for and exclusion of racialized persons. The use of informal or highly discretionary approaches are particularly problematic as there is more room for subjective considerations, differing standards and biases to come into play. It is also important not to design policies, practices and decision-making processes in a way that does not account for individual differences or that uses the dominant culture as the norm.
>
> OHRC

Points 1 and 2 (following) will identify the processes that are central to generating systemic discrimination: the first point underlines that, like racism, discrimination does not occur on a personal level only, but also on a societal level. The second point delves into how biases and prejudices in a wide array of domains (health, education, employment and so on) may cumulatively produce, and reproduce, systemic disadvantages and discrimination for racialized peoples.

1. Much of the literature points to the key idea that systemic racism and systemic discrimination embody a parallel process of producing systemic disadvantage for racialized peoples (see the two related text boxes that draw on these similarities). Accordingly, systemic discrimination is more than interpersonal discrimination, or how we treat one another on a personal level (e.g. micro-level discrimination). As indicated by the Ontario Human Rights Commission (OHRC) and other organizations, systemic racism and systemic discrimination constitute "patterns of behaviour, policies and practices" that "create or perpetuate disadvantage," and/or "produce… or reinforce chronic adverse outcomes" for racialized persons (Chadha-OHRC, 2021;[29] Ellermann, 2020; Galloway, 2019; Rose, 2018; Sheppard, 2010).

2. Relatedly, systemic discrimination has been associated with barriers encountered by racialized peoples in accessing, for instance, education, health care, employment or housing, though access may seem universal. For instance, a job may be open to "all," but bias[30] may play role in the disproportionate hiring of White applicants.[31] Research shows that this is not restricted to employment. In relation to health care, studies demonstrate that the bias of certain health care providers may lead them to treating Black and other racialized and Indigenous patients differently by, for example, not taking their concerns seriously which impacts the level of care they receive, resulting in adverse health outcomes (Amin, 2019; Nestel, 2012; Nnorom cited in McDevitt, 2021; PHAC cited in Amin, 2019; Physicians for Human Rights, 2003). As Riley (2012)

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[29] Chadha (2021) provides examples of discrimination whereby discrimination represents a reinforcement of the vulnerabilities of an already disadvantaged racialized population.

[30] As previously noted, bias and stereotypes are described as facets of racism within much of the literature.

[31] For evidence of bias in employment, see Henry and Ginzberg 1985 study on employment in Toronto; Joint Ryerson/University of Toronto study – Banerjee et al, 2017.

argues, "the subtle role of bias in creating and/or exacerbating health disparities is well documented in the literature." In the field of education, studies show that the bias of some educators is a significant contributing factor to higher rates of suspension among Black students (James and Turner, 2017; Ottawa Carleton District School Board (OCDSB) 2020; PHAC, 2020; Statistics Canada, 2020b).

Cumulatively, these biases produce systemic barriers that reproduce disparities – also identified as inequities and inequalities in the literature – in health, education, or employment and so forth, for racialized peoples. Bias or stereotypes are therefore captured as significant factors contributing to systemic discrimination (Ontario Human Rights Commission (OHRC); Rose, 2018; Kendi; 2019; PHAC, 2020).

> The first process refers to systemic discrimination as a set of behaviours, practices and policies that may create or perpetuate disadvantage for racialized peoples, resulting in adverse outcomes for them.
>
> The second process refers to discrimination as differential treatment of racialized persons based prejudice (bias, stereotypes, xenophobia) and barriers to inclusion across an array of social goods. Whether intentional or not, the cumulative and adverse outcomes may be deemed discriminatory.

In line with this phenomenon, the OHRC (2021) underscores that the purpose of anti-discrimination laws and policies "is to prevent … the imposition of disadvantage, stereotyping, or political or social prejudice." In this sense, much of the literature points to existing biases, barriers, disadvantages and inequities as potentially significant markers, and initiators, of systemic discrimination. Indeed, it is not uncommon to see the phrasing "bias, discrimination and stereotyping" used in an interlocking manner, in the literature (Canadian Centre for Diversity and Inclusion, 2017; Hinton, 2017; Nestel, 2012; United Nations declarations or statements on discrimination).

> Discrimination may be built into an organization's behaviour, practices and policies. This can lead to a genuine disadvantage for some people… This is called systemic or institutional discrimination. Organizations and institutions have an obligation to be aware of these forms of discrimination.
>
> When systemic discrimination is found to exist, an organization must change its practices.
> OHRC

Systemic racism plays a role in this process insofar as it sustains the inequities (e.g. disadvantages, disparities). What are some of these disparities?

Systemic racism, discrimination and racial inequalities: Some facts and figures in Canada

Nestel (2012, 8) finds that, "Evidence of racial inequities in Canada is substantial. An examination of these inequities can be helpful in thinking about the extent to which racial inequality manifests itself institutionally and within everyday social interactions in Canadian society" (See also Nnorom cited in McDevitt, 2021; Statistics Canada, 2020b). According to Statistics Canada (2020b):

Many recent studies on Canada's Black population have explored the discrimination this population experiences. Discriminatory practices were noted in several social and economic areas, including the justice system and relations with police services, the immigration system, the child welfare system, the education system and the nursing

workforce. According to data from Cycle 28 of the 2014 General Social Survey on Victimization, approximately 24% of Black individuals aged 15 or older reported that they had experienced some form of discrimination because of their ethnicity, culture, race or skin colour in the five years preceding the survey. In comparison, 4.6% of the rest of the population had experienced such discrimination.

Canadian research indicates that "not everyone is created equal when it comes to distributing the power, privilege, and property, with the result that Canada is characterized by racialized inequality" (Galabuzi, 2006). Relatedly, much of the literature points to systemic racism and discrimination as one of the prevalent causes of racialized disparities, also known as differential outcomes (Fleras, 2017; Galabuzi, 2006; Rose, 2018; Teelucksingh, 2021). The OHRC writes:

Racialized persons experience disproportionate poverty, over-representation in the prison population, under-representation in the middle and upper layers of political, administrative, economic, and media institutions, and barriers to accessing employment, housing, and health care to name just a few. **Courts have recognized that racism exists in Canada. It is all too easy for those who do not experience it to deny the reality of racism. This is counterproductive and damaging to our social fabric**. Racial discrimination and racism must be acknowledged as a pervasive and continuing reality as a starting point.

The concept of systemic racism, referred to above, posits that discriminatory structures and attitudes, coupled with the continuing impacts of historical disadvantage, may maintain such disparities. Nnorom (in McDevitt, 2021) observes that statistics can reveal the "constant barriers," faced by peoples by reason of their "race."

In relation to these debates, as recently as 2017, the United Nations Working Group of Experts on People of African Descent released a report on its mission to Canada. The Working Group (in O'Neill, 2020) finds that:

Canada's history of enslavement, racial segregation and marginalization of African Canadians has left a legacy of anti-Black racism and had a deleterious impact on people of African descent, which must be addressed in partnership with the affected communities. Across Canada, many people of African descent continue to live in poverty and poor health, have low educational attainment and are overrepresented at all levels of the criminal justice system.

Similarly, PHAC (2020) argues:

Discrimination against Black people is deeply entrenched and normalized in Canadian institutions, policies and practices and **is often invisible to those who do not feel its effects**. This form of discrimination has a long history, uniquely rooted in European colonization in Africa and the legacy of the transatlantic slave trade. **Slavery was legal in Canada until 1834. Almost two centuries later, racist ideologies established during these periods of history continue to drive processes of stigma and discrimination**.

Though all racialized peoples are impacted by racism, people of African descent remain one of the groups most disadvantaged by its effects in Canada and worldwide. Indigenous peoples are also significantly impacted by racism in Canada and internationally, as widely recognized by Canadian and international studies, the federal government, and the United Nations. In Canada, Black, other racialized and Indigenous peoples face notable disparities. They are still experiencing inequities in power, income and privilege (Block, 2011; Galabuzi, 2006; Pendakur and Pendakur, 2011; Teelucksingh and Galabuzi, 2005).

The following data show that Black, other racialized and Indigenous peoples are impacted by disproportionate outcomes ("inequities") in health, education, housing, employment and so forth. For more details, the reader may refer to Statistics Canada's publications, and publications by the not-for-profit sector and academia. It is important to note that the aim of these statistics is not purely a mathematical exercise. Indeed, extracting these statistics without an anti-racism lens may reinforce racist ideas. For instance, Statistics Canada (2020b; see also the concept of "democratic racism" cited above) observes that Black youth are less likely to have attended a higher educational institution and to have earned a postsecondary diploma, compared with other youth.

Racist ideas may rely on stereotypes to justify disparities (e.g. lazy; unmotivated; lacking in intelligence and drive; good at sports). Statistics Canada's (2020b; see also OCDSB, 2020) analysis draws on an anti-racist lens to explain these disparities: "studies suggest that factors contributing to this situation include certain teachers' attitudes, behaviours and biases toward Black youth." Likewise, an anti-racist lens asserts that "employment discrimination may contribute to the racial wage gap" (Conference Board of Canada, 2017). In the same vein, in terms of health outcomes, Tam (PHAC, 2021) observes that if people of colour are disproportionately affected by COVID-19, it has nothing to do with biology, but rather with "experiences of racism, discrimination and historical trauma" and their impact on health.

Wealth and employment

- According to the 2016 Census, 20.8% of racialized people in Canada are low-income compared to 12.2% of non-racialized people (2016 Canadian Census);
- Racialized Canadians who are university-educated earn an average of 87.4 cents to the dollar compared to their White Canadian peers (Conference Board of Canada, 2017);
- Racialized people are disproportionately more likely to be working in low-wage jobs (Block – Wellesley Institute, 2011; See also Stapleton – Metcalf Foundation, 2019);
- Employers are about 40% more likely to interview a job applicant with an English-sounding name despite identical education, skills and experience (Canadian Heritage, 2020);
- One in five racialized families live in poverty, compared to one in 20 non-racialized families (sometimes referred to as "racialized poverty") (Canada without Poverty, 2020; see also Block, 2011).

Crime and criminal justice

- In 2018, 43% of hate crimes were motivated by hatred of a race or ethnicity (Statistics Canada, 2020g);
- The incarceration rate of Black Canadians is approximately three times that of their proportion of the general Canadian population (see Office of the Correctional Investigator, 2021; Thorne, 2020);
- Based on two surveys (COVIDRacism and elimi8hate.org), the Chinese Canadian National Council captured 1,150 incidents of anti-Asian racism across Canada between March 10, 2020, and February 28, 2021 (Nicholson, 2021);
- Between 2013 and 2017, a Black person in Toronto was 20 times more likely to be fatally shot by police than a White person (OHRC, 2020).

Education

- Black youth are less likely to have attended a higher educational institution and to have earned a postsecondary diploma, compared with other youth (Statistics Canada, 2020b).

Housing

- Just over 50% of racialized households reside in homes that are not affordable, leading to a risk of homelessness. These homes are neither adequate nor suitable: they may be in need of repair, maintenance, and be overcrowded. In comparison, 28% of non-racialized households encounter these issues (Colour of Poverty, 2019).

Health

- Racialized peoples are more likely to get chronic health conditions (Nestel, 2012 – Wellesley Institute);
- "Between 2010 and 2013, 14.2% of Black Canadians age 18 years and older reported their health to be fair or poor, compared to 11.3% of White Canadians of the same age" (PHAC, 2020).
- COVID-19 has amplified disparities in health and other outcomes for racialized persons (for example, in Ottawa, racialized peoples made up 66% of COVID-19 cases in 2020. Racialized people in Ottawa represented approximately 25% of the total population in 2020 according to the 2016 Census, as noted by Statistics Canada (Ottawa Public Health, 2020; Jones, 2020).

Indigenous statistics

Indigenous peoples represent 4% of the population in Canada. Statistics related to Indigenous peoples are staggering:

- Approximately 24% of Indigenous people residing in urban areas live in poverty compared to 13% of the non-Indigenous population in these areas (Statistics Canada, 2020e).
- According to the Canadian Census 2016, Indigenous children account for 7.7% of the child population. However, they represent 52.2% of children in foster care (Indigenous Services Canada, 2021).
- According to a national study, 53% of First Nations' children living on reserves experience poverty, which represents four times the rate for White children (Upstream – Assembly of First Nations and Canadian Centre for Policy Alternatives, 2019; for statistics on Inuit and Métis children, see same study).
- Individuals with an Indigenous identity were more than twice as likely (18%) to have experienced hidden homelessness as their non-Indigenous counterparts (8%) (Statistics Canada, 2016a).
- Indigenous women are 12 times more likely to be missing or to be murdered in comparison to any other demographic group in Canada (Final Report of the National Inquiry into Missing Indigenous Women and Girls, 2019).
- In 2014, service agencies observed that of the trafficked and exploited women they served, 51% of trafficked women were Indigenous (Canadian Women's Foundation, 2014).
- Approximately 34% of Indigenous peoples have no high school certificate, or equivalency, compared to 18% of the rest of the Canadian population (Canadian Census 2016).
- Suicide rates are five to seven times higher for Indigenous youth than for non-Indigenous youth. The rate is among the highest in the world for Inuit youth (Health Canada, 2015).

- Approximately 28% of the federal prison population in 2017 were Indigenous people, who only comprised 4.1% of the Canadian population (Department of Justice, 2018).
- Almost half of incarcerated youth are Indigenous (Statistics Canada, 2018a).
- The average income of Indigenous peoples is 75% of that of non-Indigenous peoples (Indigenous Services Canada, 2020).
- Overcrowding, substandard and inadequate living conditions have led to disproportionate health outcomes for Indigenous peoples, especially as they relate to the spread of communicable disease like tuberculosis. Indeed, tuberculosis transmission in Inuit Nunangat – the four regions of the Inuit homeland – is more than 300 times higher than among the Canadian-born non-Indigenous peoples (Indigenous Services Canada, 2018; see also Inuit Tapiriit Kanatami's website).

Principles underpinning systemic racism: overview of findings from the literature

- Racial disparities cannot be explained by the actions or inactions of racialized individuals.
- Racism is considered one of the causes of differential treatment leading to discrimination.
- Biases, stereotypes and xenophobia (prejudices) may perpetuate differential treatment feeding into systemic racism and discrimination.
- Systemic racism includes interpersonal relationships as well as institutional practices.
- Systemic racism works through systems (e.g. patterns of behaviour, policies and practices) that may appear neutral.
- Historical discriminatory practices and their continuing impact on racialized groups constitute a facet of systemic racism.
- Structural causes and historical disadvantage may represent one of the key causes of systemic racism and discrimination.
- Systemic racism places the culture and experiences of the dominant group as the norm.
- Systemic racism is not a one-off occurrence; it routinely and cumulatively produces disparate outcomes for racialized peoples.
- Statistics on racialized disparities in outcomes reveal an interlocking web of inequities.

Sources: Social scientists, OHRC, Government of Canada, United Nations

PART 3: SYSTEMIC DISCRIMINATION: INTERSECTIONALITY, SUBSTANTIVE EQUALITY AND THE SUPREME COURT

Overview

In addition to the above discussion, much of the literature makes the connection between discrimination and human rights. As noted by the Report of the Standing Committee on Canadian Heritage (2018), Canada has established a framework to combat systemic discrimination and racism over the years. One such significant piece is the Canadian Charter of Rights and Freedoms (the Charter), as well as other human rights legislation, including the *Canadian Human Rights Act*, the *Canadian Multiculturalism Act* and the Criminal Code. United Nations human rights conventions usually describe non-discrimination as a pivotal concept, which may be reflected in domestic legislation. The *Immigration and Refugee Protection Act (IRPA)*, for example, stipulates (paragraph 3.3(f)), "This Act is construed and applied in a manner that… complies with international human rights instruments to which Canada is a signatory."

In Canada, the Charter prohibits discrimination on grounds related to "race," including colour, nationality or ethnic origin. Other grounds such as gender, disability and/or class, may intersect with race-related grounds to produce a form of systemic discrimination that is grounded in multiple forms of disadvantage. Much of the literature recognizes the intersectionality of these grounds.[32] For instance, Anderson (2010 cited in Nestel 2012, 6) refers to "the intersection of class, racialization and gender relations," grounded in experiencing life "not solely as gendered persons, but as classed and racialized persons." Intersectionality, as a concept, will be further referenced in Sections 2 and 3, in relation to the history of immigration policies, and the situation of migrant workers in Canada. While intersectionality can be a highly complex issue, the adjacent text provides a basic definition which the reader can further draw from.

Intersectionality

This concept acknowledges that individuals are shaped by multiple factors, such as gender, race, ethnicity, indigeneity, class, sexuality, geography, age, disability and migration status. It also acknowledges that the way individuals experience racism and discrimination can be compounded by a number of features of an individual's identity.

Report of the Standing Committee on Canadian Heritage, 2018

Substantive equality is a concept that is central to the discourse on systemic discrimination, as recognized by human rights law, the federal government, the OHRC and the Supreme Court. It constitutes one of the more significant concepts in the development of responses to discrimination and inequity of marginalized groups, e.g. those not part of the norm (Dauvergne, 2013; Fleras; 2017; MacKinnon, 2011; Sangiuliano, 2015; Sheppard, 2010). In this regard, according to the Department of Justice (2021), "…the Supreme Court has **consistently** characterized the guarantee of equality as substantive. That is, the Court has underscored that "the concept of equality does not necessarily mean identical treatment and that the formal 'like treatment' model of discrimination may in fact produce inequality." In recognition of existing disparities, substantive equality allows for "… an appreciation of the complex structural and systemic inequalities in society" (Sangiuliano, 2015, 606).

Substantive equality is a legal principle that refers to the achievement of true equality in outcomes. It is achieved through equal access, equal opportunity and, most importantly, the provision of services and benefits in a manner and according to standards that meet any unique needs and circumstances, such as cultural, social, economic and historical disadvantage.

Substantive equality is both a process and an end goal relating to outcomes that seeks to acknowledge and overcome the barriers that have led to the inequality in the first place. When substantive equality in outcomes does not exist, inequality remains.

Government of Canada

Sheppard (2010) observes, "In the mid-1980s, the Supreme Court of Canada recognized that a seemingly neutral employment policy that was not intended to cause discrimination could, however, constitute a form of "adverse effect discrimination" (also known as indirect discrimination). This means that a policy may unintentionally result in disproportionately

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[32] For more readings on intersectionality, see Crenshaw, 2017. "In 1989, American legal scholar and civil rights activist, Kimberlé Crenshaw coined the term intersectionality (a combination of both forms of discrimination, race and gender) to explain how race intersects with gender to produce barriers for Black women. "Some women are at higher risk of gender-based violence, have fewer economic opportunities, and face a bigger gender wage gap than others. It doesn't happen because they're not 'trying hard enough.' It happens because of greater systemic discrimination in their lives" (Canadian Women's Foundation, 2021).

impacting a protected group (racialized peoples, women, peoples from a specific faith or religion etc.) by means of exclusion, or by reinforcing their disadvantage.[33] In supporting substantive equality, the Supreme Court challenged the neutrality of dominant norms, or the principle of "equality as sameness," in recognition that society's standards revolved around a dominant norm or standard (male, heterosexual, non-racialized, able-bodied etc.) that did not necessarily apply to "all." Reflecting on Sheppard's work on substantive equality, Fleras (2017, 86) points out, "the challenge was no longer about incorporating racialized minorities and women into a "palemale" world, but about **modifying institutional worlds** to make them more accommodative and responsive to those **historically disadvantaged**."
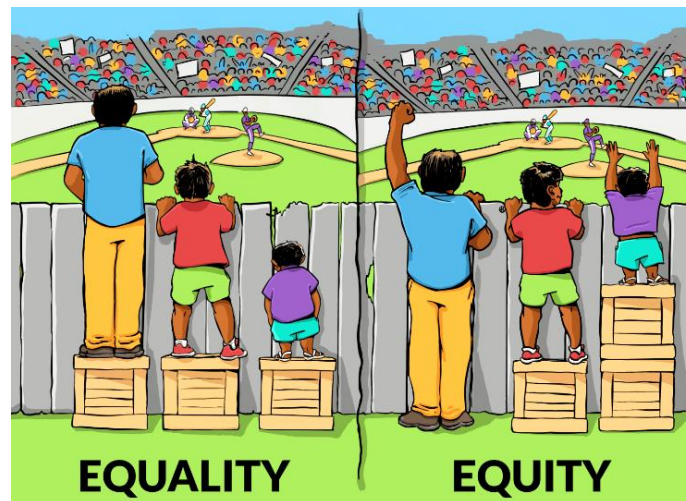
Source: [Coalition Ending Gender-Based Violence](#)

Discrimination, legal experts and the supreme court: Principles underlying discrimination[34]

This final and brief section will place the concept of discrimination within the lens of the Supreme Court, and legal interpretations. Of note, not all of the complexities of this subject can be included for reasons of space and scoping; however, the core ideas pertaining to this review will be highlighted, namely in relation to the concepts of disadvantage and discrimination. Indeed, the Supreme Court of Canada acknowledges the importance of the principle of substantive equality, in recognition of the disadvantages experienced on the grounds of immigration status.

Relatedly, while section 6 of the Charter – which refers to the right of every citizen "to enter, remain in and leave Canada" – allows for a distinction between citizens and non citizens (see also Joppke, 2005), that right is not, in all cases, a blanket justification for treating non citizens without attention to already existing vulnerabilities, as highlighted by Canadian experts

Dauvergne, 2013; Ellermann, 2019; Galloway, 2019; Triadafilopoulos, 2012.

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[33] A policy or rule, though neutral and universal, can impact a protected group disproportionately, or have the opposite intended effect, placing certain groups at a disadvantage. For example, if a policy asks that all men must be clean-shaven before coming to work, this discriminates against Sikh men on the grounds of their religion. A test of physical strength as part of a job requirement may end up discriminating against women and persons with specific disabilities. This may not have been the intention, but it results in discrimination. For more reading on adverse effect discrimination see OHRC's website, http://www.ohrc.on.ca/en

[34] The focus on the Supreme Court is invoked because of its leadership role (see Dauvergne, 2013, 667). For the introduction of human rights law in Canada, see Walter S. Tarnapolsky and William F. Pentney, 2001).

In the *Andrews* decision, Justice Wilson notes:

> Relative to citizens, non-citizens are a group lacking in political power and as such vulnerable to having their rights to equal concern and respect violated….I emphasize, … that this is a determination which is not to be made only in the context of the law which is subject to challenge but rather in the context of the place of the group in the entire social, political and legal fabric of our society. **While legislatures must inevitably draw distinctions among the governed, such distinctions should not bring about or reinforce the disadvantage of certain groups and individuals by denying them the rights freely accorded to others**.

Galloway (2019, 30-31; see also Dauvergne (2013)), by referring to the relevant example of migrant workers, has argued that an appraisal of discrimination should consider the "context and factors" (e.g., context of a social group in its entire fabric, including the consideration that a social group may already be vulnerable on the grounds of their immigration status) as well as a review, or examination, of the following elements:

- Xenophobia, e.g. the ways in which migrant workers may be portrayed by public discourse etc.;
  Does the policy or law reinforce xenophobia?

- An appraisal of historical experience, namely raising the question of whether historical developments have consistently shown a certain bias toward certain groups;
  Does the policy or law reinforce historical bias toward certain groups?

- Recognition of disadvantage, e.g. a consideration of whether the social group is already disadvantaged;
  Does the policy or law perpetuate socio-economic disadvantage, prejudice or stereotyping?

- Wider impacts on society and consideration for equal concern and respect.
  Is wider society impacted by the disadvantages experienced by certain groups?

Galloway (2019) argues that cases by the Supreme Court have taken into consideration "the values that should underpin the concept of discrimination." In *Law* (see also Withler and Quebec), the Court insisted that non-discrimination analysis "is to be undertaken in … a contextualized manner," and further emphasized that discrimination must not constitute a violation of human dignity by creating, or exacerbating, "disadvantage, stereotyping or political or social prejudice" (Nakache and Crépeau, 2006, 11); Sheppard, 2010, 34-35):

> **It may be said that the purpose of [the Charter] is to prevent the violation of essential human dignity and freedom through the imposition of disadvantage, stereotyping, or political or social prejudice**, and to promote a society in which all person enjoy equal recognition at law as human beings or as members of Canadian society, equally capable and equally deserving of concern, respect and consideration.

Sheppard (2010, 40) makes a link between discrimination and how it impacts the dignity of oppressed groups, "the stereotyping, exclusion, prejudice, and mistreatment of individuals because of their membership in historically disadvantaged groups undermines dignity." As noted above, the recognition that the neutrality, or uniformity of an approach, may reproduce, or reinforce, disadvantage (see "adverse effect discrimination") may be considered discriminatory. Sheppard provides an example of adverse effect discrimination that is crucial for the purpose of this review. She explains that adverse effect discrimination may occur when

differential treatment disproportionately impacts individuals from specific socially disadvantaged groups. More than this, she (2010, 21) observes that a seemingly neutral policy may have discriminatory impacts:

> For example, if domestic workers are excluded from labour standards regulation, the legislation on its face may not discriminate on the basis of race, gender, or national or ethnic origin. However, **if we assign the gender, race, and national and ethnic origin of domestic workers, who are largely women who have migrated from developing countries, the discriminatory impact of the differential treatment of domestic workers is clear.** Facially neutral categories, in this instance, may have disparate effects on groups traditionally protected in human rights laws. (See also Sections 2 and 3)

In sum, as articulated by Benedet et al (2004, 830), "the idea that **intention is not required for a finding of discrimination**, the idea that discrimination need not be overt or direct but may result from a disparate impact on a particular group, and the idea that attaining equality may require treating people differently" underlie "the Supreme Court of Canada's human rights jurisprudence".

While cases and interpretations are ongoing, and jurisprudence complex and in-flux, these considerations have been brought to the reader's attention so that key aspects of the debates may be captured by the review.

This section has reviewed much of the literature regarding discrimination, as grounded in the Charter and enumerated by Canadian legal theorists, social scientists, the OHRC and the Government of Canada. The literature suggests that while Canada has the right to discriminate with regards to immigration (section 6 of the Charter), this right is not absolute and should not diminish core Charter values and human rights. Such values include reciprocal respect, substantive equality, respect for human dignity and caution as to whether laws and policies may augment xenophobia, and/or stereotypes, and enhance historical disadvantage based on "race," or other grounds.

Furthermore, much of the current literature highlights that discrimination is not only a legalistic concept, but one that is embedded in values and ethics by which the government abides. A recognition of the vulnerability of certain populations should be acknowledged in any decision that impacts them.

As observed in the literature, and by Canadian legal experts, a deracialized/neutral discourse which has racist effects is still discriminatory.

In line with the findings, the following questions may be necessary for the assessment of systemic impact of discrimination on Canadian society:
- How do decisions impact the whole of society?
- Do they reinforce historical disadvantages, prejudices, stereotyping and ignore substantive equality?
- Do they promote xenophobia and weaken the Charter's core values?
- Are policies discriminatory in their outcomes, e.g. do they disproportionately impact a "race," "gender," and/or a specific group of ethnic/national origin etc.?

Principles underpinning systemic discrimination: Overview of findings from the literature

- Discrimination may be present in facially neutral policies.

- Discrimination does not have to be intentional to qualify as discriminatory.

- Discrimination reproduces stigma and reinforces stereotypes and xenophobia.

- Discrimination reinforces historical disadvantages.

- Discrimination systematically violates the rights of certain groups.

- Discrimination accelerates inequities, ignores the vulnerabilities of certain groups, and leads to further institutionalization of group disparities.

- Discrimination ignores, or reinforces, barriers to accessing services and opportunities.

- Discrimination ignores substantive equality, or the presence of disadvantages as a starting-point.

- Discrimination violates the principle of equal respect, and demeans inherent human dignity and worth.

Sources: Supreme Court of Canada, Government of Canada, OHRC, social scientists, legal theorists

PART 1: RACISM IN CANADIAN IMMIGRATION HISTORY

Section 2 explores racism in immigration history, starting from the late 19th century. It will be divided into two parts: the first part relates to immigration history and racism, which is key to understanding the literature on racism and the emergence of temporary migration programs, in Part 2. Triadafilopoulos (2012) depicts two main periods as central to the development of Canadian immigration policy – the first being the turn of the 20th century until the Second World War. This approach to immigration policy during this first time period was primarily justified, and bolstered, by scientific racism (see Section 1). In the literature, this time-period is commonly referred to as the building of "White Canada" or the "Keep Canada White" era.[35]

This time period overtly favoured British and European immigration in order to preserve the cultural typography, or White British "character," of Canada. Stasiulis and Bakan (1997, 33) accordingly suggest, "A racial/ethnic hierarchy in immigration policy emerged that judged potential migrants according to their distance from, and proximity to, 'white British' ideals." The belief in the superiority of certain peoples was not merely a point of debate, but was enshrined in Canadian law.

The second period centred on the aftermath of the Holocaust, decolonization and the emergence of a global human rights culture and coincided with the discrediting of racism internationally (Triadafilopoulos, 2007, 3). It witnessed the emergence of the points system, or the human capital approach, as well as the introduction of temporary migrant programs. According to much of the literature, these two periods have influenced, and shaped, Canadian immigration policies to this day.

PART 2: THE BUILDING OF "WHITE CANADA": TURN OF THE CENTURY UNTIL THE SECOND WORLD WAR

The first period, which in the words of Hawkins (1989, 8), is often relegated to "discreet silence," is reviewed by a complex literature derived from legal scholars, sociologists, and historians who describe the construction of Canada as an extension of Britain (Venkatesh 2019, 83). In this context, Jakubowski (1997, 12) writes, "Striving to preserve the British character of Canada, efforts were directed towards excluding some people from entry, while encouraging others to settle" (see also settler colonialism).[36] Potential migrants were ranked into categories, with "preferred" immigrants being drawn from Great Britain, the United States, France and, to a lesser extent, Northern and Western Europe. When these recruitment efforts failed to produce the large numbers required to settle Canada's western prairie land, the federal government

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[35] This phrasing is commonly found in the literature. See for example, Glasbeek (1997), Jakubowski (1997), Thobani (2007),Triadafilopoulos (2012) and Hawkins (1989) who states, "This period of history and indeed the whole lengthy episode of White Canada is often downplayed, or clothed in discreet silence or simply not extrapolated from its historical context."

[36] Authors have linked the construction of White Canada, as well as practices that are relevant to migrant workers today, to the concept of settler colonialism. Venkatesh (2019, 83) writes, "Extensive scholarship has addressed the practices of settler colonialism. The economic analysis of colonisation concentrates on the resources and economic gain for colonising countries through exploitation of the colonised people…Canada was constructed as an extension of Britain, where settlers formed a nation state with citizenry and political institutions replicating colonial Britain, while displacing and disenfranchising Indigenous peoples in the colonised territories." Elaborating on these connections is beyond the scope of this paper.

extended its preferential policies to include other "White" immigrants – for example Ukrainians, Italians, Poles and Hutterites – classified as "non-preferred."

In the late 19th century, Canada sought to import White agriculturalists to contribute to the settlement of western Canada. The literature overwhelmingly suggests that White immigrants were viewed as being of "superior stock" and "good stock," and consequently more preferable to, and assimilable than, immigrants of colour (Jakubowski, 1997; Satzewich, 1991; Stasiulis and Jhappan, 1995; Triadafilopoulos, 2012). Nonetheless, even with the expansion of the "White category" to include more immigrants from less desirable source countries – e.g. Central and Eastern Europe – Canada's labour needs could still not be met (Bolaria and Li, 1988).

Asian Immigration

Projects that necessitated the recruitment of non-White labour included the construction of the Canadian Pacific Railway (CPR) from 1881 to 1885. The western section of CPR was mostly built by Chinese workers and led to a notable increase in immigration (Bolaria and Li, 1988, 72; Venkatesh, 2019, 86). Chinese workers were considered to be a cheap and readily available source of labour. Their non-whiteness, however, did not go unnoticed, especially upon near completion of the CPR. As Venkatesh (2019, 86) explains, "Immigration policies towards people from China provide the paradigmatic example of the coexistence of migrant labour with the xenophobic construction of anti-immigrant myths." Stereotypes built around Chinese workers depicted them as unclean, deprived of morality, and as a threat to Canadian health and safety. This prompted public calls to limit the entry of "inferior" foreigners leading to the implementation of controls on Chinese immigration (Triadafilopoulos, 2013, 27). Prime Minister John A. Macdonald stated in this regard, "It will be all very well to exclude Chinese labor, when we can replace it with white labor, but until that's done, it is better to have Chinese labor than no labor at all" (cited in Triadafilopoulos, 2013, 27).

Indeed, Chinese immigration was accepted so long as its labour was indispensable. Because British Columbia sought an outright exclusion of Chinese labour, the federal government sought to appease tensions by introducing the *Chinese Immigration Act* of 1885 which required Chinese immigrants to pay "a head tax" of $50, with exemptions for diplomats and merchants, so as to restrain their entry.[37] This tax was subsequently raised to $100 in 1900 and $500 in 1903 (Abu-Laban, 1998, 77; Matas, 1985, 8-9). Generally, the wives and children of Chinese labourers – working class immigrants – were excluded from entering, and settling in, Canada (Abu-Laban, 1998, 72).[38] Thobani (2007, 130) reveals the interwoven raced (non-White), classed (working-class), and gendered effects (wives and children) of lasting family separation: "Many Chinese men, as is well known, lived out their lives in Canada as 'married bachelors' because their wives and children were forced to remain in China. Immigration policies had specific gendered and classed consequences for family life well after the mid-20th century" (In Section 2, some of these historical patterns will be linked to the subject of migrant workers in the contemporary context).

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[37] Not all Chinese entered Canada as contract labourers. Some were merchants, students, independent workers and miners (Bolaria and Li, 1988, 105).

[38] Bolaria and Li explain that after 1903 the cost of bringing wives and children was "enormous" (the head tax being raised to $500). After 1923, the law prohibited the entry of all Chinese making it impossible to bring family over (Bolaria and Li, 1988, 114).

Other discriminatory policies of the time included the *1907 Gentleman's Agreement* with Japan and the *1908 Continuous Journey Stipulation* that primarily impacted immigrants from India and Japan (Bolaria and Li, 1988, 170; Jakubowski, 1997, 14; Canadian Museum of Pier 21). Under the first agreement, the Japanese government agreed to voluntarily limit the number of Japanese immigrants arriving in Canada on an annual basis. This was within the context of anti-Asian sentiment rising in the province of British Columbia, which called for restrictions on Japanese immigration (Canadian Museum of Immigration at Pier 21).

According to the *Continuous Journey Stipulation*, immigrants arriving in Canada "otherwise than by a continuous journey from countries of which they were natives or citizens … may be refused entry." To be able to enter Canada, people had to come through "one continuous journey" and "through ticket" from their country of origin. The only company able to provide a continuous journey from India to Canada was the CPR. However, the Government of Canada directed the CPR to prohibit the sale of any "through ticket to Canada" (Bolaria and Li, 1988, 170). This was considered a subtle way of restricting entry from India – a restriction subsequently exemplified by the *Komagata Maru* incident which challenged the regulations of the *Continuous Journey regulation*.

Of note, the *Komagata Maru* was a Japanese ship transporting 376 passengers from Punjab province in British India. It set anchor in Vancouver harbour in 1914 and stayed for approximately two months. The owner of the ship argued that, as British citizens, passengers had the right to disembark in Canada. However, passengers were not admitted to Canada, by order of the Canadian courts. Canadian courts settled the matter as such (see Macklin, 2011, 59):

> In that our fellow British subjects are of different racial instincts to those of the European race – and consistent therewith, their family life, rules of society and laws are of a very different character – in their own interests, their proper place of residence is within the confines of their respective countries in the continent of Asia, not in Canada… **[Their customs will] give rise to disturbances** destructive to the well-being of society and against the maintenance of peace, order and good government ... **Better that people of non-assimilative race should not come to Canada, but rather that they should remain of residence in their country of origin…**

From an historical perspective, not only were Indian customs considered "destructive" to Canada, but the climate rationale entered this discourse by designating them as a "non assimilative" race. Indeed, retracing this period, scholars explain that the theory underlying racial discrimination at the time was grounded in "the assimilation argument" (Bolaria and Li, 1988, 171). In 1908, for instance, Mackenzie King's report on Indian immigration stated that "the native of India is not a person suited to this country… accustomed as many of them are to the conditions of a tropical climate, and possessing manners and customs so unlike our own people," or, spoke of "their inability to readily adapt themselves to surroundings entirely different…" (cited in Bolaria and Li, 1988, 171).

Henry et al (1995, 73; see also Jakubowski, 1997, 15) specify that the 1908 *Continuous Journey Stipulation*, "amended the Immigration Act to allow the government to control East Indian immigration without having the appearance of doing so." A year after its introduction, six South Asians entered Canada compared to 2,500 the year preceding it (Henry et al, 1995, 73; Jakubowski, 1997, 15; Thobani, 2007, 92), while the departure of the *Komagata Maru* "signalled the virtual cessation of Indian immigration to Canada."

In sum, the *Chinese Exclusion Act*, the *Gentleman's Agreement* and the *Continuous Journey Stipulation* were mechanisms by which almost no Asians emigrated to Canada until after the Second World War based on the racist belief that they constituted "non-assimilative "races" of "destructive customs" (Henry et al, 1995; Jakubowski, 1995, 73; Kelly and Trebilcock, 2010).

Climatic unsuitability and exclusion from Canada: Differential treatment based on "Race"

Black people were excluded from subsidized settlement opportunities in western Canada (Aiken, 2007, 63-4; Venkatesh, 2019, 83). The Laurier government (1896-1911) chose to restrict African-American immigration, including with "informal" measures which encompassed medical and character examinations. Any examination at the border was to result in the rejection of most Black immigrants (Triadafilopoulos, 2012, 31). Indeed, Schwinghamer (2021) explains that "remarkable efforts" were made to discourage African-American immigration at their points of origin. In the early 20th century, Canadian immigration officials prevented African-American immigration to Canada through the use of "selective enforcement of regulations, deception, bribery, and other questionable methods" (Schwinghamer, 2021).

> In the early 20th century, Canadian immigration officials prevented African American immigration to Canada through the use of "selective enforcement of regulations, deception, bribery, and other questionable methods."
> Steve Schwinghamer, 2021

Between 1905 and 1912, while hundreds of thousands of Americans came to Canada, only about 1,000 African-Americans, who sought to escape discrimination in the United States (Schwinghamer, 2021), did so. The reasons for this exclusion were based on Canadian domestic pressure, including the fact that many Canadian civic organizations asked for a ban on black immigration, fearing social unrest. Campaigns of dissuasion were embedded in the enacting of "passive but deliberate barriers" by Canadian immigration authorities against African-Americans (Schwinghamer, 2021; see also Dunsworth, 2018, 566). These "passive barriers" included: bribes to medical officers to turn away potential African-American settlers; Canadian authorities requesting agents in the U.S. to warn potential African-American settlers of the dangers posed by Canada; forbidding immigration officers to provide African-Americans with a certificate verifying their status as farmers; or requiring railway representatives to demand full fare, instead of the reduced fare for settlers. The secretary in the department of immigration justified such exclusion on the grounds of the unsuitability of the Canadian climate for Black peoples. He wrote, "the climate and other conditions of this country are not such as would be found congenial to coloured people" (cited in Schwinghamer, 2021).

What is more, scholars suggest that as the need for labour diminished, the government started passing discriminatory legislation and policies to restrict the entry of immigrants from "undesirable" sources based on their "race." The *Immigration Act* of 1910 gave the government the authority to exclude the entry of immigrants "belonging to any race deemed unsuitable to the climate and requirements of Canada or immigrants of any specified class, occupation, or character."[39]

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[39] The Act of 1910 gave the governor in council and its appointed immigration officials broad discretionary powers (Dunsworth, 2018, 566).

The aim of the *Immigration Act* of 1910 was to limit immigration to "healthy, white, preferably British or American agriculturalists," or, as explained by Thobani (2007, 92) and Jakubowski (1997, 17) the Act was a "principal instrument" for the maintenance of the "Keep Canada White" policies (see also Triadafilopoulos, 2012, 31). The Act remained in effect for the next 50 years, explicitly favouring European immigration (Thobani, 2007, 92). Paragraph 38(c) stipulated that "race" was a prohibitive legal category that created an undesirable category of immigrants. In 1919, it was amended to include "nationality," a race-related ground. Paragraph 38(c) described those who could be denied entry as:

> any nationality **or race of immigrants** of any specified class or occupation, by reason of any economic, industrial or other condition temporarily existing in Canada or because such immigrants are deemed unsuitable having regard to the climatic, industrial, social, educational, labour… or because such immigrants are **deemed undesirable** owing to their peculiar customs, habits, modes of life, methods of holding property and because of their probable inability to become readily assimilated or to assume the duties and responsibilities of Canadian citizenship within a reasonable time after their entry.

This idea was also circulated in an immigration promotion pamphlet of the time (Law Union of Ontario, 1981, 26):

> Canada is situated in the North Temperate Zone… **The climate is particularly suited to the white race**. It is the land of homes – the new homeland of the British people. British people soon find themselves at home in Canada. It is a British country, with British customs and ideals…

Jakubowski (1997, 16) contends that by including paragraph 38(c), discrimination became enshrined in law by instituting "differential treatment based on race," which was reflected in the creation of a list of preferred countries:

> The policy of the Department [1910] at the present time is to encourage immigration of farmers, farm labourers, and female domestic servants from the United States, the British Isles, and certain Northern European countries, namely France, Belgium, Holland, Switzerland, Germany, Denmark, Norway, Sweden and Iceland. On the other hand, **it is the policy of the Department to do all in its power to keep out of the country … those belonging to nationalities unlikely to assimilate and who consequently prevent the building up of a united nation of people of similar customs and ideals.**

Similarly, the total exclusion of Chinese migrants was advocated by many, including the Trades and Labour Congress, the Retail Merchants Association of Canada, and the Ku Klux Klan of Canada.

This culminated in the *Chinese Immigration Act* of 1923 which limited entry or landing of persons of Chinese origin bar exemptions (Triadafilopoulos, 2013, 36). Consequently, between 1923 and 1947, less than 50 Chinese immigrants were allowed entry into the country (Thobani, 2007, 92). Bolaria and Li (1998) underscore that discrimination against the Chinese cannot be framed in terms of a "historical accident": "the removal of citizenship rights and the restriction on occupational competition were legally sanctioned by the state, and as such, were incorporated into the institutions of Canada."

> The authors go on to underline the unconcealed racist contours of immigration policies, "Such discrimination was systematic and legal, and was rationalized by an ideology which advocated the racial superiority of whites over non whites"
> Bolaria and Li, 1988, 109.

By the end of 1920, most Asians, Africans, and Continental Europeans, particularly Jews, were categorically excluded from Canada. Immigration was limited to those deemed "desirable," that is, immigrants constructed as "preferred races" (Thobani, 2007, 17). In 1939, the MS St. Louis, a ship carrying more than 900 Jewish refugees, was forced to return to Europe because Canada had refused passengers safe haven. As a result, 254 Jews later died in concentration camps. During the Nazi regime (1933 to 1945), "Canada accepted fewer Jewish refugees than any other Western nation. A senior Canadian immigration official asked during the war about how many Jews would eventually be considered for entry into Canada, provided a now infamous response: "None is too many" (BBC, 2018). This phrase is widely quoted insofar as it reflects the policies of the time. Frederick C. Blair, Director of Immigration Branch in the MacKenzie King administration, supported a closed door policy on Jewish refugees and advised the government not to accept the entry of Jews aboard the St. Louis.[40] While other examples may be cited, scholars have described this period as "racist in orientation, assimilationist in objective" (Elliott and Fleras cited in Jakubowski, 1997, 11). In the aftermath of two world wars and the depression, immigration had reached an all-time low of 7,576 in Canada (Elliott and Fleras, 1996, 16). The renewal of immigration did not occur until 1947.

PART 3: POST-WORLD WAR II PERIOD

The second period, characterized by a discrediting of racism, the aftermath of the Holocaust, and the initial enunciation of human rights principles, was supported by an individualist ethic, "holding that all persons were endowed with fundamental rights regardless of their race, ethnicity, or nationality" (Triadafilopoulos, 2012, 8). Triadafilopoulos (2012, 9; see also Satzewich, 1991) goes on to state, "This is not to say that racial discrimination disappeared after the Second World War; rather, the discrediting of racism and integral nationalism as legitimizing principles made discriminatory policies harder to defend and maintain in the face of normatively sanctioned criticism. In both Canada and Germany, governments' sensitivity to these views created the conditions for policy change."

Similarly, Thobani (2007, 15 and 109) points out that the citizenship and immigration legislation that distinguished between "preferred" (initially British and French, and thereafter other European nationalities) and "non preferred" (Asians, Africans and Caribbeans) "races" prevailed until the 1960s and 1970s. Indeed, this feature was a result of earlier thinking on "non assimilative races." For instance in 1947, Prime Minister Mackenzie King provided a statement on immigration that reflected the undesirability of certain migrants based on origin (House of Commons Debates, 1947):

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[40] CBC (1982) reports that "Upon his retirement in 1943, Blair was given a prestigious award for meritorious public service." See also Abella and Troper (2017).

> With regard to the selection of immigrants… I wish to make it quite clear that Canada is perfectly within her rights in selecting persons who we regard as desirable future citizens. It is not a "fundamental human right" of any alien to enter Canada. It is a privilege. It is a matter of domestic policy…
>
> The people of Canada do not wish, as a result of mass immigration, to make a fundamental alteration in the character of our population. Large-scale immigration from the Orient[41] would change the fundamental composition of the Canadian population. Any considerable Oriental immigration would, moreover, be certain to give rise to social and economic problems of a character that might lead to serious difficulties in the field of international relations.
>
> Prime Minister Mackenzie King

Prime Minister MacKenzie's statement, underpinning the right of Canada to select immigrants (now section 6 of the Charter), can nonetheless result in discriminatory effects if prejudice/xenophobia are part of the selection process, as reviewed in Section 1. These stereotypes rooted in claims of inability to assimilate led to the racist belief that racialized peoples were not compatible with an idealized view of Canada as White in nature and culture. Preferential treatment was still to be given to "British subjects from the U.K., Ireland, Newfoundland, New Zealand, Australia or the Union of South Africa, and also citizens of the United States" who were considered to be more easily assimilated into Canada's white "character" (Manpower in Immigration, 1974, 203; Jakubowski, 1997, 17).

In the 1950s and 1960s, Canada repealed the *Chinese Immigration Act* and enfranchised Asian Canadians. Likewise, Canada established an annual quota for immigration from India, Pakistan and Ceylon, with the aim of dismantling racial discrimination. This did not, however, modify the intent of the *Immigration Act* of 1952 which maintained paragraph 38(c), but replaced the category of "race" with "ethnic group" (Hawkins, 1989, 17). The Minister was given discretion to ban or limit the admission of people on the grounds of "ethnicity, nationality, geographic origin, peculiarity of custom, unsuitability of climate or inability to become assimilated" so as not to disrupt the character of Canada's population, which is to say, of White European origin (Jakubowski, 1997, 17).[42]

As Jakubowski and Glasbeek (1997, 9) demonstrate, while initially the idea was to build a "White Canada," the need for labour and the rise of internationalism put an end to this growing inclination. Canada's membership in the United Nations meant an "unqualified obligation to eliminate racial discrimination in its legislation" (Triadafilopoulos, 2007, 8). **A governmental working paper at the time summed up the issue as such, "The problem of Asiatic immigration into Canada is twofold: an international problem of avoiding the charge of racial discrimination and a domestic sociological and political problem of assimilation"** (Jakubowski, 1997, 8). The latter brief mentions that the solution entails "revising our immigration legislation so as to avoid the charge of racial discrimination and yet so effectively limiting Asiatic immigration as to prevent aggravation of the Asiatic minority problem."[43]

In the same vein, Jakubowski (1997, 17) adds, "From the *Immigration Act* of 1910 up to and including the *Act* of 1952, paragraph 38(c) was the principal instrument through which the

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[41] Hawkins notes that the Orient refers to everything in the Eastern Hemisphere outside of Europe (cited in Abu-Laban, 1998, 72).

[42] Tom Kent, advisor to Prime Minister Lester B. Pearson in the early 1960s said of that time, "there was little definition of rules to determine who was admissible to Canada and who was not… a good many decisions, not determined by the rules, [were] referred back to higher levels of the bureaucratic structure" (Elrick, 2020, 5).

[43] "Asiatic Immigration into Canada" Canadian National Archives, RG76, VOL. 85, File 554-5 pt. 1.

implicit White Canada policy in immigration was implemented."[44] This was accompanied by official statements.

> In 1958, the Director of Immigration Branch stated (Satzewich, 1989, 77): "It is not by accident that coloured British subjects other than negligible numbers from the United Kingdom are excluded from Canada… They do not assimilate readily and pretty much vegetate to a low standard of living. Despite what has been said to the contrary, many cannot adapt themselves to our climatic conditions."
> Cited in Victor Satzewich, 1989

Dunsworth (2018), Triadafilopoulos 2007, 9) and Satzewich (1989, 77-78) specify that it was under paragraph 38(c) that Black people from both the U.S. and the Caribbean, "deemed climatically unsuitable," would be excluded from entering Canada into the 1960s, with only limited exceptions. The Governor-in-Council was empowered to prohibit or limit the admission of persons by reason of their:

1. Nationality, citizenship, occupation, class, geographical area of origin;

2. Peculiar customs, habits, modes of life, or methods of holding property;

3. Unsuitability vis-à-vis climatic, economic, social, industrial, labor, health, or other conditions and;

4. Probable inability to become readily assimilated or to assume the duties and responsibilities of Canadian citizenship within a reasonable time after their admission.

This list was devised to restrict entry to non White immigrants and preserve the character of Canada, by which was meant "White Canada." Preferred countries remained the U.S, Britain and Western Europe (Abu-Laban, 1998, 73, Marsden, 2011, 42). In *Andrews* (see Section 1), in which the Supreme Court elaborated on the relative vulnerability of immigrants, Justice La Forest opined on merging of race with nationality, "discrimination on the basis of nationality has from early times been an inseparable companion of discrimination on the basis of race and national or ethnic origin" (in Aiken, 2007, 85).

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[44] "High-level bureaucrats made thousands of decisions each year via order-in-council, a legislative instrument that is implemented without legislative or judiciary oversight. The 1952 Immigration Act gave the Minister of Citizenship and Immigration the power to use order-in-council to admit or exclude any group or individual notwithstanding the Immigration Act and Regulations, including clauses defining the (in)admissibility of groups by national and racial origin, and extensive use was made of this power" (Elrick, 2020, 6, Hawkins, 1988). "A clause in the Immigration Act of 1910 gave the government of Canada the legal power to discriminate on the basis of race" (Arat-Koc, 1997, 73).

PART 4: DISMANTLING EXPLICIT RACISM IN IMMIGRATION POLICY

Canada experienced the dismantling of its overtly, racially discriminatory policies from 1962, with the Immigration Regulations (Triadafilopoulos, 2012, 89).[45] Indeed, in 1962, a universal admission policy, also known as the points system (or merit-based policy), was introduced. It was further modified and entrenched in the *Immigration Act*, 1976-77 (Thobani, 2007, 97). The points system established the independent class (economic immigration) and the family class, intended for family reunification. This formally ended the "Keep Canada White" era and was considered a period of innovation (Thobani, 2007, 97).

Triadafilopoulos and other scholars argue that the urge to modify immigration policy was not so much centred on economic concerns, but rather on the "image" that Canada had to maintain internationally, especially in relation to its support of the civil rights movements and the dismantling of colonialism and apartheid, as buttressed by its foreign policy (Fitzgerald and Cook-Martin, 2014; Jakubowski, 1997; Satzewich, 1991; Triadafilopoulos, 2012).[46] Similarly, Joppke (2005, 49) asserts that the discrediting of race and the advent of a global human rights culture made it difficult for liberal-democratic states like Canada to maintain discriminatory policies. Hawkins (1988; Thobani, 2007, 147) in her extensive study on immigration policy during that time, likewise, grounded the rationale that Canada could not be taken seriously on the international stage with a "racially discriminatory policy round her neck" and had an interest in improving relations with emerging, and newly independent, "Third world countries" (as they were descriptively referred to at the time) – she illustrates how neither the general Canadian population, nor Parliament, had really disavowed racism.

Li (2003, 23) slightly differs on the point of international prestige, or rather adds to it, seeing the introduction of a non-discriminatory policy as a result of Canada's growing needs for labour and skills that traditional European countries could no longer provide. Thobani (2007, 98 and 147), similarly, identifies that labour shortages dictated the presence of immigrants as an "unavoidable necessity," especially as the White character of Canada had already been consolidated at that point.

Scholars suggest that while, officially, the deracialization of immigration policies was initiated, these policies did not signify "complete deracialization" in practice. The literature often emphasizes this contradiction using words such as "in theory" or "in practice" to depict the idea. Arat-Koc (1997, 55; see also Bolaria and Li, 1988) points out that while deracialization occurred, many authors believed that racism continued in immigration policies and procedures. Dunsworth (2018, 567) explains, "the official policy of immigration selection based on race, ethnicity, or place of origin ended via a pair of Orders-in-Council in 1962 and 1967, but a number of scholars have cautioned that while these reforms represented a transformative shift in Canadian immigration policy, they did not in fact usher in complete "deracialization."

As Dunsworth (2018, 567-8) goes on to state, "Historians indicate that discrimination persisted, at least in the early years following the Orders, in such realms as: the geographical distribution of immigration offices; immigration officers' use of discretionary powers … and via the preference given under the points system to highly educated, French- or English-proficient

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[45] The aim of the revised regulations was to eliminate "any valid grounds for arguing that they contain any restrictions or controls based on racial, ethnic or colour discrimination." This was to be done via the amendment of Regulation 20 (Triadafilopoulos, 2012, 89)

[46] Fitzgerald and Cook-Martin (2014, 142) observe, "without significant military or economic power, Canada attempted to secure the world's respect by its good deeds."

candidates, more likely to hail from predominantly white "developed" countries" (see also Abu-Laban, 1998; Elrick, 2020; Kelley and Trebilcock, 2010; Satzewich, 1989; 1991; Thobani, 2007; Wright, 2013).

Victor Satzewich (2016) demonstrates the crucial role played by civil servants in implementing Canada's system of immigration preferences.
Phil Triadafilopoulos, 2021

Canada's Caribbean partners (Jamaica, Barbados, Trinidad, and other island states of the "British Isles") were among the fiercest critics of Canada's immigration policies. In 1962, the Director of Immigration stated that the purpose of deracialization amounted to, "abolishing racial discrimination from [Canada's] policy while making it clear that "we shall still give preference in our selection of immigration to those countries which have traditionally supplied our immigrants."[47] Immigration officers had discretion to still limit potential non-White immigrants. Deputy Minister George Davidson wrote:

> There may be some tendency toward discrimination in the administrative application of the Regulations… though the fact that we recognize, for example, the greater difficulties that are faced by a West Indian who tries to find employment in Canada, as compared to a Western European…. **This may justify and even require a somewhat more exacting interpretation of adequacy in terms of skills and settlement arrangements in the case of the West Indian… That kind of discrimination, in my opinion, can be justified and defended**.

Of note here, racism and discrimination were viewed as justified, ethical, and "normal." Related to the "superior stock" narrative, Elrick (2020, 14) argues that the term "low calibre" was often used to describe potential immigrants from the Caribbean along with the use of stereotypes such as "poor, ignorant, indolent." These stereotypes were attached to a construction of Caribbean countries as an inferior region of the world.

In the same vein, Caribbeans were capable of transposing inferiority (read: socio-economic problems and social unrest) to Canada. This thinking was based on racism (see Section 1).

The interviewing of officers at the time revealed their description of immigrants from the Caribbean as "childlike, indolent, lazy and stupid." Satzewich (1989, 86) suggests that this was not dissimilar from the 18th and 19th century racist stereotypes used to justify slavery and colonization.

The phasing out of explicit racism was to be accomplished by the amendment of Regulation 20, considered by the Minister as the "heart of Canada's immigration policy." The amendment of Regulation 20 can be viewed as constituting the origins of the points system and eliminated all references to race, ethnic origin, nationality, or geographic origins (Triadafilopoulos, 2007, 13): "The new Regulation 20(a) lays primary stress on selectivity based skills and qualifications as the main conditions for admissibility, without regard for any other factor. If an applicant can qualify on these grounds and has sufficient means to establish himself in Canada until he finds employment, or alternatively has a firm employment opportunity or plan for self-establishment in Canada, he comes within the admissible clauses."

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[47] Memorandum from the Director of Immigration to the Deputy Minister, November 10, 1961. National Archives of Canada, RG 26, VOL. 100, File 3015-1, pt. 8.

Fears in Canada were founded on "uncontrolled" migration and the importation of social problems. Despite the 1962 regulations, Canada maintained "the right… to decide its own social and racial composition and refuse to accept immigrants whose presence would cause severe disruptions or drastic change" (Satzewich, 1989, 84; Triadafilopoulos, 2007, 16).[48] FitzGerald and Cook-Martin (2014, 177) write that in view of the exclusion of the Caribbean and Black would-be immigrants, universal admissions were a "charade" for an international audience. Triadafilopoulous (2012, 17) concludes, "Contrary to expectations, the issue of race refused to disappear…During a press conference in Jamaica on November 30, 1965, [Lester B.] Pearson formally acknowledged the reality of a double standard in admissions and procedures and pledged to make good on Canada's promise to remove racial discrimination. Additional charges of racism remained." The *Globe and Mail* asked whether the Regulations were actually being applied equally to "coloured and white immigrants." Pearson then made a commitment to remove racial discrimination "in theory as well as in practice" (Triadafilopoulos, 2012, 17).

Shortly thereafter, a temporary program to employ workers from Jamaica and other Caribbean countries was introduced, which is still present today. Elrick (2020, 2) summarizes the literature on this part of Canadian immigration history, and the role played by the federal public service, as follows: "…high-level bureaucrats in postwar Canada are depicted as resisting immigration policy universalisation and acting behind the scenes to maintain racialized selection practices, resulting in delayed changes to formal policies and potentially laying the groundwork for racist selection practices to continue covertly."

Points system: Universal admissions policy

The White Paper on Immigration, tabled in the House of Commons in 1966, was a policy report commissioned to make recommendations to the government in light of the changing Canadian economy, bearing in mind that migration from non-preferred countries (non-European, non-Western hemisphere) was seen as a threat to social cohesion (Abu Laban, 1998, 74).[49] Hence, low-skilled immigration, like racialized immigration, was viewed as a threat to social cohesion, with concomitant arguments that in times of economic downturn, low-skilled immigrants would not be able to re-train, due to education levels, their countries of origin, and their lack of assimilation potential.[50]

> The points system emerged to manage unwanted social problems that were feared would emerge from certain kinds of immigrants.

It is important to underline the roots of the points system as a system to manage unwanted social problems that could ensue from certain kinds of immigrants. The report called for a stronger marriage between immigration and long-term economic interests and the recruitment of qualified immigrants. While the paper stressed that there could not be discrimination on the grounds of race or ethnicity in a universal admissions policy, it also warned of the economic and social consequences of uncontrolled sponsored migration – which would be the equivalent of family reunification today, that is, the sponsoring of certain family members by permanent

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[48] Confidential information for the Prime Minister: Canada and Commonwealth Immigration. West Indies Conference 1965 (Triadafilopoulos, 2007, 16).

[49] The White Paper on Immigration called for skilled immigration because "if large numbers of unskilled immigrants come to Canada when the economy is particularly buoyant, the problems of poverty exposed by any economic readjustment will be more severe" (Abu-Laban, 1998, 74).

[50] These arguments are still being raised in modern discussions in relation to lower-skilled migrant workers.

citizens or Canadian citizens. Furthermore, it promoted the idea of the tightening of sponsorship of family members. Under the proposed measures, Canadian citizens would be able to sponsor a wider range of dependent and non dependent relatives, but landed immigrants would only be able to sponsor immediate dependents. These ideas led to criticisms by ethnic groups, church and labour groups which denounced the tightening of sponsored categories, or today's family class (See also Marsden, 2011, 43). This led the-then Department of Manpower and Immigration to rethink its policies, and implement the new regulations of 1967.

The points system reflected the phasing out of all references to "grounds of charges of discrimination" and emphasized "the skills, ability and training of the prospective immigrant himself, and on his ability to establish himself successfully in Canada," as per the 1962 Immigration Regulations and the amendment of Regulation 20.[51] Though this signaled the end of racial and ethnic criteria, skepticism did not disappear. The points system was introduced as an innovative tool to assess immigrants' skills and education (Aiken, 2007, 76; Hawkins, 1989, 39; Jakubowski, 1997, 18; Triadafilopoulos, 2012, 14). The universal admissions policy of 1967 embedded in the *Immigration Act* of 1976 – the first *Act* to formally eliminate racial discrimination - heralded the beginning of "deracialized" immigration policies and stands at the root of Canada's multiculturalism (see also Elrick, 2020, 3).

From 1946-1966, immigrants from Asia, the Caribbean, Latin America, and Africa represented an insignificant fraction of Canada's immigration intake, while by 1977 it represented half of annual flows (Triadafilopoulos, 2007, 2). Canada also opened its doors to "non-traditional" and "non preferred" countries and committed itself to ending discriminatory policies. According to paragraph 3(f):

> It is hereby declared that Canadian Immigration policy and the rules and regulations made under this Act shall be designed and administered in such a manner as to promote the domestic and international interests of Canada recognizing the need to…(f) **ensure that any person who seeks admission to Canada on either a permanent or temporary basis is subject to standards of admission that do not discriminate on grounds of race, national or ethnic origin, colour, religion or sex**.

Under the *Act*, potential immigrants would be assessed according to universal standards and their ability to settle successfully (Jakubowski, 1997, 19). Scholars suggest, however, that signs of discriminatory policy were becoming more subtle, albeit still indicating a preference for White European immigration. Elrick (2020, 4) explains, "for example, the Department continued to limit the size of, and distribution of staff and resources to, case processing offices in non-desirable countries of origin."

Scholars, such as Triadafilopoulous (2007 and 2012), Jakubowski (1997), Satzewich (1991), Dunsworth (2018) also emphasize the wide use of discretion under the *Act*. The literature here suggests that discrimination in less subtle forms persisted (see also Aikish, 2007). Elrick (2020, 1) observes in her analysis that the points system became a means by which race did not disappear, but was "managed," "at the intersection of class and status." For instance, social rioting and the disruption of social order were associated with Black immigration (Satzewich, 1989, 78). In turn, Black immigration was made synonymous with poverty and unskilled

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[51] Memorandum to Cabinet Re: Immigration Regulations, October 16, 1961, National Archives of Canada (in Triadafilopoulos, 2007, 13). Triadafilopoulos (2012, 91) notes that the *Globe and Mail* reacted to the 1962 Regulations as follows, "Canada Unlocks Its Doors to All Who Possess Skills – on Paper at Least."

labour, reminiscent of the concept of the "non-assimilative race." "Black migrants were defined as potential problems, or as individuals who might disrupt the social order.

> This was… because of the racist belief that as a "race," they were unable to "assimilate" to the "Canadian way of life"
> Satzewich, 1991, 191.

While the literature disagrees on the motives behind the repeal of discriminatory policies, whether influenced by international factors, or the need for additional labour, it remains undisputed that the basis for the repeal of these policies has influenced Canadian immigration policy to this day (see Points System and Human Capital approach, below).

Points system: Precursor to federal skilled worker program, business class, express entry, Canadian experience class and human capital approach

While the focus of this review is on migrant workers and temporary migration programs in Canada, the literary debates on permanent economic migration (that is, the points system and human capital approach) are highly relevant, as discussed below. The points system is closely connected to temporary migration, but also impacts all immigrants, whether they be considered "high-skilled" or not. While the points system is often presented as a success of migratory policies, the literature considers that it still incorporates discriminatory undertones.

Joppke, nonetheless, is not in agreement. He describes skill-based selection as the "epitome of non discrimination": "The State may consider the individual not only for what she does, not for what she is... The individual is selected according to 'achievement,' not 'ascription,' that is, according to her agency rather than according to what she is immutably born with" (cited in Ellermann, 2019, 47). Ellermann and other scholars believe this to be a "conventional" reading of immigration policies without further scrutiny of discriminatory effects (Ellermann, 2019, 47) and positionality of gendered, classed, and raced individuals. As Ellermann (2019, 89-90) contends:

> Immigration policies can be discriminatory even if they are not based on intentional and explicit exclusion of certain groups… our central point is that the biases these mechanisms produce are … problematic for the same reasons that liberal states have condemned explicitly discriminatory immigration policies since the 1960s… **policies biased against certain social groups are not immune from the charge of discrimination simply because selection necessitates differentiation…** liberal states do not have absolute discretion when selecting among prospective immigrants since they cannot legitimately violate their constitutive moral principles in the process of, or as result of, immigrant selection … **Joppke and others see discrimination as a breach of the principle of personal autonomy only through the intentional and explicit exclusion of entire groups of people, we view discrimination as a principle of equal respect through policies that demean the inherent dignity and worth of certain citizens**. Selection on the basis of ascriptive characteristics is problematic not merely because those features are immutable, but because they have been used in the past to deny the equal moral worth of their bearers, and they continue to be associated with negative stereotypes that systematically disadvantage citizens who share them, such as ethnicity, nationality, gender, sexual orientation, ability status, class, and religion.

Aligned with Ellermann's discussion (2019; 2020), this review also considers the amplification of injustice or societal inequalities. The questions central to this analysis are as follows: Do policies aggravate, or reproduce, divisions along class lines? Do they promote stigma? Do they violate principles of equal respect? (See Section 1). Understanding this problematic is central to the issue of migrant workers.

> According to scholars, there would not be a temporary program in the absence of a merit-based system that favours a profile of the ideal immigrant viewed as potentially "successful." This creates a second tier of immigration, in which migrants, officially classified as low-skilled in receiving countries, but "key" to core industries, are treated along a differential standard.

This is considered to be linked to an interlocking system of "race" and class. Terms used to describe the ideal immigrant include "best and brightest," "immigrant quality," "good and desirable," "deserving," "talented," and also "valuable," (Guo, 2015; Tannock, 2011), reminiscent of terms such as "superior stock."

Origins-based selection still has a taint of desirability traits that are not based on race, but on aptitudes, skills and language, leading scholars to point to middle-class criteria (Guo, 2015; Tannock, 2011). The issue of being less of a burden for the host society, and therefore make less use of social welfare, than skilled economic immigrants is also crucial in a merit-based immigration system. The question, however, is whether this has discriminatory (racist) effects. Bauder argues that there are "ethical" issues raised by this view, given that many Canadians themselves would not be considered by their own government to be of high enough "quality" to be permitted to enter Canada, their own country, as independent immigrants (Bauder, 2002; Castles and Mills, 2003; Tannock, 2011, 1347).

Dunsworth (2018, 568) pinpoints that generally the literature on the persistence of racism in Canadian immigration policy – whether permanent or temporary – has highlighted "**unofficial ways in which race has continued to matter either in the unstated and perhaps unconscious bias of immigration bureaucrats, from department headquarters in Ottawa down to visa and border officers, or in the devolution of migrant-selection responsibilities, as in the case in the SAWP."** Understanding the points system legacy, though not strictly within the scope of this review, is therefore key in grasping the dynamics of temporary migration.

PART 5: HISTORY OF RACISM AND TEMPORARY MIGRATION PROGRAMS

Agricultural and domestic migrant workers were the first to be incorporated into temporary migration programs during, and in the aftermath of, the deracialization of immigration policies. Their incorporation began before the premise of the Non-Immigration Employment Authorization Program (NIEAP), the precursor to the TFWP. This section examines the history behind temporary migration programs, as based on "race." At first, the history of migrant agricultural workers will be reviewed, followed by that of domestic workers and the NIEAP.

Agriculture and the history of the seasonal agricultural worker program

Agriculture has always been of special significance to immigration. Indeed, agriculture is known to have the "longest history" within temporary migrant worker programs (Preibisch,

2010, 45).[52] What is more, the Ministry of Agriculture sponsored Canada's first *Immigration Act* (Venkatesh, 2019, 85).

Between 1896 and 1905, the Canadian Minister of Interior began a campaign to attract Europeans outside of the United Kingdom to Canada to work in agriculture. However, prejudices towards Ukrainians, Italians, Poles and other Eastern and Southern Europeans, who had been working in the sector, led to a reversal of the policy to favour British workers (Venkatesh, 2019, 86). By 1920, acute labour shortages in the industry led the government to reopen the sector to non-preferred countries. In 1947, Canada reintroduced a temporary labour importation scheme for Polish agriculturalists who were granted landed immigration status and could apply for citizenship after two years. This scheme was expanded to all European post-war refugees. Under this scheme, 100,000 refugees entered Canada (Venkatesh, 2019, 87).

During the post-war era, Canada kept up with an immigration system that permitted immigration from European countries provided prospective immigrants had a relative in Canada. By the late 1950s, the Department of Citizenship and Immigration could not recruit enough workers from Europe to satisfy labour needs. As noted, non-White immigrants were considered climatically unsuited to living in Canada and amenable to igniting social unrest. Satzewich (1991, 127) defines this thinking as racist: ''climate'' appears to be an important element in Canadian national mythology and self-definition. As suggested in the 1952 *Immigration Act*, arguments about climate were used persistently to deny access to permanent settlement to persons from the Caribbean…**The representation of 'black' people is indicative, then, not just of a process of racialization, but of racism".**

In 1952, the Minister of Citizenship and Immigration stretched this further by correlating climatic unsuitability to labour market unsuitability, "In light of the experience it would be unrealistic to say that immigrants who have spent the greater part of their life in tropical countries become readily adapted to the Canadian mode of life which, in great extent, is determined by climatic conditions… it is equally true that, generally speaking, **persons from tropical countries or sub-tropical countries find it more difficult to succeed in the highly competitive Canadian economy**" (cited in Satzewich, 1991, 129).

The characterization of the climatic unsuitability of people from the tropics, leading to the racist argument that they could not adjust to life in Canada, became a means for them to be limited to the role of "temporary" workers, undeserving of permanent residence. More than this, this climatic unsuitability also allegedly rendered prospective immigrants incapable of competing in the Canadian economy.

According to this thinking, warm climate did not only impact biological predisposition to living in Canada, but also peoples' intellect and aptitudes.

What is more, as opposed to Caribbean workers, Canada held that European workers were naturally unsuited for "unfree migrant labour" given that they were "inherently free." Unfree labour was characterized by the signing of labour contracts; the denial of family reunification; restricted access to permanent residence; barriers of access to social, educational or welfare services, as well as "forced rotation and repatriation of labour" (Burawoy and Thomas cited in Satzewich, 1990, 330; see also Bolaria and Li, 1988: 226-29). Historically, unfree migrant

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[52] In 1868, thousands of British orphans settled in Canada to work on farms (Preibisch, 2010, 45).

labour is also associated with slave labour, serfdom and indentured servitude (Bolaria and Li, 1988; Eggerman, 2012; Satzewich, 1990, 329).

In contrast to Caribbean workers, representatives of the Department of Labour wrote, "… the well known responsibility of these people [Europeans], their urge to a free initiative, their close knit family ties and their spiritual and moral characteristics would doom any movement to failure if regarded as merely a movement to meet labour deficiencies" (Satzewich, 1991, 120).

Considered "inherently free," Europeans could not sign labour contracts because that would constitute an "abnegation of human rights which cannot be justified in a democratic society" (Satzewich, 1988, 293). The freedom of workers was rooted in a process of racialization, by which Dutch, British and German workers could not be perceived as "unfree labour," and Caribbean workers were constructed as naturally fitting the category of unfree work (Satzewich, 1991, 121). By contrast, the postwar guestworker system in Europe provided ways for migrant workers to settle permanently, for instance in the Netherlands and in Switzerland.

When skill-based permanent immigration was introduced in the 1960s, farm-owners started voicing their discontent that farm work was classified as "unskilled." As a result, they began lobbying for a temporary program, or a two-year contract labour sponsorship program (Venkatesh, 2019, 87). In 1966, 264 male workers from Jamaica were permitted entry to work in Canada to work on a seasonal, contractual basis in the fruit and vegetable industry in south-western Ontario, as part of a program that is still known as the SAWP to this day.

Tannock (2011, 1342) illustrates that this ironically occurred around the same time as the White Paper on Immigration advanced that Canada no longer needed workers with "strong backs to work its lands." Venkatesh (2019, 87) explains this process, "The changes in immigration law in the 1960s were made to increase permanent immigration and SAWP was the only seasonal temporary migration scheme that was drafted for the agricultural sector. The workers came under a permit that was tied to the employer during the harvest season and had to return after the season ended. The program worked through a bilateral arrangement with Jamaica."

Ventatesh (2019, 88) goes on to state that the program was initiated as a short-term program to ensure that workers remained in the agricultural sector. Cook-Martin and Fitzgerald (2014, 182; see Dunsworth, 2018, 568) observe, in their study on comparative racist immigration policies, that Temporary Foreign Worker (TFW) schemes, especially … (SAWP) constitute an "exception to the end of national origins-based selection criteria in Canada, since employers in this program select workers by country of origin." This clearly demonstrates that discrimination was still an unchallenged facet of this program, while immigration programs based on the human capital approach were designed to reduce discrimination.

Bauder (2008), Dunsworth (2018), Goldberg (2009), Marsden (2011), Perry (2012), Preibisch (2010), Satzewich (1989, 1990, 1991, 2007) and Venkatesh (2019) unanimously assert that the SAWP is based on racist immigration policies that eventually culminated in its creation.

Perry (2012, 189; see also Bauder, 2008; Venkatesh, 2019) illustrates how the SAWP is a "relic of Canada's racist and colonial past, one that continues uninterrupted in the present age of statist multiculturalism' and refers to "the history of overt racism in which the program is rooted."

During the late 1970s and early 1980s, approximately 4,700 men and (a smaller number of) women from the Caribbean temporarily stayed in Canada on a yearly basis. Thereafter, source countries came to include Barbados, Trinidad and Tobago, Grenada, Montserrat and Dominica.

Caribbean workers, after the termination of their contract, could not remain in Canada. The contracts involved "a form of compulsory rotation and repatriation." Satzewich (1991, 110 and 115) writes:

> The contracts specify, among other things, the minimum wage which the employer must pay, the provision of adequate living quarters on the part of the employer, the conditions under which the workers are to be repatriated for breach of contract and arrangements for transportation. Their conditions of entry also specify that at no time are the workers to be employed by anyone except the employer to whom they are contracted. If they quit or change jobs without the agreement of the employer and the representative of the Canada Employment and Immigration Commission, then they are subject to repatriation. They therefore cannot circulate in the Canadian labour market. Because they have been defined as temporary entrants to Canada without the right of permanent settlement, and because it is not intended that they become citizens of the country and parts of the imagined community of the Canadian nation, they are considered here a form of unfree migrant labour … **Absent in the case of Canada are mechanisms whereby a Caribbean worker who has come to work in successive harvests eventually qualifies for the right to settle in the country permanently**.

Black people were viewed as having a "fixed and unchanging nature" suited for temporary unfree migrant labour. According to Satzewich (1988, 196), "It is clear … that the… Department of Citizenship and Immigration saw the incorporation of Caribbean workers as unfree migrant labour both as a method to resolve a labour problem and as a method that would prevent 'black' settlement in the country."

In short, Black people were characterized as unsuitable on a number of levels. There was clearly an emphasis on their fixed biological characteristics and traits being incompatible with an ability to assimilate to the Canadian climate. It does not stop here, however. Caribbean workers were also viewed as being suited for certain kinds of labour, and not for others: for agriculture, but not for factory work. The constraints of temporary entry and unfree labour were means to control the permanent entry of workers deemed undesirable based on their race, or "the physical presence of people with certain phenotypical characteristics." It also prevented these workers from bringing their families to settle in Canada. By being "socially invisible" (that is, viewed as one-dimensional economic beings) they would not induce "race relations" issues (Satzewich, 1991, 191; Satzewich, 1988, 299): **"The belief that the presence of groups with certain phenotypical characteristics would cause certain "problems" constitutes a negative evaluation of those forms of phenotypical difference, and as such, qualifies as racism".**

The noted roots of racism underlying the SAWP are present throughout the literature. In the 1980s, a member of parliament who sat on the House of Commons Immigration Committee reflecting this past racist argument stated, … "if there are to be immigrants, they should be trained immigrants from Europe. That's not racism… Rather, Canadians are merely seeking people who can adjust to this climate"
Victor Satzewich, 1991, 128.

Negative traits linked to "race" were often advanced (e.g. the discourse maintained that they cannot adjust, they will cause social and racial problems, and we are doing "them and us" a favour by excluding them). Private discourse by government officials post-deracialization era continued to include racist remarks. As reviewed previously, and as highlighted in the

literature, formal deracialization of immigration policies did not mean the end of racism, especially in private circles.[53] These discourses, nonetheless, came to be reflected in immigration policies, ever so subtly, as illustrated by the NIEAP.

Domestic workers

Canada has a long history of securing domestic work externally (Grandea and Kerr, 1998). Just as with the SAWP, domestic service in Canada has been associated with indentured labour, and characterized as "unfree labour," and less commonly as slavery (Arat-Koc, 1997, 57). Historically, however, the vast majority of female slaves were brought in to Canada as domestic servants in the late 18th and early 19th centuries (Arat-Koc, 1997, 57; Bolaria and Li, 1988, 165). Main source countries for domestic service, in the pre-war years, included the U.K. and Western Europe.

In keeping with nation-building and seeking to recruit "civilizers" for Canada, British domestics were seen as the future wives and mothers of the nation, and daughters of the Empire (Arat-Koc, 1997, 54-5; Bakan and Stasiulis, 1997, 33). In the early 20th century, they constituted more than three quarters of domestics working in Canada (Arat-Koc, 1997, 60). Bakan and Stasiulis (1997, 16) place the policies related to domestic service within the context of negative eugenics and that of discouraging "undesirable" races from settling in Canada as a historical feature of Canadian immigration policy.

> Historically, the vast majority of female slaves were brought in to Canada as domestic servants in the late 18th and early 19th centuries.
> Sedef Arat-Koc, 1997; B. Singh Bolaria & Peter S. Li, 1988

During World War II, Eastern European refugees (displaced persons) worked for Canadian families for a period of one year. In the early 1950s, German, Italian and Greek women also worked in Canada as domestics.

> European domestics all entered Canada as landed immigrants. Black and other domestics of colour were excluded from Canada not based solely on the now very familiar argument of their presumed inherent inability to adjust to the climate, but also on their supposed "sexual licentiousness" – this exclusion lasted until 1955
> Calliste, MacKenzie, Timoll cited in Bakan and Stasiulis, 1997, 33.

A small and short-lived exception occurred for a small number of domestics who were brought to Canada from Guadeloupe in 1910-11 (Bakan and Stasiulis, 1997, 33). Arat-Koc (1997, 54) explains, "… domestic workers with "less preferred" racial backgrounds were viewed merely as cheap, temporary, and expendable labour. The variations in, regulation of, and experiences of, different groups of domestic workers thus suggest that there has been a continuum in status and socially constructed racial/ethnic desirability among foreign domestics, which corresponds to the racial/ethnic hierarchy constructed within Canadian immigration policy as a whole." As stated by the Director of Immigration Branch in 1955, "it has long been the policy of this Department to restrict the admission to Canada of coloured or partly coloured persons" (cited in Satzewich, 1991, 126). Calliste (1994, 132) points out that Canadian immigration policy

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[53] Satzewich (1988, 129 and 294) writes, "Certain parallels can be drawn between the private discourse of the state after 1962 and the earlier era of explicitly racialized immigration control."

regarding Blacks, was "structured by a dialectic of economic, political and ideological relations: employers' demand for cheap labour to do unskilled and domestic work was set in tension with the state's desire to exclude Blacks as permanent settlers."

In 1955, the federal government initiated a domestic-worker recruitment program for Caribbean women, formally entitled, The Domestic Scheme. Subsequently, in 1981, the federal government launched the Foreign Domestic Movement Program with Jamaica and Barbados (Mackenzie, 1988, 128-133). These programs were the precursors to the Live-in-Caregiver Program (1992) and the caregiver streams (2014 and 2019), also known as the 2014 and 2019 permanent residence pilots or Caregiver Program. More details are provided below as with regard to the historical caregiver programs (pre-1992).

During the first year of the Domestic scheme, there was a quota of 100 female workers, followed by 280 per year in subsequent years. After 1962, a few Caribbean women entered through regular immigration channels. The quota system remained constant until the early 1970s. The scheme recognized that single women, with no dependants, were permitted to come to Canada as landed immigrants on the condition that they stayed with their employer for at least a year, after which they could move freely in the labour market (Bakan and Stasilius, 1997, 16; Satzewich, 1991, 125). After five years, they could apply for citizenship and sponsor certain close relatives (Satzewich, 1991, 125).

Bolaria and Li (1988, 201) assert that to qualify they had to be of "young, of good character" and "single and without children." They had to have an eighth grade education and could not move on to other jobs before spending at least a year as a domestic servant (Jakubowski, 1997, 47). Initially, the scheme was considered successful. "Canada," Arat-Koc (1997, 75 – see also Calliste, 1989, 45) explains, "was receiving an over-qualified workforce to perform domestic labour at no cost to itself. Many of the women recruited under the program were so highly educated that their emigration contributed to a 'brain drain' from Barbados." Though granted landed immigrant status on arrival, an agreement with the two Caribbean countries stipulated that should women be found unsuitable for domestic work, they would be returned to their countries or origin with sending countries responsible for costs of return (Arat-Koc, 1997, 75).

In addition to "race," there was a "gender" component to immigration programs related to domestic service (Fleras, 1992, 141; Macklin, 1999; Satzewich, 1991; Thobani, 2007). **Gender intersected with race to produce stereotypes about women involved in the domestic service.** Indeed, "Representatives of the state, in a racist manner, defined females from the Caribbean as a fixed biological group which possessed certain negatively evaluated fixed cultural traits which would lead to the creation of social and "racial" problems in the country."

This was accompanied by the belief that Caribbean women's close relatives were "of poor quality" and by beliefs in "their supposed libidinous natures" (Satzewich, 1989, 92).

> If white women were to be the 'mothers' of the nation, non-white women were said to herald its doom… women of the non-preferred races were constituted as morally degenerate, sexually depraved, and endowed with a fecundity more animalistic than human.
> Sunera Thobani, 2007

As a case in point, Black women had to undergo a medical testing for veneral disease, linked to the racist idea that they were naturally promiscuous, with further gynecological examinations upon arrival (Arat-Koc, 75; Bakan and Stasiulis, 1997, 34). Mackenzie (in Satzewich, 1991, 144) describes the situation as follows, "Women arriving under the scheme were not only

subjected to extensive medical tests in their home countries – including x-rays and tests for tropical diseases – but were subjected to extensive gynecological examinations (testing for syphilis) when they arrived in Canada. The governments of Jamaica and Barbados were expressly not informed of the tests" (Mackenzie cited in Stasiulis, 1987, 6).

Satzewich (1991, 144) explains that these immigration-based arguments reflect racist ideas embedded in the rationale for slavery, whereby Black people were associated with animals and natural promiscuity with no means whatsoever of controlling their sexual impulses. Slavery influenced immigration ideas of the 20th century. What is more, the government was also concerned about sponsorship of family members and the feared anticipation of "unskilled," uncontrolled arrival of Black would-be immigrants.

One immigration official stated (Satzewich, 1989, 91), "The one unsponsored worker may meet someone's need for a domestic servant for a year or two, but the result may be ten or twenty sponsored immigrants **of dubious value to Canada** and who may well cause insoluble social problems… I am greatly concerned that we may be facing a West Indian sponsorship explosion". Further official statements were made to this end. The Canadian High Commissioner in Trinidad spoke of "promiscuity… especially in the lower end of the social scale" – a sign of the construction of a discourse that revealed discrimination, grounded in prejudicial/xenophobic statements, by enmeshing "race" with "class."

The Director of Immigration Branch stated (Satzewich (1989, 92), "West Indian mores are quite different from ours. Illegitimacy is pretty well accepted and a fact of life…" The program continued until 1967 after which, in 1973, women were no longer admitted automatically on landed immigrant status, but rather on "non-immigrant temporary employment visas," while European domestics continued to enter Canada as landed immigrants with mobility rights (Bakan and Stasiulis, 1997, 34). "Access to citizenship rights," Arat-Koc (1997, 56) argues, "has been facilitated for domestics of the 'desirable' race/ethnicity, while made difficult or inaccessible for those of 'undesirable' racial/ethnic backgrounds." Jakubowski (1997, 48) cites Silvera in describing the prerequisites of the temporary visa, "Each visa is issued for a particular kind of job, for a specific employer and for a definite period of time. If any of these circumstances change, the holder of the visa must immediately report to the Employment and Immigration Commission or run the risk of being deported."

Under the Foreign Domestic Movement Program, regulations permitted women to apply for "permanent residency" in Canada if they had been in the country for two years. Scholars, however, stressed that access to permanent residence was made complex by officers having the discretionary power to take into account, aptitude for learning… adaptability to Canadian lifestyle and personal suitability (Silera cited in Jakubowski, 48) which could still be grounded in "race." Jakubowski (1997, 48) and Balkan and Stasiulis (1997) argued that the conditions linked to the temporary employment visas seldom allowed domestic servants to challenge their employers over conditions of work and led to situations of exploitation and physical and psychological abuse. The task force on Immigration Practices and Procedures (1981, see Jakubowski, 1997, 48) indicated, "Their employment authorization is limited to employment with a designated employer, a person's status may change to that of visitor if she loses or gives up a job while in Canada. A visitor cannot apply for another employment permit from within Canada. This puts a high premium on clinging to one's job and leaves the domestic extremely vulnerable to exploitation."

The literature reveals that this led domestic workers to become "docile, compliant and obedient," especially as they began to fear for their status and feared deportation (Jakubowski, 1997, 48; Silvera, 1989). Since the 1970s, Filipino women became the vast majority of domestic workers in Canada, historically preceded by Caribbean women. In times of economic uncertainty, these women were often viewed as taking jobs away from local Canadians. In order to illustrate that deracialization did not usher in complete racial equality for all types of immigrants, Carty (in Arat-Koc, 1997, 78) indicates, "It is ironic that the recent emergence of migrant, as opposed to immigrant, status for foreign domestic workers came precisely at the time when Canada claimed to have rid its immigration policies and procedures of racial and ethnic biases. Just when Canada started to define itself as "multicultural," it developed policies which defined some groups of immigrants as 'workers only.'" This "irony" is also signalled in the literature in relation to the establishment of the NIEAP, especially in Nandita Sharma's book *Home Economics* (2006).

The Non-Immigrant Employment Authorization Program (NIEAP)

Along with the deracialization of immigration policies came a regulatory framework which governed the entry of temporary workers. This framework, introduced in 1973, was entitled "The Non-Immigrant Employment Authorization Program," the precursor to today's TFWP (Marsden, 2011, 44 and Tannock, 2011, 1,343). This program expanded beyond the existing "migrant worker" recruitment programs intended for specific sections of the labour market, such as agriculture and domestic work. The NIEAP also transformed immigration policy writ-large as it facilitated the shift to "migrant workers" as the main source of foreign nationals recruited to Canada rather than immigrants, that is, landed immigrants with access to permanent residence and citizenship (Sharma, 2002). Sharma (2006) has written extensively about this shift in her book, cited above, in which she argues that the origins of the program were tightly tied to considerations of "race." Likewise, Marsden (2011, 19) explains:

> This regime allowed workers to enter Canada for specified periods during which they were bonded to a particular employer on the basis of demonstrated temporary labour market shortages, which could encompass a variety of job types such as agricultural and domestic labour, service, and professional positions. Thus, immediately alongside the shift to a more explicitly economic migration policy was the division between migrants who were able to enter Canada as immigrants (also called "permanent residents") and those who entered temporarily.

The division of migrants into permanent and temporary categories was accompanied by a further division of temporary migrants into high-skilled and low-skilled categories. A correlation formed between the type of work undertaken by foreign workers and their likelihood of obtaining permanent residence…. Female workers and workers from less economically developed countries were significantly overrepresented in low-skilled positions.
Sarah Marsden, 2011

To note, the origins of the "low-skilled" stream of migrant workers, seldom amenable to permanent residence and therefore of citizenship, were based on Canada's post racialized immigration approach, itself rooted, and closely intermeshed, in the overt (sometimes, private) racism that created temporary migration programs so as to avoid the permanent settlement of Black people. In other words, those considered "high-skilled" or "skilled" had a much higher opportunity to obtain permanent residence.

Justifications for hiring temporary workers were framed along the rationale of "labour shortages." Sharma (in Marsden, 2011, 45) highlights that Canadians were not willing to do these jobs on the grounds of their dangerous nature, but also, importantly, due to low wages. She also suggests that racialized workers were no longer explicitly excluded from immigrating, but included in temporary migration programs which challenged their access to permanent settlement and family reunification.

In a similar way, Sharma points to the hidden racialized origins of the TFWP which, for her, were a means by which Canada could still pursue discrimination (2006, 20):

> … the problem that the NIEAP seems to have solved is the problem of non-permanence of non-Whites within Canadian society. Following the liberalization of Canadian immigration policy in 1967, non-Whites admitted as immigrants, that is, permanent residents, came to have (virtually) the same rights as White Canadians. Moreover, after 1967, a growing proportion of immigrants came from the global south…

Sharma (2006, 22 and 89) underlines that the NIEAP came as a solution to the problems identified in Parliament: too strong a presence of racialized peoples, that is, "too many non-Whites" in the country, causing it irreparable damage. According to Sharma (2006):

> Non-Whites had always migrated to Canada. What had changed from previous periods in Canadian history was that after 1967 non-Whites were able to enter as permanent residents. By the end period of 1973, there was general consensus in Parliament that the 1967 changes had left the Canadian immigration system 'out of control,' thereby creating problems for Canadians. **Not coincidentally, it was also in this period, in 1974, that non Whites first came to constitute the majority of immigrants to Canada**. In this historical juncture, then, discursively producing immigration as the cause of various problems relied on the organization of a moral panic about the permanent status of non-Whites in Canada and the consequences of this for the 'character' of Canadian society.

Sharma (2006, 20) argues that as it was virtually impossible to overtly discriminate against immigrants based on "race" and other characteristics, discourses within Parliament during this time were, however, still tainted with racism and underpinned the undesirability of racialized immigrants. The NIEAP which offered temporary entry to racialized immigrants categorized as "cheap labour" emerged shortly thereafter. By 2004, three-quarters of labour-based immigration stemmed from the TFWP.

SECTION 3: RACISM AND DISCRIMINATION IN CONTEMPORARY TEMPORARY MIGRATION PROGRAMS

PART 1: OVERVIEW

Before delving into the last section of the review, it is worth mentioning that Canadian temporary migration programs are categorized between two main streams - the TFWP and the IMP - following reforms to the temporary labour migration policy in 2014. It is worth iterating that with regards to the TFWP, this review centers on "low-wage" and "low-skilled" migrant workers that come under the program, most particularly Seasonal Agricultural Workers (SAW) and caregivers. The IMP, which for the most part, "though not exclusively, includes programs that facilitate migration of workers in higher-skilled positions"[54] (Faraday, 2016, 11), will be reviewed following the section on agriculture and domestic work.

As noted, the purpose of this review is to focus on racism, discrimination and migrant workers, in line with the literature, in relation to these aforementioned specific temporary migration programs. It is not to engage with, and expand on, the elaborate structure, and contents, of temporary migration labour programs. Therefore, in line with the scope of this review, the paper is not presenting extensive material related to their descriptive aspects in the main body of the text, but is including a profile of these programs in order to equip the reader with the terminological and descriptive framework relevant to exploring racism and discrimination in relation to migrant workers in this current, and final, section (refer to Appendix A for such information on the TFWP and the IMP, including information on National Occupational Classification (NOC) codes, 2014 reforms, the Labour Market Impact Assessment (LMIA), as well as "low-skilled"/"high skilled" and "low wage"/"high-wage" terminologies).

The SAWP and caregiver streams represent the oldest programs of temporary labour migration dating back to the 1950s for the caregiver streams, and the 1960s for the SAWP (see Section 2).[55] Though these programs are not necessarily known for being numerically significant,[56] it does not make them any less salient. For instance, core Canadian industries, such as agriculture, would be significantly hampered without the work of migrant agricultural workers who make up the bulk of workers in the TFWP; indeed, migrant agricultural workers are key to ensuring the smooth functioning of the food supply chain in Canada (Falconer, 2020; Statistics Canada, 2020c). The proportional significance of caregivers and SAWs is highlighted by Stasiulis (2020, 39) who indicates that they account for around two-thirds of all low-wage migrants in the TFWP.[57] Caregivers and SAWs originate from countries from the global South, including Mexico, the Philippines and Jamaica. In 2006, over 94% of non-permanent residents who worked as caregivers were women, while almost 92% of farm workers were men, revealing the highly gendered and racialized nature of caregiving and farm work (Statistics Canada, 2018b).

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[54] Of note, the majority of IMP participants hold open work permits (skill level is not captured on the work permit).

[55] Even the name "Seasonal Agricultural Worker Program"/"SAWP" has not shifted since 1966, the year of its creation.

[56] Each year, approximately 60,000 migrant workers arrive in Canada via the TFWP's agricultural stream (Landry et al, 2021). In 2017, 6,869 work permits were approved in the caregiver streams.

[57] In 2014, caregivers and agricultural workers accounted for 68,455 of the 109,457 low-wage migrant workers under the TFWP that is 62.5% of all low-wage migrant workers (Faraday, 2016, 19).

Further, the issues that will be addressed in the remainder of this review cannot be efficiently explored without mentioning the role "globalization" plays in immigration policy and the global economy, as per the literature.[58] In the words of Stasiulis and Bakan (2005, 1), "In an age of globalization, when national borders are commonly considered to be a minor factor in the world system – permeable to multinational corporations, technology and international organizations – the experiences of poor women of colour seeking to migrate in order to support their families often escape analytic scrutiny."[59] Indeed, the literature argues that existing inequalities based on "developed" and "developing" countries may be exacerbated and condoned as acceptable, especially in relation to migrants from the global South. In this manner, unequal global relations of "race," gender, and class may be replicated at national and local levels, in what authors term "a global hierarchy." In turn, these hierarchies, or global power imbalances, are reflected in the relationships between migrant workers from the global South, constructed as poor, racialized and vulnerable, and their employers from the global North, who decide their fate and treatment on their farms, premises, or homes in Canada (Díaz Mendiburo, 2021; Landry et al, 2021; McLaughlin, 2021; Venkatesh, 2019).

It is important to note that experts emphasize that it is not necessarily employers as such, but rather the structure of the program that permits the power imbalance that is deemed to be at the root of exploitative practices (Lee, 2016). Some authors refer to "neocolonial relations of power"[60] in order to describe the legacies of discriminatory practices (see Section 1) that are still apparent within uneven global development, which are embedded in globalization. These features will be referred to in both the analysis on migrant agricultural workers, caregivers, and the IMP.

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[58] For researchers, this is a legacy of a colonization discourse and that of settler colonialism (see Section 2, footnotes section). Nation-state building for settlers rested on the displacement and disenfranchisement of Indigenous peoples in the colonized territories. As such, authors compare the exploitation of racialized immigrants (unfree labour) to the displacement of Indigenous peoples believed to be inferior. Stasiulis (2020, 24) similarly writes, "In the first decades of the 21st century, such non-settler migrant labour, whose undesirability as settlers is co-constituted through intersections of race, class and gender, as well as other social and political identifiers, frequently exceeds permanent settler migration." Stasiulis (2020, 24) mentions the concept of the disposability of migrant workers and draws comparisons with "continuous and devastating violence and neglect of Indigenous lives, health and well-being ..."

[59] Though it is beyond the scope of this review to expand upon all the complexities and multi-dimensionalities of globalization, it is key to refer to the global context in which temporary migration occurs, that is, according to the asymmetric nature of global processes. Stiglitz (2006) explains that though the world has become more connected than ever, it is also characterized by rising inequality within and between nations (cited in Czaika and de Haas, 2014, 317). In the context of the present subject-matter, the globalization of migration has resulted in widening gaps of wealth and poverty worldwide, leading poor racialized migrants to leave their countries of origin in the search of better-paying employment. While labour is increasingly mobile in a globalized economy, or global labor market, the world is increasingly characterized by "growing economic cleavages" in which precarious labour migration mostly flows from the South to the North (Aiken, 2006, 65; Ku et al, 2019, 301). According to this view, migration happens according to "unequal global terms of exchange" (Czaika and de Haas, 2014, 319). Some authors view temporary migration as an integral aspect of these "unequal global terms of exchange" reflected in immigration policies "that give employment and residence rights to certain favored (generally skilled and/or wealthy) groups, but at the same time excludes lower skilled migrants from such rights" (Czaika and de Haas, 2014, 319; see also Walsh, 2014, 597-598 and Stasiulis, 2020, 27).

[60] Neocolonialism underpins that power differentials between nations has not ceased in the aftermath of formal colonization. It can be characterized by wage differentials and growing poverty in countries of the South. Consequently, these factors may induce migration to the North so that migrants may be able to provide for families in countries of origin. As such, migrants may be constructed as "cheap labour" in relation to their geographic origin – a certain form of stereotyping.

PART 2: TEMPORARY MIGRATION. DELVING INTO GREATER DEPTH IN THE LITERATURE ON RACE

Review of concepts

In order to succinctly address the findings related to racism in Section 1, it is helpful to repeat that much of the literature finds that racism, or systemic racism, may be a cause of discrimination in that racial bias (conscious or unconscious) may influence the ways in which racialized people are valued, and consequently treated. Correspondingly, discrimination may be present when the outcomes of a specific policy or practice (or set of policies or practices) disproportionately impact racialized individuals or groups, and/or result in exacerbating adverse outcomes for them, even in the absence of an intent to discriminate. "Race" may be situated at the intersection of other axes of inequality, such as gender, class, or disability - a phenomenon known as "intersectionality," to induce various forms of discrimination (see Section 1, Part 2).

Further, in view of situating the last section of this review in its proper context, it is worth reaffirming some pivotal concepts underpinning racism, in line with the literature. These include (see Sections 1 and 2 for more details):

- The belief in the superiority of one's "race" over others is known as "biological" or "scientific racism";

- While biological racism has been discredited, it endures in subtle, less discernible, ways rendering it difficult to measure;

- These subtle ways manifest themselves in the lingering belief that "race" continues to be "real" leading to a "racialization process" whereby only peoples of colour are marked as "different," or "diverse" (this is also known as "race as a social construct");

- There are specific forms of this more nuanced racism, such as unconscious bias and microaggressions, that support the construction of racialized or Indigenous peoples as "outsiders," that is, as peripheral to a "White" European norm;

- The manifestations of racism are marked by the iteration of stereotypes, characterized by ascribing inhering and fixed traits to particular "races";

- These stereotypes (whether positive or negative) are also expressed in relation to labour: "Black people are physically suited for farm work;" "Mexicans are compliant," "Indigenous peoples are lazy," "Filipino women are nurturing," or "newcomers don't learn as fast."

- This marking of individuals and groups as different from the norm, may lead to differential treatment based on bias or prejudice, the denial of equal opportunities and barriers in accessing social goods and services (refer to discrimination, Section 1, Part 2);

Moreover, the context in relation to Canada's history includes:

- In Canadian immigration history, stereotypes – predicated on the idea that racialized peoples could not adjust to the climate on the grounds of their "race" – led to the belief that racialized peoples could not "assimilate" (read: integrate and permanently settle). This racist belief is at the root of temporary migration programs, most particularly the SAWP and the caregiver streams;

- Exclusion was also predicated on the belief that migrants would fundamentally transform the social and cultural fabric of the nation – modifying its White European character. In other words, "non-assimilation" was used to contextualize racialized migrants as a threat to the "whiteness" of the nation (Newman, 2021);

- Exclusion to permanent settlement was a "race-based" premise and had policy implications: migrants' reuniting with family was feared on the grounds that family members were of "dubious value to Canada." References to fears of "sponsorship explosion," based on this belief, can be found in historical sources;

- Racialized migration became synonymous with "poverty" and "unskilled labour." Hence "low-skilled" migration became intertwined with "racialized migration" and coalesced to produce permanent exclusion;

- Historical forms of labour subjugation such as slavery or indentured labour (depicted in the literature as "unfree labour") have been justified on the grounds that racialized peoples were "inferior." Experts have described these labour structures as "discriminatory practices."

A brief overview of agricultural streams under the Temporary Foreign Worker program and current trends

Agricultural streams under the TFWP

- **SAWP:** Mexico & Caribbean and seasonal

- **Agricultural, High-Wage, and Low-Wage stream:** All countries, seasonal and non-seasonal

The Conference Board of Canada (2016, 19) writes, "Thanks in large part to the SAWP, the [agricultural] sector has been able to fill about three-quarters of its labour gap with TFWs, such that they now account for more than 1 in 10 people in the sector's workforce." As of 2002, Canada extended opportunities for Canadian growers to recruit workers from other countries under the TFWP, that is, outside of the countries that participate in the SAWP (Basok and George, 2020, 3; McLaughlin and Hennebry, 2013; Preibisch, 2010). Today, migrant workers from Mexico, Jamaica, Honduras and Guatemala constitute some of the nationalities under both SAWP and the Agricultural Stream of the TFWP. These workers are key to sustaining greenhouses, and additional agricultural subsectors in Canada (Basok and George, 2020, 4). Indeed, the SAWP has been considered a model in terms of its multilateral cooperation, the predictability of its numbers of workers, and as a response to addressing Canadian labour shortages and unemployment in countries of origin (see Basok, 2007). However, Basok (2007) also underlines its "flaws," just as does Ramsaroop (2000): both authors point to worker mobility issues, and the negative impact these programs have on participants. These aspects will be fleshed out in greater detail in subsequent sections.

Following the 2014 reforms, the TFWP has increasingly narrowed to focus on agricultural workers and less on caregivers and other labour-tested workers (Vosko, 2020, 3). Outside agriculture, the TFWP has undergone notable reductions in the admission of migrant workers whether "high-" or "low-skilled" (Vosko, 2020, 6). In 2018, approximately two-thirds of work permits (52,800 work permits of 84,230 in total) delivered under the TFWP were in agriculture (Vosko, 2020, 6), with the SAWP remaining the predominant stream. By the end of 2019, Canada saw record levels of migrant workers employed in the agricultural sector, while the

number of Canadians and permanent residents plateaued and even declined (Falconer, 2020, 1). This need for migrant labour appears to be growing continuously at a rapid pace.[61]

Racism and discrimination: Migrant workers

Much of the literature links racism and discrimination to the restrictions surrounding access to permanent residence (see section below on "Low-Skilled" Workers, Access to Permanent Residence and Discrimination), but also in the differential treatment of migrants with regards to social benefits and protections. According to the literature, this is not a recent outcome of policies, nor is it an accident. The very structure of the current program has its roots in the racism that has underpinned Canadian immigration policy.

Historically, Black Caribbean workers were permitted entry as temporary workers, but were not allowed to settle permanently. As a reminder from Section 2, Satzewich (1991, 191) stated, "Black migrants were defined as potential problems, or as individuals who might disrupt the social order… because of the racist belief that as a 'race' they were unable to 'assimilate' to the other 'Canadian way of life'. The argument that agricultural seasonal workers were not able to "assimilate" – or in current language to "integrate" and/or "be successfully established"– was central to the design of the program, which has not changed significantly since its creation in the 1960s, notwithstanding the expansion of eligible countries. While pointing to Satzewich's pioneering work on "race" and racism in agriculture in Canada, Preibisch and Binford (2007) observe how several authors acknowledge "the centrality of racism and processes of racialization in the recruitment and allocation of non-citizen foreign workers," that still exists today (Stasiulis and Bakan, 2005; Sharma, 2002, 2006).

Likewise, Ventakesh (2019, 88; see also Baines and Sharma, 92-93; Caxaj, 2020 and 2021) points out, "The program [SAWP] soon became a permanent fixture of the immigration system and has sustained the agricultural sector with precarious, unfree labour for the past 51 years. Workers come year after year to work on Canadian farms, spending most of their lives in Canada away from their families, without any prospect of permanent settlement".

Caxaj (2021) provided research that a significant part of their working lives, precisely decades, is spent in Canada. Few migrant workers, Perry (2012, 4) asserts, would meet the eligibility criteria intended for economic immigrants, based partly on language proficiency, occupation classification, and level of education (this is all the more relevant as IRCC considers "levels of education" to be a diversity factor potentially leading to discrimination; see methodology section at the beginning of the review).

While the demand for migrant workers in the Canadian economy is permanent (see also Lynch and Aceytuno, 2021 who speak of temporary workers being needed on an "ongoing," permanent, basis"),[62] their exclusion from permanent residence is said to be amplified by

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[61] In 2012, 39,700 permits were issued to migrant agricultural workers. As of 2019, 63,830 migrant workers worked in Canada on farms in processing plants and in transportation with the vast majority of migrants working as farm labourers (almost 88% in 2019) (Falconer, 2020, 1). Notably, most agricultural migrant workers were concentrated in Ontario (38.9%), followed by Quebec (26.5%) and British Columbia (20.3%) (Falconer, 2020, 6).

[62] Others note the problematic use of the term "temporary" in "temporary workers" in that it is only migrant workers' visas that are temporary in light of the "decade-long tenure of some migrants" (Preibisch, 2012, 86). Similarly Landry et al (2021, 1) write that, "Though referred to as temporary, they often fill long-term positions and provide crucial support to the Canadian agricultural industry, which has seen an increasing disengagement from the domestic workforce in the last fifteen years."

"linguistic and cultural barriers," "lower formal education levels," and their "provenance from poor countries" (Library of Parliament, 2020, 13; Marsden, 2011, 56; Perry, 2012).

In the same vein, Marsden (2011, 47) observes that this lack of access should be of concern to liberal democracies that are characterized by non-discrimination and equality rights. The binary oppositions between skilled/unskilled, permanent/temporary, privileged/excluded are viewed within a lens of discrimination in the literature, and the premise to restrict access to permanent residence has been considered to induce further discrimination(s) (see section below on "Low-Skilled" Workers, Access to Permanent Residence and Discrimination). Depatie-Pelletier (2008, 27) signals accordingly, "the current denial of family and immigration rights on the basis of skill level especially discriminates against women and workers originating from specific developing countries." This, the literature finds, is reminiscent of the historical fear by high-ranking immigration officials of temporary workers bringing their families over in the hope of permanent settlement (see Section 2). Esses explains, "Many countries have repealed immigration restrictions that are explicitly based on race or religion because of their discriminatory nature. Yet … immigration policies may still be targeting particular national groups when they clearly affect certain groups in a disproportionate manner" (Esses, 2021, 516). Indeed, the literature suggests (see Section 1) that discrimination may also be measured by the outcomes that policies induce, and the inequalities and stereotypes that they may reinforce even if their design and intent are neutral and universalizing.

In the same way, Lim and Jakubowski suggest (see Section 1) that policies that have a "disproportionate" impact on certain groups would reflect "negligence" on the part of immigration policy-makers who have a "duty of care" not to exacerbate "gendered and ethnicized" outcomes and "negative beliefs" about subordinate groups (Elrick, 2020, 2545; see also the OHRC on racialized disparities). Discrimination is said to take root when policies act to amplify, already existing stereotypes (racial processes underpinning racism), whether they be intentional or not; that is, the outcomes of such policies matter.

> The literature suggests that discrimination may also be measured by the outcomes that policies induce, and the inequalities and stereotypes that they may reinforce even if their design and intent are neutral and universalizing.

This idea of "outcomes," in relation to the TFWP, is expressed by Marsden (2011, 51): **"the result of the temporary foreign worker program since its inception has been the creation of a distinct and racialized labour force within Canada in which workers are extremely vulnerable to exploitation and face specific barriers to accessing social benefits"**. Among discriminatory features, including barriers to health care, researchers cite fear of termination; loss of wages and fear of other employer-related violations; lack of independent transportation; inadequacy of translation services and culturally-sensitive services; limited clinic hours; insurance coverage of worker's claim system; lack of access to phones and the internet; lack of gender-based healthcare; lack of knowledge and information about use of the health care and insurance system (Caxaj, 2021; Hennebry et al. 2016; Orkin et al, 2014; Stasiulis, 2020).

> The amplification of stereotypes is buttressed by the differential treatment of migrant workers, stemming from policies that condone various working and living standards which would be unacceptable to Canadian workers.

This process exacerbates negative attitudes toward migrant workers, and, paradoxically, gives credence to these same policies. Marsden (2011, 56; see also Dunsworth, 2018) has used Kedar's (2002, 401) analysis to highlight that the TFWP created a new "ethno-class of foreign people," who remain distinct from founders and immigrants, which "persists in current policy."

Similarly, Preibisch and Binford (2007, 7) observe that processes of racialization for migrants are conducive to discrimination in accessing economic and social opportunities. In addition to Marsden (2011), Perry (2012), Stasiulis (2020) and Venkatesh (2019), Chartrand and Vosko (2020) observe that temporary worker programs, "remain strongly rooted in their historical development as a means of recruiting labour presumed to be highly exploitable…"

Chartrand and Vosko (2020, 5) relatedly add, "Canadian programmes also tend to fuel existing racialized and gendered divisions of labour and hierarchies in both sending and host states." Along the same lines, Goldberg (cited in Perry, 2012, 6) has found that since the beginning migrant farm workers have been "demarcated to strangers and exploitable labour" with, as Perry (2012) contends, "clear racial hierarchies" of White host and Black/racialized, guest, embedded in disproportionate relations of power reminiscent of colonial servitude. The analyses are linked insofar as they reveal the entrenchment of inequalities along the lines of "race," gender, class and geographical origin. The analyses also demonstrate that policies may inadvertently exacerbate processes of racialization of a labour force from limited source countries which results in discriminatory access to social and economic benefits based on skill level. Here, Bolaria and Li (1988, 30) link social exclusion and this lack of equality back to the concept of institutional racism which they say "systematically excludes subordinate members from equal participation and treatment in society". The contours and forms of this alleged differential treatment based on "race" and "race-related grounds," are scrutinized below.

Systemic Racism: References to slavery, indentured labour and exploitation as discriminatory practices

In addition to the above, the literature contains important discussions on migrant workers and differential treatment, precariousness, and exploitation as embedded in "race," or in the words of above-cited Bolaria and Li (1988, 8), "race relations in the context of labour exploitation." These aspects of the migrant workers' situation, grounded in unequal social relations of "race"/ethnicity, class and gender, are characterized by a lack of access to several benefits and even adequate housing. They are significant insofar as they mirror the discriminatory treatment of migrant workers in the workplace and elsewhere, according to much of the literature, and is hence, worthy of mention, as per the purpose and scope of this review.

Indeed, the existing literature underlines that migrant workers have different entitlements justified by presumed unsuitability to settle permanently in Canada (Perry, 2012, 1; Venkatesh, 2019, 94). The below section will cover the subjects of discriminatory labour practices (slavery and indentured labour), substandard health and labour practices and social isolation which have been depicted as "discriminatory exclusion."

As reviewed in Section 1, the literature links certain forms of servitude – such as slavery, feudalism and indentured labour – to practices embedded in racism. Vosko (2020, 13) argues that the restricted pathways to permanent residence enhance the propensity for exploitation because workers can be trapped in jobs indefinitely. Walia (2010, 71), similarly, underscores that migrant workers are kept in a state of vulnerability and constitute a cheap labour force, never really belonging to the nation (see also Baines and Sharma, 2006, 99). Bauder (2008)

observes that migrant agricultural workers find themselves in a bonded employment relationship reminiscent of feudalism. Similarly, others point to, "the spectre of slavery and/or indentured servitude" rooted in the construction of temporary migration programs (Basok, 2002; Bolaria, 1992, Preibisch, 413; Satzewich, 1991; Shantz, 2014, 233; Sharma, 2006; Wong, 1984; see also Perry, 2012, 19; Venkatesh, 2019, 85).[63] Some authors highlight that this is not only a spectre, but a blatant demonstration of modern-day indentured labour whereby workers work at a specific job for a specific period of time for a specific employer (Baines and Sharma, 2006, 76 and 87).[64] It is important to describe this system of indenture, insofar as this discriminatory practice (see Section 1) has found parallels in temporary migration programs. According to Bolaria and Li (1988, 162 and 164):

> This was the specific labour system under which a large number of Indian workers went abroad under British colonialism … **The indenture system "bound" the worker to a particular employer and/or plantation under a contract, usually written and "voluntarily" agreed to, which bargained away the freedom of the employee for a specified period of time.** At the end of the indenture period the worker could have the status of "free labour," or be reindentured, or return to India. Of course, the employer would want to renew the contract if the worker was still productive, or to "dispose" of him if he was not. **In this regard, the indenture system was preferable to slavery for employers, because they could rotate the healthy and productive labour force, either through hiring new indentured workers or through renewing old contracts, and discard unproductive workers.** The labourers recruited under the indenture system were known as "coolies," and they worked under conditions not dissimilar to those of slavery… **The recruitment of male individuals and not families was the norm under the indenture system**.

The literature has linked these past processes to current exploitation underpinning abusive and unhealthy living and working conditions (Basok and George, 2020; Bridi, 2013; Cohen et al, 2017; Hennebry, 2012; McLaughlin and Hennebry, 2015; Preibisch et al, 2010; Vosko et al, 2019; Well et al, 2014; Wieler et al, 2017). Bonded employment is also reflected in the restrictions on labour mobility and constraints on mobility within the (mostly rural) communities. Perry (2012, 3) observes that exploitative social relations are made possible given that public and private lives are being "closely regulated by employers, who provide not only work, but also transportation and housing."

Exploitation has been accentuated by the intertwining of bonded employment with substandard employment practices. The former, rooted in the fear experienced by migrant workers of losing their jobs and being deported, ensures their obedience and compliance. Although migrant workers are said to receive equal protection under provincial employment standards and are theoretically protected by the same legislation as domestic workers, it is not so in practice as they cannot exercise labour rights "in the same way as citizens" (Preibisch, 2010, 415). Han (2020) points out that uneven access to services stems from the precariousness of immigration status grounded in the "exclusivity of work permits tying them to a single employer" (see

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[63] "These cases involve foreign workers and raise alarming questions about government programs by which employers bring already precarious workers into Canada to work with few rights and minimal protections as a source of vulnerable, and often coerced, labour" (Shantz, 2014, 233).

[64] Baines and Sharma (2006, 76 and 87) speak of temporary foreign workers as modern-day indentured labourers.

Landry et al, 2021) which restricts migrant workers' movement, but also makes them fearful of complaining, or asserting their rights.

In addition, while contractual provisions may state that agricultural foreign workers receive equal or higher hourly wage as Canadian workers, they nonetheless earn less than their Canadian counterparts (Preibisch and Binford, 2007, 11). Adding insult to injury, migrant workers who pay millions into employment insurance contributions, cannot collect benefits given that, as temporary workers, they have to leave Canada once unemployed (Marsden, 2011, 56 and 57).[65] Perry (2012, 12) accordingly points out that migrant workers occupy a "legislated yet ambiguous zone" in which substandard standards may be readily accepted.

> The COVID-19 pandemic has both exacerbated many of these [health] disparities and further increased the risk of labour rights violations and vulnerability to exploitation for these workers.
> Vivianne Landry et al, 2021

Exploitation has also been intertwined with substandard health and safety standards in the workplace and the high potential for getting ill and injured. "Many migrant workers," Walia (2010, 74; see also Lee, 2016) highlights, "are required to work with pesticides without proper training or safety equipment." Once injured, migrant workers may be repatriated, and replaced with "younger, fitter, healthier workers at the beginning of each season" denoting their "deportability" and "disposability."[66] Ramirez (in Baines and Sharma, 2006, 87) refers to replacement practices as a "revolving door of exploitation." Stasiulis (2020, 40-41; see also Hennebry, 2010, 75; Lee, 2016; McLauglin et al, 2014) notes:

> The significant increase in seasonal agricultural workers in the last 25 years has meant that a growing share of occupations linked to the Canadian food system with high rates of workplace injury, work-related illness and death are taken up by racialized migrant workers from the global South. **Among the most serious health risks facing migrant workers are: viral, respiratory, neurological and physical illnesses stemming from the unprotected handling of and exposure to pesticides and chemicals, musculoskeletal injury, contact with food and water-borne diseases associated with fertilizers, repetitive stress injuries, gastroenterological issues, sexual health conditions, and mental health concerns.** While farm workers, regardless of their citizenship status, experience many of these agricultural health risks, the level of risk is greatly amplified in the case of migrant workers… Researchers identify a myriad of reasons for the intensified risks of injury, illness and death… health insurance and OHS [Occupational Health and Safety] are promised by the federal SAWP but are within the purview of the provincial jurisdiction, where they are most often poorly administered or completely ignored.

In this context, unsanitary conditions include overcrowding, poor ventilation, untreated water, inadequate toilet facilities and living in close proximity to chemicals and pesticides constitute less than ideal living conditions and a constant hazard to health (Hennebry, 2010, 74; Stasiulis, 2020, 42). This also denotes the lack of "social value" – a concept mentioned above – placed

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[65] "By law, all temporary foreign workers must contribute at the same rate as permanent residents in the work force, but temporary workers – due to their limited status and labour mobility barriers – are often unable to obtain benefits from the employment insurance system into which they paid" (Marsden, 2011, 56 and 57).

[66] "Unlike permanent residency, temporary migrant schemes rely on upon the endless supply in poorer countries of younger, fitter and healthier workers, who undergo pre-migration health screening, permitting employers to regularly terminate, repatriate and rehire new workforces."

on certain categories of peoples, who are seen as not deserving of equal protections. When these conditions lead to migrant workers' ensuing deaths, they have been described as "invisible, ungrievable and undeserving of memorialization" (Butler, 2004). Underpinning differential treatment, Orkin et al (2014, 193; Stasiulis, 2020, 43) make the observation that medical repatriation is "at once an occupational health event, an international deportation and termination of employment," unique to the situation of migrant workers. Migrants' substandard housing, during COVID-19, has contributed to health disparities (Han, 2020; Landry et al, 2021).

Indeed, exploitation has, throughout the literature, been tied to substandard living conditions within employers' residence, or in proximity to employers' property, and has been linked to the infantilization of migrants, and surveillance, by employers. Scholars refer to this as "paternalism" (Caxaj, 2021; for paternalism, see Jarmon, 2007), an intrinsic component of racism. As a case in point, there have been instances whereby employers would hire a "babysitter" to ensure that – adult – migrant women would not leave the premises (see Díaz Mendiburo, 2021). Indeed, paternalism evokes a language of benevolent protection for migrant workers resulting in the lack of freedom of movement. Preibisch (2015, 415) stresses:

> Housing arrangements shape power relations. **Most employers prefer locating workers on or near their property; under the SAWP, in all but one province the employer is obliged to provide (unregulated) housing to workers at no cost. Such arrangements extend the reach of employers' control over farm workers' behavior beyond the sphere of work, including restrictions on workers' mobility off the farm.** These restrictions have included curfews, prohibiting visitors of the opposite sex, or obliging workers to inform their employers of their whereabouts when outside the farm. "Ultimately, the United Food and Commercial Workers Union (UFCW, 2020) is concerned that, in addition to these factors, migrant workers are dependent on the moods of their employers to be able to stay in Canada." (See also Basok, 2007; Laliberté and Satzewich, 1999; Preibisch, 2004; Preibisch & Encalada, 2010; on housing and health, see also Caxaj, 2010; 2021)

Relatedly, research suggests that migrant workers experience social isolation, in addition to labour standards violations and that these effects can linger even for those who transition to permanent residence (Caxaj, 2020 and 2021; Library of Parliament, 2020, 15; Preibisch and Binford, 2007, 10). A study by Basok and George (2020, 3) suggests that a sense of inclusion and belonging is vital for overall well-being and health. Despite welcoming initiatives, they observe, it is the structure of the TFWP, with its "forced separation from families" and "lack of mobility within the labour force," that contributes to isolation.

In the same vein, McLaughlin and Hennebry underline that it is the structure of the TFWP that leads to "pervasive and persistent" health risks (McLaughlin and Hennebry, 2013, 183). The Library of Parliament (2020, 13) observes that the perception of migrant workers – here to fill temporary job vacancies – along with the rationale that settlement is not the policy goal, has affected policy decisions in Canada, most notably their access to federally-funded settlement services. The expectation, on the part of the government, is that migrant workers have the employment, educational and language skills needed for their occupations and jobs in Canada and that employers will help them settle (Library of Parliament, 2020, 13).

In sum, separation from families; lack of labour mobility; long hours at work, and linguistic and other barriers buttressed by lack of access to settlement services may be compounding

effects that impact their social isolation (Basok and George, 2020, 3). Isolation is of special concern to those working on farms and residing with their employers, such as caregivers (Library of Parliament, 2020, 13). Preibisch (2007) also shows how migrants' housing may be at times concealed behind packing sheds so that migrants remain out of visibility, and "out-of-sight" of neighbours. Consequently, migrants are not fully part of the social fabric of the communities which have received them (Basok and George, 2020; Perry, 2012, 3). In reality, and as mentioned above, some migrant workers work and live in Canada for years, even decades, punctuated by yearly returns to their home countries, in a permanent state of rotationality – what is known as "circular migration" (Caxaj, 2021).[67]

Compounding factors – long working hours, lack of overtime pay and benefits/wage theft, unhealthy working conditions, crowded living quarters, substandard labour standards and workplace abuse – have led authors such as Sharma to describe patterns of a "discriminatory exclusion."[68] Sharma accordingly remarks, "This discriminatory exclusion is simultaneously an exclusion of racial and ethnic minorities from universalized privileges which is in effect institutionalized racism" (Sharma cited in Bolaria and Li, 1988, 182). Underpinning the same rationale, Bolaria and Li (1988, 29) suggest that exclusions are facilitated by the racial discrimination that subjugates migrant racialized labour to menial employment and substandard conditions. They additionally attach this concept to wider forms of discrimination grounded in "race": "When race has become a defining characteristic not only of people, but of jobs, housing, social life, religion, politics and citizenship rights, a theory of race is bound to develop." Such theory, Bolaria and Li suggest, may be broadly labelled as racism. Similarly, Faraday (2012, 5-6) pinpoints how migrant workers in low wage occupations share similar experiences of exploitation.

> Faraday observes, "the exploitation is not isolated and anecdotal. It is endemic. It is systemic. And the depths of the violations are degrading."

The UFCW (2020) calls not only for federal-provincial reforms in order to tackle unfair treatment, but also a meaningful rethink of the expanded TFWP as the be-all and end-all of labour shortages facing the agri-food sector. According to the UFCW (2020), "Canada has seen a continuous expansion of the migrant and temporary foreign workforce incorporate agriculture under federal programs that deliver migrant workers to employers, and then essentially abandon them to fend for themselves." The shifting of responsibilities for addressing challenges within the program has led to rendering migrant agricultural workers "more vulnerable than the general Canadian workforce, as their legal rights and entitlements are fewer" (Bauder, 2008; UFCW, 2020). The literature does note a vacuum in governance, which seems not to be completely unintended, according to scholars and organizations. Indeed, the governance of the program has various layers (federal as well as provincial and territorial).[69]

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[67] Aceytuno (2021) notes that circularity prevents SAWs from applying to the agri-food pilot. (For more details on the agri-food pilot, see IRCC (2020a).

[68] See also Ryerson University Symposium on Anti-Discrimination policies (Schultze, 2021) whereby discrimination is also described as substandard labour practices; crowded living arrangements, lack of sick leave and access to healthcare.

[69] Immigration is a federal-provincial matter. Provincial/territorial legislation applies to matters of employment, education, housing and health care. Federal legislation applies to authorization of entry, removal of foreign nationals, but also to employment insurance and criminal law (Library of Parliament, 2). Sometimes, these jurisdictional matters can be "messy" and lead to grey areas. For example, HUMA (2016) notes that labour laws are both under federal and provincial jurisdiction, and that the federal government should show leadership and "initiate a conversation" related to temporary foreign workers' access to the protection of a labour union. In 2018, Carlos and Wilson (cited in Stasiulis, 2020, 40) conducted a study among 21 Filipina caregivers and underscored a widespread violation of the federal government requirement of employer-provided third plan insurance before

Stasiulis (2020, 41) refers to the joint governance through federal immigration programs and provincial legislation as a "jurisdictional quagmire" (see footnote for more details; see also Alboim and Cohl, 2020).

> We propose that the federal government lead a consultative process with provinces, municipal bodies, employers and workers. The purpose would be to develop national standards for health and safety, housing and employment, to establish clear roles and responsibilities and to improve coordination among government bodies for temporary agricultural workers.
>
> Naomi Alboim & Karen Cohl, 2020

Dehumanization and disposability

In the literature, exploitation has also been correlated with the words "precariousness," "precarity," and "disposability," or "dehumanization" to describe the situation of migrant workers and the uncertainty of status, or higher potentiality of losing status, itself linked to the precariousness of employment (Goldring and Landolt, 2013). The notion of dehumanization is illustrated by the work of Basok and George (2020, 3), "Informed by intersectional modes of differentiation including race, age, class and gender, the denial of permanent residency status results in exclusions that are multilayered at the political, social and cultural levels that include **feelings of misrecognition, dishonour, dehumanization and disrespect**". Reminiscent of the review of the concept of discrimination (Section 2), Caxaj and Diaz (2018, 13) likewise accentuate that this contributes to a "lack of acknowledgment of their full personhood" integral to human dignity:[70] they are considered as "workers," not as "holistic persons" (Basok and George, 2020, 9; Caxaj and Diaz, 2018).

> In the same light, Carey Newman (2021) speaks of the need to dismantle the rationale of migrants as "resources" (that is, not as holistic peoples with needs to be around their families and communities), but as mere means to an economic end) in immigration policy. He voices that temporary migrant programs represent the "most extreme example of extracting labour" which, from the Indigenous lens, as he states, has long-term health impacts for Canadian society as a whole, our relationships with each other, and with culture and the land.

To illustrate these points further, Bauder (2008, 100-101) states that migrant agricultural workers "are more vulnerable and exploitable than Canadian workers; **they can be treated in ways not allowed by Canadian labour standards**; they are not permitted to switch employers; and they can be threatened with deportation." These amount to discriminatory standards being applied to a specific group of racialized workers from a limited number of (poorer) countries from the global South.

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workers join their provincial health care plan. The provision of this mandated health care has been shown to be provided to only one-quarter of the participants who took part in their study. In this three-month period, workers may not necessarily seek medical attention when sick or injured (Hennebry cited in Stasiulis, 2020, 42). Hennebry suggests that there is a lack of consistency with issues of housing due to an absence of federal guidelines concerning accommodation and amenities of migrant farm workers (see also Alboim and Cohl (2020) on the lack of accountability and coordination). A "Primary Agricultural Stream Review," commissioned by the federal government, reached the same conclusion. Stasiulis writes, "Employers resist the suggestion of standardized housing requirements; however, worrying that a potential national standard would increase their costs, leaving the federal government resigned to accepting that this matter is too "complex" to be nationally regulated. Moreover, while federally the promise of health insurance is assured, provincially it is hardly delivered (Stasiulis, 2020, 41).

70 To note, in international instruments, human dignity is often referred to as a basis for anti-discrimination (see Section 1).

Sharma (2006, 103), who discerns that the demand for temporary workers remains constant whether in conditions of high- or low- unemployment in rich countries, argues that the TFWP preserved racial discrimination where "racially undesirable groups are no longer explicitly excluded." Sharma (2006, 108) thereby highlights the complexity underpinning temporary migration programs and views the function of temporary forms of migration as more than filling labour market needs.

In a similar line of argument, Venkatesh (2019, 88) pinpoints that, "The SAWP system ensures a transitory work force that provides labour renewal without the Canadian state bearing any costs of labour welfare, such as pensions, employment insurance, and labour retraining."

Vasanthi Venkatesh, 2019

Accordingly, it is economically advantageous to have a flexible labour force, highly dependent on employers for status (Baines and Sharma, 2006, 76 and 92-93). Migrant workers are described to be doing "types of work" undesirable, or too dangerous, to Canadians. This leads some authors to suggest that there are three types of work "the three Ds" (dirty, dangerous and difficult) that are highly unattractive to the Canadian workforce (though essential for their overall wellbeing and health), and relinquished to racialized temporary labour to which these types of work are affixed (Marsden, 2011, 63; McLaughlin and Hennebry, 2013; 175; Perry, 2012, 17; Walia, 2010, 74).

The amplification, and stigmatization of, migrant workers exacerbate existing negative beliefs about the reasons underlying their subordination and marginalization, which are embedded in the concepts of discrimination and institutional racism. One important question, in relation to discrimination, is whether policies act to either diminish, even eradicate, or amplify these stigmas. Bolaria and Li (1988, 29) point out, "As the physical characteristics of a group are repeatedly paired with dirty work, the social standing of the group gets to be defined, in part, by the work it does. Over time, the cultural and physical characteristics of a group become inseparable from its work role and its subservient position. Race… takes on a social meaning and significance." Bolaria and Li (1988, 27) commenting on "race" and labour add, "As Miles (1982: 34) points out, when an employer decides not to hire black teenagers, it is the employer's decision, and not "race per se, which influences job opportunities. Indeed, race does not carry a social significance in itself unless it is systematically paired with social rewards and penalties."

Stereotypes and paternalism under the guise of care

Esses (2021, 515) argues, "… one determinant of restrictive immigration attitudes may be prejudice toward immigrants. Indeed, immigration policies and practices may both reflect and influence public attitudes." Hence, the importance of delving into the stereotypes of migrant workers, past and present, and their potential influence on immigration policies. As noted in the literature, temporary migration programs have "a history of racial subordination" that still persists to this day in which state regulations, as expressed by Baines and Sharma, condone the "use" of migrant workers as cheap racialized labour along with stereotypes and racial categorizations (Bauder, 2008, 102). In the words of Perry (2012, 10, see also Adilman, 1984; Bolaria and Li, 1988, 188), "The present day SAWP operates as an exception to citizen-track immigration policies and rather has its roots in notoriously unexceptional and historical practices of racial subjugation such as slavery in the eighteenth century and the restrictions of

rights and freedoms of Chinese immigrants in the late nineteenth and early twentieth centuries" (see also Part II for an historical introduction).

The arrival of Chinese labourers in the late 19th century, as cooks, labourers, laundry men, domestic servants and as workers providing assistance in the mining industry is viewed as part of the parentage, and precedent, of current temporary migration programs. Venkatesh (2019, 86; see also Thobani, 2007, 84-87) notes, "Racist propaganda about their 'noxious' habits, lack of cleanliness, moral depravity, and lawlessness fed into the social construction of the Chinese as a threat to Canadian health and safety." Therefore, they were not allowed to permanently settle, even though they were essential to the economy. Stereotypes, substantiated by beliefs about the inherent inability to settle and contribute to Canada, impacted immigration policies. For instance, discriminatory legislation which imposed a head tax was followed by a total ban on Chinese immigration; the prohibition of bringing in spouses and children; indenture with specific employers; debt bondage to recruiters; and barriers to citizenship acquisition all bear a striking resemblance to the nomenclature underpinning current temporary migration programs, most notably the SAWP (Stasiulis, 2020, 35;[71] Marsden, 2011, 47).

Sung (2021) notes the parallels between the head tax and its ramifications with the situation of current migrant workers whom she states are used as means to "extract labour," in the absence of their families. Stasiulis (2020, 35 – for the same analysis on the below see Vosko, 2020, 13; Marsden, 2011, 47; Venkatesh, 2019, 86) observes:

> The bulk labour of male Chinese workers is but one of several significant historical precedents for temporary migrant worker schemes in Canada, that established niches in the labour market, filled through recruitment of foreign workers made vulnerable and considered disposable through their positioning as poor, racialized, from the global South… Black Caribbean female domestic workers were another group that historically were treated as hyper-exploitable and disposable migrant labour. As summed up by Agnes Calliste, Canada's immigration policy regarding Blacks was structured by a dialectic of economic, political and ideological relations: employers' demand for cheap labour to do unskilled and domestic work was set in tension with the state's desire to exclude blacks as permanent settlers.

While trade unions supported Chinese workers to a certain extent, they were regarded as "unorganisable," that is as a threat to the pay and conditions of White workers (Bauder, 2008, 103). Historically, Satzewich (1988, 1989, 1991, 2007) and others (see Dunsworth, 2018, for instance) observe that the basis for exclusion from permanent forms of residence for Black and racialized workers rests on the following rationale – as stated by immigration officials and representatives:

- The unsuitability to adapt to the climate (it was deemed that people from tropical countries could not biologically adjust to the climate more suited to the "White race");
- This climatic unsuitability suddenly led to them being perceived as being unable to fill broader needs in the labour market (such workers are only suited for one type of work);

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[71] "The bulk labour of male Chinese workers is but one of several significant historical precedents for temporary migrant worker schemes in Canada…" (Stasiulis, 2020, 35)

- Their "nature" ("childlike," "indolent," "lazy," "promiscuous" and "stupid") could bring about social problems, such as rioting, and therefore they would be unable to assimilate and would upset the tranquil and civilized social order;[72]
- By coming to Canada, through a process where the Canadian government works closely with their home governments, Canada provides the necessary means for these countries to increase their wealth;
- For these reasons, they were mostly unsuited to remain in Canada permanently.

To note, the TFWP has been justified as a form of development cooperation (Preibisch, 2010, 408), that provides assistance to other countries in need of development. The alleged unsuitability to adapt to the climate also constituted a justification for the built-in seasonality of workers under the SAWP. The climatic unsuitability – a racist rationale – has constructed seasonality on the grounds that farm work cannot be done during the winter, but also as a benevolent and paternalistic act toward migrant workers; e.g. keeping them away from harsh winter conditions under the guise of protection. The built-in seasonality also prevents migrant workers from being part of certain labour organizational supports, and from being long-term members of unions and collectives – as a reminder, this current state of affairs is derived from racism and past immigration trends, but has persisted in current immigration policies.

Bauder (2008) analyzes current stereotypes of migrant workers working in agriculture. He delineates that some messages, appearing in the media with repercussions for policy, are amenable to maintaining, and perpetuating, exploitative practices underpinning temporary migration programs. According to Bauder's study, migrant workers are portrayed as:

- Vital to the economy;
- A "liability" to rural communities;
- A form of foreign aid to the global south;
- Nomads who enjoy a way of life that is supported by seasonality and constructed as a free choice.

> Interestingly, his study shows similar stereotypes fuelled by history. "Foreign farm workers… are portrayed by the press as valuable economic resources, and as skilled agricultural labour; but also as a social problem and potential criminals; employing them is depicted as a means of providing assistance to poor families in the global south."
> Harald Bauder, 2008, 101

Migrant workers have also been depicted as taking jobs away from Canadians in such mottos as "put Canadians First" and others, creating a division among workers with its ensuing labels and stereotypes for migrant workers.

> "Other articles depict migrant workers as 'nomads' who take pleasure in seasonal work and the transient way of life imposed by the offshore programme. Their position in the international division of labour is depicted as 'natural,' and 'chosen' by them."
> Harald Bauder, 2008

Other factors are worth mentioning such as noted previously, seasonal workers usually live in close proximity to their employers and are usually excluded from the surrounding communities;

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[72] See also Thobani (2007, 87), "… the prevailing ideology of the period fantasized nefarious motives and imagined Asians as plotting to swamp and invade their society."

they are viewed, from the foreign aid perspective, as sacrificial fathers who provide for their families, but also, paradoxically, as workers who may be the source of social problems in their rural communities. For this very reason, it is best if they remain isolated, and consequentially and paradoxically, have been said not to be able to integrate socially and culturally. Bauder (2008, 115-116) writes:

> Although these images appear contradictory, they situate workers in different geographical contexts: as necessary labour-power on farms, as social problems in rural communities, and as compassionate fathers and husbands in their countries of origin. While the workers are dehumanised in the context of rural Ontario, they regain their humanity when they are represented in relation to their places of origin… The different narratives… can be reassembled into … a coherent message… Foreign labour is necessary for the agricultural economy to prosper; offshore workers, however, are not suited for permanent inclusion in the rural community where they work because of their inherent potential for criminal and violent behaviour; rather, they must regularly return to their places of origin, there to deliver money for needed education and improvement of the standard of living among their families who stay behind in the global south….

Representation of the migrant workers from the south as an 'economic necessity' and a 'social problem'; yet deserving the north's compassion to improve their lives, constitute an important discursive strategy that supplies the ideological legitimacy to support this labour practice.
Harald Bauder, 2008

Popular views and social constructions of migrant workers around deep-rooted stereotypes have served to legitimize and naturalize the program as an indelible part of the immigration system. Alleged lack of propensity to integrate is based upon age-old stereotypes that include associations with issues like criminality or the fact that migrant workers provide remittances to their families. However, this comes at high human costs grounded in the "racial configuration of the SAWP" (Perry, 2012). The high price with regards to the loss of social capital and human resources as well as high human costs in terms of chronic and long-term health issues, and the separation from their families have been documented in the literature (Caxaj (2020; 2021); Preibisch and Binford (2007); Sassen-Koob, 1978, 519). "This moral economy of care finds resonance in the expression of Canada as a caring and tolerant nation while deflecting attention away from the history of overt racism in which the guest worker program is rooted" (Perry, 2012, 17).

Systemic racism: Discriminatory recruitment/selection of agricultural workers

Vosko (2020, 6) observes that one of the developments exacerbating historical recruitment trends is reflected in the recruitment by source countries that still prevails in the SAWP. It is important to note that recruitment, as used in this paper, is not limited to employer recruitment, but also refers to state selection. Preibisch (2010, 418) explains that employers can discriminate in their hiring, because of the source country recruitment allowed by the SAWP:

Employers are able to specify the sex and nationality of their employees, a practice in conflict with human rights legislation at the provincial and federal level.
Kerry Preibisch, 2010

> While Canadian employers are legally prevented from using discriminatory recruitment when hiring domestic workers, those approved to contract TMWs [s workers] do so without sanction. The ways in which employers exploit this provision as a means to organize their labor arrangements is not only apparent in workplace arrangements through conspicuous segmentation on the grounds of ethnicity, race, citizenship, and gender, but in the narratives of employers themselves.

Employers' narratives on migrant labour may centre on racial stereotypes to organize labour tasks, which has been well-documented in the literature (Preibish and Binford, 2007). These stereotypes are based on "work ethics," and a "willing" and "reliable" workforce. These traits are then correlated to one "race" or "nationality." This discriminatory practice by employers, masked as "choice" of countries, perpetuates racism and discrimination. This practice has allowed employers to choose the nationality and sex of migrant workers, thereby contributing to gendered and racialized segmentation, which leads Preibisch (2010, 422) to identify the embedded discrimination based on sex and race in "the structure and operation" of agricultural temporary migration programs: "Although growers employing migrants under the SAWP already enjoy greater flexibility in their recruitment practices by permitting them to choose their workers on the basis of sex and nationality – a mechanism of this guestworker program that has been used by employers to weaken the bargaining power of workers and their representatives – the Low-Skill Pilot Project takes this a step further by opening a global labor pool."

Indeed, while Jamaican men represented the majority of workers in the first 20 years of the SAWP's creation (1960s - 1980s), Mexican workers account for the majority of workers today. Preibisch and Binford (2007) show in their article on race and agricultural workers that the "replacement" of Caribbean workers by Mexican workers is fed by a racialization process whereby growers/employers may "pick their own labour" and stratify agricultural labour force by attributing certain types of work on the basis of "race/ethnicity" and its alleged match in terms of optimal work and tasks. In this way, skills, dexterity and certain stereotypical attributes exert an influence on labour segmentation (e.g. Mexican workers are shorter in stature and more suited to field crops while Jamaican workers are "naturally" better at fruit-picking given their tall stature), but also on country surfing and the selection of migrant workers for the most "docile," "reliant" workers (Preibisch and Binford, 2007, 18 and 32).

As noted, this is not anecdotal, but a systemic part of labour distribution in Ontario's farms and has been said to influence the evolution of different commodity sectors (e.g. if there is a growing demand in greenhouse production, there will be a growing demand for Mexican workers and so forth). Dunsworth (2018) explains that this process constitutes one of the "unofficial ways" in which race continues to matter post-1967 in that responsibilities for migrant-selection are devolved to employers, as reflected in the SAWP – the structure of which constitutes a longstanding design by the federal government. In earlier times, Satzewich demonstrates that whenever the "fixed natures" of certain "races" became part of the discourse that touched upon immigration processes or impacted policies (directly or indirectly), this did not relate to racialization, but rather to racism.

In the rural communities of Ontario, the stereotypes constructing Caribbean workers as naturally conflict-prone and sexually promiscuous, (traits evoked during the negotiations preceding the creation of the SAWP in the mid-60s) are part of a growing narrative separating Mexican workers from their Caribbean counterparts. Research demonstrates that this is intertwined with the denial of "full humanity" (or "dehumanization" invoked earlier) in an "animalistic sense" whereby Caribbean workers are viewed as not having risen above their

"animal origins" (Esses, 2021, 511). Stereotypes built around Caribbean workers, in the past and today, evoke this dehumanization of personhood.

Mexicans, still stereotyped, are conceived of as being "less trouble" (e.g. "docile and obedient") and less likely to mingle with Canadian women given that they are more "family-oriented." As Mexican workers cannot communicate on par with English-speaking Caribbean workers, and are less prone to visit family members in Toronto on weekends, the logic maintains that they are, therefore, less likely to be socially active in the communities in which they live, rendering them more desirable (and available) workers (Preibisch and Binford, 2007, 25).

Preibisch and Binford (2007, 5) use the term "blatant racist beliefs" to describe what underpins the selection, and labour segmentation, of workers as part of a federally-created agricultural program: "Sometimes grower discourses manifest as crude racism, casting Caribbean men as hypersexualized Black subjects who pose a risk to Canadian women, while other times these racialized assumptions are framed in terms of physical and/or psychic dispositions to the production of certain crops." This portrayal is part of the scientific racism grounded in past centuries which justifies "race" in terms of "biology" (See Section 1). Further evidence points to the growing selection of Mexican workers based on skin colour, complexion and values as standing closer to Canadian standards and as part of country surfing (Preibisch and Binford, 2007, 32).

Underpinning the state of the literature on race and temporary migration programs, Preibisch and Binford (2007, 9) argue:

> Canadian studies, along with the broader body of research on the international migration of domestic workers, hold important findings regarding the role of racialized understandings and assumptions in implementing foreign worker programs, as well as the consequences for workers themselves. **These studies have shown convincingly that governments, employers and migrant agencies hold racialized (and gendered) preferences for migrants** (Stasiulis and Bakan, 2005; Oishi, 2005; Pratt, 1997; Winter, 2005). A number of researchers also document the malleability of these social constructions when they no longer suit employers… Furthermore, these studies point to the material consequences of racially and sexually oppressive stereotypes, not only in terms of one group losing employment opportunities to another; but also in terms of social hierarchies and the construction of migrant workers as subjects less deserving of the rights afforded citizens. Indeed, their findings further underline processes of racialization as central to constructing the vulnerability of workers in society and making them more exploitable as cheap labour (Persaud, 2001).

Migrant women and agriculture: Gap in the literature

In 2017, around 40,000 workers came to Canada as part of the SAWP, women representing less than 4% of this number (Weiler and Cohen, 2018). For agricultural migrant women, violations have manifested in the form of "physical and sexual assaults," "pressure to accept unsafe work," and "barriers to healthcare," demonstrating that gendered perspectives, despite the relatively small presence of women, are also very much a part of the literary analysis of the program (Caxaj, 2021; see also Aceytuno (2021) who spoke of the lack of "gender equity").

At a virtual event where the documentary "Migranta con M de Mama/Migrant Mother" (2020) was discussed among experts, McLaughlin (2021) noted a gap in the literature when it comes to migrant women working on farms in Canada.

In addition to the precariousness experienced by their male counterparts, as described above, they encounter gender-based forms of racism, stigma and discrimination and are at a heightened risk of gender-based violence.

Leaving their families in order to care for them brings an emotional dilemma whereby they need to financially provide for them, but sacrifice "personal, emotional, social and health needs" in the process, and are beset with grief over missed times with their children (Hennebry, 2021 and McLaughlin, 2021).

Some women have been in the SAWP for more than a decade and experience separation from their children, an experience which differs from that of men due to cultural expectations globally placed on women as primary caregivers. A feeling of abandonment and family separation impact mental and physical health in the short- and long-term. This is exacerbated by the "lack of power" (McLaughlin, 2021); for instance, they cannot have their children visit them in Canada, nor can they decide when they enter and leave Canada – as this decision is made by their employers, and supported by family reunification policies for family members of agricultural workers.

In addition, power imbalances between female farmworkers and employers exacerbate the risk for gender-based violence, including sexual violence. Weiler and Cohen write, "The structure of the Seasonal Agricultural Worker Program heightens the power imbalance between workers and employers, amplifying women's vulnerability to sexual assault. Work permits are tied to a specific employer, so getting fired typically means getting deported. Workers in abusive workplaces often have difficulty transferring to a new boss. To be rehired the following season, a farm worker must receive a positive evaluation from their employer." While this power imbalance exists for both men and women, the gendered ways in which it manifests itself include higher vulnerability to sexual assault, barriers of access to reproductive health services, and the heightened effect of the separation from their children impacting their mental and physical health in the long-term.

PART 3: MIGRANT CAREGIVERS IN CANADA

Introduction

The migration of caregivers in Canada has been a longstanding feature of Canadian immigration writ large, and Canadian immigration policy. To briefly reiterate the contours of historical caregiver programs and streams for the purpose of further contemporary review, a series of "domestic worker schemes'" initially targeted women from the Caribbean, namely from Barbados and Jamaica, in the aftermath of World War II. These women, highly educated, were eligible for permanent residence after one year. From 1973, migrant caregivers were incorporated into temporary migration programs through the Foreign Domestic Movement in 1981, and subsequently, the Live-in-Caregiver Program in 1992 (Bhuyan et al, 2018, 5; see Section 2). These programs were created in order to address large labour shortages of Canadian workers able to provide live-in domestic work (Stasiulis and Bakan, 2005, 93).

In 2014, caregiver pilot programs replaced the Live-in Caregiver Program (LCP). This paper refers to the post-2014 pilot programs that followed the Live-in Caregiver program as "caregiver streams," while remaining cognizant of the fact that terminologies may differ depending on sources. It is important to note that, in the wider literature, these streams may still

be referred to as the "Live-in Caregiver Program," "Caregiver Program," or "Caregiver Programs" not due to errors– the selected literature being aware of the new streams and their characteristics – or to gloss over their reforms over the years, but rather to depict the common experiences of migrant caregivers over time, regardless of the programs, or streams, under which they entered Canada.[73] Indeed, collectively, these terminologies refer to the movement of migrant caregivers to Canada and the longstanding challenges which they have consistently faced at the intersections of gender, "race," class, country of origin and "care work."

It is also noteworthy that due to the recent changes to the streams (namely, in 2019), the literature has yet to catch up on all the analysis and the emerging data based on the most recent reforms. Nonetheless, the paper seeks to be as comprehensive as it can with the available information. Following a description of the LCP and, most particularly, the significant reforms that took place post 2014 and post-2019, this section examines the experiences of migrant caregivers within the lens of a "race," gender, class, as well as country of origin. In other words, it will highlight the salience of an "intersectional" lens, as related to migrant caregivers in Canada and the racialization and gendering of "care work" transnationally.

Description of the live-in caregiver program and caregiver streams

In the last two decades, an increasing number of Filipino migrant workers have come to Canada to care for children, people with disabilities and the elderly in the homes of Canadian families and fill labour care market shortages (Lightman et al, 2021; Spitzer and Torres, 2007; Tungohan et al, 2015, 88). Between 1992 and 2014, the LCP constituted the pathway through which migrant caregivers entered Canada to fulfil its care needs. The LCP permitted caregivers to have an "automatic" and "guaranteed" pathway to permanent residence upon completion of the two-year live-in requirement with employers (Keung, 2021b; Schwiter et al, 2018; Statistics Canada, 2018b; Tungohan, 2017).[74] Tungohan (2014) explains:

> The Live-in Caregiver Program (LCP) allows Canadian families to hire live-in caregivers from abroad to care for children, elderly folks, and disabled individuals. The terms of the program require live-in caregivers to live and work with their employers for a period of twenty four months, after which they can apply for permanent residency and claim their spouses and children to join them. Live-in caregivers receive an open work permit after they have completed their twenty-four month live-in work requirement, which means they are no longer tied to their employers and can start looking for employment outside their employers' households.

In 2007, at its peak, 13,000 caregivers were admitted to Canada under the LCP (Doraw et al, 2015) and approximately 75% of migrant workers in the LCP were women from the Philippines (Schwiter et al, 2018, 468; Toronto Immigrant Employment Data Initiative (TIEDI), 2011). In 2011, over 11,000 caregivers were granted permanent residence. The majority were women from the Philippines who were trained nurses (Fleras, 2012, 141). In 2016, after the LCP was replaced with the 2014 caregiver streams, the socio-demographic

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[73] Employment and Social Development Canada (ESDC), for instance, refers to the caregiver streams as "Caregiver Program." Of note, the literature may still refer to the LCP to describe the 2014 and 2019 caregiver streams in order to note that caregivers still overwhelmingly live with their employers, and/or that streams modify, and replace, the program. Even with multiple reforms, the caregiver program(s) and streams are seen as part of the continuation of the entry of migrant caregivers to Canada since post-war times.

[74] Keung (2021b) writes that the LCP "provided what's called an automatic pathway to permanent residence, allowing them to pursue permanent status here in Canada in exchange for the work they put in and the sacrifices they make."

trends were comparable: women represented the majority (94%) of migrant caregivers, and the majority of new caregiver permit holders were from the Philippines (88%). Other top source countries have included India, China, and Indonesia; and with over 30 other countries of origin representing relatively smaller uptakes (e.g. less than 40 caregiver permit holders per year) such as Nepal, Thailand and Jamaica (Siyuan, 2018, 4). In 2019, new caregiver streams replaced the 2014 streams (see below sub-sections for more details).

In 2014, the LCP was repealed and two new pilot programs were created, one intended for the care of children and the other for the care of people with high medical needs. A very meaningful development under the 2014 caregiver streams – welcomed by many stakeholders and caregivers themselves – was the removal of the requirement to "live-in" with employers in order to qualify for permanent residence. Though the LCP had its challenges, (for instance, criticisms of the live in component as well as the closed work permit), thousands of caregivers were admitted through this unique pathway (Banerjee and Hiebert, 2021). The Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities (HUMA, 2016, 3) indicates that by December 2014, the LCP was no longer a "stand-alone stream." Statistics Canada (2018) explains, "Since 2014, new caregivers entering Canada are no longer admitted through the LCP permanent residence stream. They are admitted through the regular process and do not have a guaranteed pathway to permanent residence. They must now apply under two categories – those caring for children, and those caring for people with high medical needs. Both categories have an annual cap" (Statistics Canada, 2018b; see also Black, 2014).

These streams were designated as the "Caring for Children" and "Caring for People with High Medical Needs" permanent residence pilots. Under the 2014 streams, migrant caregivers entered through the TFWP like any other migrant worker, and after obtaining the required work experience, needed to apply to the new pilot programs which had eligibility criteria such as language requirements. This was a clear departure from the former LCP which "pre-assessed" all eligibility criteria prior to entry in Canada – eligibility criteria which did not include language and post secondary education requirements and were considered less arduous, and less costly, to meet (Siyuan, 2018; Keung, 2021b).[75] The additional language and education requirements, as well as the cap, became a source of criticisms by academics, caregivers and advocates alike. Criticisms centred on the fact that though there were positive changes (such as the end of the live-in component), caregivers were unlikely to benefit from them if they could not access the streams.

The 2014 pilots were replaced through further reforms in 2019. IRCC recognized that the two pilot programs were "ineffective" (2019a). The introduction of an occupation-specific work permit and the possibility for immediate family members to accompany caregivers to Canada were considered to be steps in the right direction. However, for scholars, the media and advocates, these positives changes were made within the matrix of added restrictions to permanent residence, but did not take into account the structural barriers that may be encountered by migrant caregivers. Indeed, despite the fact that caregivers are more likely to

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[75] For the eligibility criteria of the LCP, see IRCC's OP manual, 2014. Stasiulis and Bakan (2005) explain, "Criteria for entry under the LCP originally called for the equivalent of a Canadian grade 12 education, plus 6 months of formal training. Within months of the program's inception, the latter training requirement was amended to allow for experience in lieu of training." Bhuyan et al (2018, 5) add that under the 2014 streams, caregivers "must now qualify for permanent residence based on language proficiency (in English or French), and education achievement equivalent to four years of post-secondary education overseas or one year of post-secondary education in Canada."

obtain permanent residence than other groups of temporary workers, critics have pointed to new challenges, including backlogs, higher processing times, increased costs for caregivers, the "flimsiness" of pilot programs for caregivers, and challenges for employers, even before the pandemic (Dangzalan, 2020; Hou and Morissette, 2018; Keung, 2021b). In addition, research shows that structural barriers, such as rent or transportation costs prevent caregivers from living outside of the homes of their employers despite the elimination of the "live in" component (see section below "Effects of the Removal of the Live-In Component"). In light of these barriers, this reform has not had the intended effect hoped for.

To further illuminate the requirements of the new 2019 pilots, IRCC (2019a) explains, "Caregivers will only receive a work permit if they have a job offer in Canada and meet standard criteria for economic immigration programs. Once working in Canada, caregivers will be able to begin gaining the required two years of Canadian work experience to apply for permanent residence." Work permits can only be issued once the eligibility for permanent residence has been carefully assessed (Keung, 2021b; Dangzalan, 2020). This, Dangzahan (2020) notes, creates backlogs and longer processing times that inconvenience employers who may need immediate help. Dangzalan (2020) explains, "This renders the programs untenable for most employers. Some who need a caregiver cannot wait that long" (see also Brownell, 2015).

In addition, the costs involved for caregivers when still overseas, related to the language and education criteria, and to admissibility assessments for themselves and their immediate families, represent structural barriers that former caregivers under the LCP did not have to face. This is what the literature means when it states that the pathway to permanent residence under the LCP was "guaranteed" and "automatic" (for instance, see Bhuyan et al, 2018; Keung, 2021b; Statistics Canada, 2018b; Tungohan 2017). Caregivers came to Canada with less "stringent" and costly eligibility criteria, worked for two years under certain conditions (such as living with their employer) and were eligible for permanent residence.

> The new pilots have made this process less clear and more expensive, leading to greater difficulties for caregivers to participate in these new streams or qualify for permanent residence – leading some observers to note that they cannot benefit from positive changes if they can't "get in".
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> Okun-Nachoff, cited in Keung, 2021a.

What is more, scholars have concerns about the increase in undocumented caregivers in light of the added difficulties that these changes may mean for caregivers who are unable to meet the eligibility criteria for permanent residence, and in the context of the added yearly cap (Siyuan, 2018, 25). A "black market of nannies" has been said to have emerged as a result of the loss of the automatic path to permanent residence, new caps on new permanent residence applications every year and additional criteria on education and language requirements effective 2014 (Brownell, 2015). These observations may also apply to the 2019 streams in light of their eligibility criteria.

Neocolonialism and international caregiving: gendered and racialized labour hierarchies

Researchers underline the intersectionality underlying the personal and economic situation of migrant caregivers. Lightman et al (2021, 3) denote that "processes of racialization dovetail with gender, entry class and country of origin to shape experiences at work." These are informed by "social groups' various identities" (for example, being a woman from the Philippines), "categories of difference" (for instance, gender, class, race), and "processes of differentiation" (the social construction of gender and race, e.g. "racialization and gendering") sustained by what they name "systems of domination," including racism.

Siyuan indicates that through the creation and implementation of these programs, traditional gender roles may be reinforced (Siyuan, 2018, 31). For instance, in the SAWP, the traditional male figure looks after their families through arduous physical labour, while women in the caregiver streams tend to theirs through caregiving and nurturing roles in receiving countries. The sexual division of labour, where women are responsible for the home and childcare, may be reinforced through the caregiver streams, as underlined by researchers. There are similarities between the SAWP and the caregiver streams – both are strongly gendered, racialized, represented by stereotypes of its workers, and criticized by scholars and stakeholders for the vulnerability to abuse and exploitation (Spitzer and Torres, 2008); both include long separation from families; decline in health; fear of speaking out about work conditions; abuse and labour violations; both are said to represent the mobility grounded in globalization and global disparities. While it is important to delineate these similar gendered and racialized aspects in differently situated temporary migrant programs, in light of our study, some features remain unique to the caregiver streams.

In terms of globalization, much of the literature mentions "a global care chain" or "international transfer of caretaking" (see Hochschild, 2000; Parreñas, 2015; Schwiter et al, 2018, 465), whereby migrant caregivers leave their families, creating transnational families and a chain of caregivers from poor to rich nations, resulting in a "care drain" (Ehrenreich & Hochschild, 2004) – terminologically related to the well-known term "brain drain."

> The spatial stretching of global relations of care is informed by a crisis of care in rich nations, whereby Canadian women's participation in the paid labour force has increased significantly, and inadequacy of public care has been put into the limelight and has led to a greater reliance on international caregiving.

Within this global process (also equated to "neocolonialism," see migrant agricultural workers above), caregivers send remittances to their countries of origin in order to provide financial and economic support to their families, paradoxically becoming saviours and sole breadwinners (Banerjee et al, 2017; Tungohan et al, 2015, 87), and creating intense feelings of guilt over separation from their children. Stasiulis and Bakan (2005, 102) explain the process, "In such a system women from the Third World [sic] care for the children of wealthy women in the First World, and in turn support through their labour and remittances the provision of care for their own children at home" (Bhuyan et al, 2018, 1; Glenn, 1992; Pratt, 2012; Schwiter et al, 2018).

The social and financial welfare of their families constitutes the main cause of departure from their countries of origin (Stasiulis and Bakan, 2005, 102). Relatedly, caregiving has been correlated with enhancing global development, as with the SAWP. Yet, mobile global workers are highly vulnerable. Similar to workers participating in the SAWP, this mobile global workforce remains "exploitable," "flexible," "commodified," and "expendable" (Walia, 2010).

As a case in point, and in line with the literature on global care, the "global migration of gendered care work" is represented by a highly vulnerable workforce in which "class-based" and "racialized privilege" remain embedded in notions of domestic servitude (Bhuyan et al, 2018; Schwiter et al, 2018; Pratt, 2012, Glenn, 1992), characterized by disproportionate relations of power between professional women of the North and their families and global (racialized) maids and nannies.

Hochschild (2002, 26) compares these processes to colonization where the extraction of "care" substitutes the extraction of "natural resources," while Sarvasy and Longo (2004) refer to a neo-colonialism in which human labor becomes a proxy for "resource extraction."

In terms of the global migration of feminized care workers, Grandea and Kerr (1998, 7) illustrate how, "women's migration has had profound social consequences in their home countries. Family separations and neglected children have been among the negative impacts of the phenomenon" (see Parreñas' book [2005] on "children of migration" and transnational families). Stasiulis and Bakan (2005, 5) view the private home as reflecting "a global system in microcosm" where "families and childcare needs of West Indian and Filipino women are absented from the matrix of considerations," reinforcing the servitude of migrant racialized women. In this way, the literature on caregiving has highlighted that processes of racism, exploitation and patterns of abuse underpin temporary migrant programs (Stasiulis and Bakan, 2005, 5).

The research shows that the structure of migrant care programs and streams has unequivocally allowed for abuse and vulnerability. Authors show (Stasiulis and Bakan, 2005, 47) that subservient groups are further disadvantaged by policies when they note that the structure of caregiving programs has "been structured by various federal governments over decades with the full knowledge of a highly vulnerable pool of foreign worker applicants, upon whom exceptionally restrictive conditions are imposed" (for a similar analysis, see Lightman et al, 2021; Maeda, 2018). Here, it is worth reiterating the concept of anti-discrimination in its relation to substantive equality. Sheppard (2010, 21) in Section 1, Part 2 provided an example of adverse effect discrimination – neutral policies having adverse impacts on particular groups. For instance, she observed that adverse effect discrimination may occur when differential treatment is based on a "categorization" that disproportionately affects individuals from specific socially disadvantaged groups. More than this, she highlighted that a seemingly neutral policy may have discriminatory impacts:

> For example, if domestic workers are excluded from labour standards regulation, the legislation on its face may not discriminate on the basis of race, gender, or national or ethnic origin. However, if we assign the gender, race, and national and ethnic origin of domestic workers, who are largely women who have migrated from developing countries, the discriminatory impact of the differential treatment of domestic workers is clear. Facially neutral categories, in this instance, may have disparate effects on groups traditionally protected in human rights laws.

In addition to analysis based on "race," Lightman et al (2021, 3) delineate how Canadian immigration history (see Section 2) and intersectionality continue to impact the "racialized labour hierarchies" experienced by Filipino caregivers:

> In the case of Filipina LCP immigrants, intersectional analysis contextualizes the challenges that these women face, **underscoring how systems of domination, such as**

racism, sexism, and settler colonialism, underlie Canadian nation-building and immigration policies, such that different immigrant groups are placed in racialized labour hierarchies. Specifically, such racialized labour hierarchies explain why British, Irish and European migrant domestic workers from the mid-19th to mid-20th century were automatically granted Canadian citizenship, while Caribbean and Filipina migrant domestic workers from the 1950s onwards have had to pass additional criteria before being able to do so. Canada's 'new' Caregiver Program, established in 2013, with minor policy changes added as recently as 2019, is still dominated by women from the Global South and imposes additional criteria such as language and licensing requirements, thereby showing the continuation of racialized labour hierarchies in migrant care work.

These effects will be further analyzed in the below sections.

Effects of the removal of the live-in component

When the live-in component of the former LCP was removed, it was initially met by stakeholders and academics alike with praise. Further research shows, however, that the practicality of this change is difficult to implement. Low wages may not make it possible for caregivers to afford their own accommodation, even though the policy change has been implemented. This implies that caregivers still mostly live with employers, a finding that has been substantiated by research from Bhuyan et al (2018) as well as Schwitzer et al (2018). Further, employers still show a preference for caregivers' living with them given the flexibility it affords them, rendering caregivers vulnerable to unpaid work caused by the blurring of lines between working, and off-duty hours (Caregiver Action Centre, 2015; Siyuan, 2018, 24; Stasiulis and Bakan, 2005, 68; Thompson, 2016). Siyuan (2018, 24) writes, "it seems that the removal of the requirement may not work as expected." Schwiter et al (2018) likewise add, "Given the resulting imbalance in power between workers and employers in negotiating terms and conditions of employment, it seems likely that workers will continue to live-in if employers require it." Speaking of the live-in arrangements, Grandea and Kerr (1998, 9) observe:

> **They [caregivers] can be called upon at any time of the day to do virtually any type of chore, ranging from putting the children to sleep in the middle of the night, to walking the pets, to shovelling snow, to painting walls, to entertaining guests at midnight.** As a result, it is difficult to draw the line between work hours and off-duty hours. Long working hours have, thus, characterised the lives of foreign domestic workers. These long hours are often without financial compensation.

According to Oxman-Martinez et al likewise (2005, 255):

> Temporary workers, and especially LCP workers who reside within their employer's home are also hard-pressed to defend their work-related rights out of fear that they will jeopardize their future application for permanent residency, or even be deported if they complain too much or over-utilize available services. This situation contributes to the long hours and poor working conditions known to compromise physical and mental health. Caregivers are at a higher risk for mental health problems, as separation from family and work-related isolation can lead to stress, depression or a number of other emotional difficulties.

In this light, decline in health is not innocuous. As McLaughlin and Hennebry (2013, 178) interrelatedly point out "… health represents intersecting and reinforcing forms of precarity and vulnerability: precarious circumstances produce poor health, and health concerns produce

further precarity" (see also Arat-Koc, 1989; Schwiter et al, 2018, 43). As with the SAWP, access to healthcare is challenged by an array of jurisdictional barriers. In a 2018 study on migrant live-in caregivers, Carlos and Wilson found that the federal requirement of employer-provided third-party insurance and mandated healthcare – before migrant workers are able to join the Ontario provincial health plan – was not guaranteed for three-quarters of the participants in their study. This jeopardizes their health as they do not seek medical care while injured or sick while awaiting for the provincial health care to kick-in (in Stasiulis, 2020, 39-40).

As Schwiter et al (2018, 43; see also Arat-Koc, 1989) explain, the home has become the site of care characterized by poor pay, long and uncertain hours as well as the absence of regulatory oversight that is an intrinsic feature of paid care work within households. What is more, Canadian labour laws do not have as stringent protections for workplace violations within a home setting as with other workplaces regarding sexual harassment, or other forms of abuse (Faraday, 2014). Under the pretence of being "one of the family," Stasiulis and Bakan (1997; see also Schwiter et al, 2018, 463) explain that longer working hours and surveillance by employers may be casually instated. This does not permeate to equal relationships and respect for caregivers' labour, privacy and need for rest and leisure, denoting a "pattern of intimidation" (Stasiulis and Bakan, 2005, 52). Schwiter et al (2018, 463), citing international research, write in this respect, "For many domestic and care workers, the home becomes a place of psychological and physical abuse, where they are forced into servitude, hit and even raped." Bhuyan et al (2018; see also Arat-Koc, 2001; Parreñas, 2015; Walia, 2010), in this context, bring to light the ostensible "structural violence" embedded in migrant care work that preserves "intersecting forms of inequality through historic and ongoing racism, sexism, classism, ableism."

The structural violence of migrant care work is a form of gender-based violence produced through gendered migration of domestic workers from the Global South to wealthier nations that lack protection for migrant workers who are financially and legally dependent on their employer. In the context of migrant care work, specific forms of workplace abuse and exploitation include physical harm (e.g. physical and sexual acts), psychological harm (e.g. verbal threats, emotional abuse), deprivation of basic needs (e.g. privacy, nutrition) and exploitation (e.g. unpaid work).

Gender and racial discrimination

The critique of the closed work permit which is present both in the SAWP and much of the caregiver streams, will not be repeated here, as this feature entailed similar consequences for caregivers prior to 2019, including a disproportionate power relationship with employers which, as the literature notes, may underpin discrimination and racism. For authors, keeping this requirement reinforced the cause of precariousness and vulnerability (Dorow et al, 2015 in Schwiter et al, 2018, 468; Nakache, 2013, 77). Many scholars and advocates, therefore, welcome the 2019 introduction of the occupation specific work permit for participants in the newest pilots and even cite it as a best practice that could be replicated to address exploitative issues faced by migrant agricultural workers (Lynch and Aceytuno, 2021).

The live-in component (even though the latter is no longer officially in place, in practice it is still the norm), exacerbates the exploitative nature of the caregiver streams, especially for women (e.g. "exploitation" at the intersection of race, gender, and perceived class). As the literature shows, proximity to, or living with, employers increases isolation with negative

health and social consequences. It has also been shown that caregivers' social network revolves around communitarian networks and fellow caregivers, limiting their social capital and chances of employment outside of the caregiving sector once they have obtained permanent residence (Bhuyan et al, 2018). Stasiulis and Bakan (2005, 5 and 71) contend that foreign domestic workers are among the most vulnerable to conditions of exploitation and abuse, based on intersectionality. They also point out that "women's work" is deemed to require little skill, namely because it has been historically unpaid and performed by women underpinning the devaluation of care work.

Some of the abuses that caregivers are more likely to experience reflect the intersections of race and gender, including sexual discrimination. Others are based on the devaluation of "women's work," and their roles as feminized caregivers, reflecting the power, and class, imbalances with employers (See Banerjee et al, 2017). Notwithstanding that many caregivers have a positive relationship with their employers, numerous qualitative studies reveal (Arat-Koc, 2001; Banerjee et al, 2017; Grandea and Kerr, 1998; Stasiulis and Bakan, 1997; Oxman-Martinez et al, 2004; Pratt, 1999):

- Sexual discrimination, including harassment and violence as one form of discrimination experienced by caregivers;
  - Sexual discrimination includes sexual abuse, financial and psychological abuse
- Breaches of their employment contracts and wage theft;
- Work shifts of 12 hours with no days off and the prohibition on caregivers to leave the house for fear they will bring COVID to their homes.(Dangzalan (2020) observes that, in this instance, they become "virtual prisoners");
- Filipino women, often stereotyped as "hardworking," "nurturing," "caring and loving," are marked by their "race" and gender (e.g. "positive racism") (Kelly and Lusis, 2006, 843);
- Devaluation of feminized domestic labour is amplified (Salvador, 2015) thereby exacerbating gender stereotypes;
- Gender stereotypes/feminine traits, especially in caregiving, may feed into gender-based exploitation at work;
- Racial discrimination from recruitment agencies and employers;
- Intersectionality: female, racialized, low-wage workers contributing to systemic marginalization in households and society;
- Combination of racism, sexism, and classism buttressed by stereotypes may impede upward social mobility after permanent residence (Siyuan, 2018);
- Guilt of caregivers over separation from their children as mothers is amplified, especially in light of gender roles (see familism – Salvador, 2015).

Racial stratification and placement agencies

As noted previously, Canada has historically privileged a certain ideal of permanent residents and citizens, who have certain characteristics and traits including racialized preferences, as "desirable citizens" (see Section 2). While no longer explicitly expressed, Callon (2006) however argues that racial hierarchies are discernible within the caregiver streams/movement in Canada, as found in its structure today. More precisely, Stasiulis and Bakan illustrate how light-skinned women are the recipients of wider selection and preferential treatment compared to dark-skinned women, with a noticeable preference for Filipinos, who are considered to be of closer standing to White Canadians in complexion and behaviour as well as values – not unlike

the preference for Mexican workers over Caribbean workers in the SAWP (Torres, 2012, 227 cited in Siyuan, 2018, 34). Indeed, darker skinned caregivers tend to be given "dirtier" jobs – a mirroring of the matching of "race" with types of jobs, particularly in relation to the three Ds (dirty, dangerous, and difficult). In relation to racism, Cohen has highlighted a significant connection between job category and "race" in keeping with an established pattern whereby Filipino women (lighter-skinned) are nannies and West Indian women (darker-skinned) work as cooks and cleaners (Cohen cited in Stasiulis and Bakan, 2005, 105).

This racial stratification is also present within placement agencies, as made evident by the recruitment of domestic workers (that is, caregivers). The role of placement agencies is to match domestic workers with families. Caregivers must secure employment before arriving in Canada and placement agencies play an instrumental role as "being the eyes and ears" of migrant workers with regards to accessing the Canadian labour market. Stasiulis and Bakan (2005, 70) demonstrate, via their study, that racial selection is "analytically reflective of wider and systemic processes." In their extensive study, Stasiulis and Bakan (2005, 74-77) found that the quality of childcare is assessed according to nationality and "race," reinforced by gender stereotypes, with European caregivers considered most desirable. They also found that agencies usually find migrant women of colour to be much more naturally and inherently suited for the job than Canadian women.[76] Another finding indicates that though men may apply at a significant rate, they are not favoured applicants as childcare is deemed not "suitable" for them. Stasiulis and Bakan (2005, 74) provide that racial and gender stereotypes are not only significant, but endemic, to the selection of caregivers. It is also historically relevant. Stasiulis and Bakan (2005, 75) explain:

Racial stereotyping is endemic to the matching process that defines the parameters of the domestic placement agency. Successful domestic placement agencies pride themselves in their ability to render a perfect "match" between client and applicant. In this practice, this frequently means the ability to stereotype "appropriately." This is not, however, only a recent characteristic of in home care, nor is racial stereotyping unique to the particular form of gatekeeper. From the early 1900s to 1960s, White European domestics were favoured in Canadian policy, and were provided with less restrictive conditions for permanently residing in the country… The anticipation was that these women of 'good stock' would become the wives of White Canadian men and the future mothers of White Canadian children.

Stasiulis and Bakan (2005, 79) suggest that the shift to the predominance of Filipino women and the simultaneous decline of the presence of Caribbean women in the program did not happen "accidently," but was rather created by "gatekeepers" in Canada, coinciding with the decline of the role of government counsellors from Canada Manpower Employment centres in arranging a match, and the emergence of private placement agencies in the early 1970s responsible for selection and recruitment. Stasiulis and Bakan, 2005, 77-78.

Ironically, this has also meant that these stereotypes have increased the likelihood of undocumented status for Caribbean domestic workers.[77] Indeed, because employment agencies play a role in a match before the arrival of caregivers, when such entry is restricted because of

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[76] "One purpose of the ideological stereotyping has been to portray a fictive universality of the non-white, female 'other' whose biological and 'natural' make up ascribes her to be inherently appropriate for private domestic work" (Stasiulis, 2005, 76-77).

[77] "Our findings suggest that there are notable differences between West Indian and Filipino domestic workers in terms of immigration status, with a higher concentration of illegal immigrants [sic] among the former than the latter" (Stasiulis and Bakan, 2005, 87).

racial stereotypes, Caribbean women may enter as visitors or as refugee claimants in order to find employment, reinforcing a "vicious circle" of stereotypes. Stasiulis and Bakan (2005, 77-78) find that

> Interviews with owners of placement agencies in Toronto, the major host city in Canada for foreign domestics, reveal a definite pattern of racial and ethnic stereotyping of domestic workers. Such stereotyping delineates sharply between domestics of Caribbean and Filipino origin. Regarding the image of the former, the passive and loving 'mammy' has been replaced by an apparently widely accepted image that is variously aggressive, incompetent… the favour towards West Indian nannies seemed to have slipped in inverse proportion to a rise in militancy and organized resistance among live-in domestics to abusive conditions in Canadian employment and immigration practices…not consistent with the 'mammy stereotype'…. Because childcare and housework are expected to be natural and not learned or taught, drawing upon an alternative gene pool, rather than providing different instructions or seeking a different combination of acquired credentials, is seen as the best remedial approach.[78]

Example of negative and positive racisms

Stereotypes from placement agencies and employers construct Caribbean women as "dumb," "laid back," "uneducated," "scary to children," having "strange hairdos," "criminal" while Filipinos are constructed as "passive," "soft," "respectful," "professional," or "smarter than the island girls"

Stasiulis and Bakan, 2005, 70-85.

Positive racism may be a consequence. Indeed, all racialized caregivers are suffering from racist oppression, though at different levels, "with darker skinned caregivers facing the worst situation" (Siyuan, 2018, 35-37; see also Salvador, 2015):

Filipinos are considered to be a "race" qualified for Canada and Canadian society, or to be more specific, a "race" that is customized for Canada's Caregiver Programs. Kelly and Lusis (2006) pointed out that this notion is associated with racialized understandings of Filipino characteristics and aptitudes for both migrants and Canadians. This means that Filipinos are deemed to possess characteristics that both Canada and Canadian employers value, and thus have higher possibilities of being hired.

The "positive racism" does benefit Filipino workers to some extent, but meanwhile it also brings potential exploitation… **Due to the assumed qualities linked to their "race," employers may deem that these caregivers are fine with overtime work and being treated unfairly**… "Filipino caregivers leave Canadian employers with an agreeable impression on Filipinos, which may grant them more work opportunities on one hand, while unconsciously placing them in a potential situation of exploitation on the other" (Siyuan, 2018, 37).

In summary, authors Stasiulis and Bakan (2005, 6 and 85) suggest that "blatantly racialized and gendered stereotypes" – invoking Vosko's earlier assessment of the SAWP with regards to recruitment – facilitate and restrict the recruitment and placement of foreign domestic workers in the homes of Canadian families. "While domestic placement agencies present themselves as ostensibly neutral stakeholders in meeting the needs of both employers and employees, the structural and ideological bias towards the citizens/employer, invoking particular

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[78] In terms of the labour rights of domestic workers, see *Intercede*, created in 1979.

representations of the "legitimate citizen and the "fit nanny," are readily expressed in the research findings… Racial and gendered ideological stereotypes are necessary criteria to the effective gatekeeping process in implementing Canada's foreign domestic worker policy."

"Low-skill" and deskilling

Caregivers are considered a "low-skill," "low-wage," group in that "domestic work" is considered "low skill," which leads to notions of "class" being associated with this social group, and results in them being marked as "poor," or "uneducated." All of this contributes to the entrenchment and amplification of their subordinate position (Salvador, 2015; Siyuan, 2018, 43), which reflects the discussion of discrimination in Section 1. The reality related to their skill level is, however, different. According to Tungohan's (2015) research, 86% of caregivers who are employed in the Philippines hold a bachelor's degree while only 0.2% has no high school education (based on focus group data), not unlike their Caribbean predecessors, who were similarly highly educated, including some of them who are doctors or nurses (Salvador, 2015). Bhuyan et al (2018) make the observation that although the majority of caregivers have advanced degrees in nursing or other health care professions, "migrant workers are de-skilled through the Caregiver Program." As a case in point, their sense of isolation, mentioned above, is aggravated by these experiences of deskilling and downward occupational mobility which impact physical and mental health (Pratt, 1999). Further, it reveals the invalidation of credentials gained in other countries, with its well-documented discriminatory impacts, as noted above.

When they are in Canada as temporary work permit holders, it is difficult for caregivers to engage in training and education in Canada even if they would like to, given that their work authorization does not allow for a study period surpassing 6 months. If they wish to study longer, both the study permit and international student fees represent further systemic barriers to continued education (Siyuan, 2018, 17). This is compounded by the fact that part of their wages is sent as remittances to their families back home. The lack of access to government-funded settlement services, including language classes and employment counselling, may represent additional barriers (Banerjee, 2017). Banerjee et al (2017) illustrate how these challenges can also be attributed to stereotypes tied to caregiving work, as well as racialization and discrimination.

Moreover, when caregivers obtain permanent residence, they may find themselves with challenges in the labour market due to the fact that their time spent caregiving will not count as Canadian experience. This, and other factors, such as the financial difficulties of acquiring additional Canadian education, means that caregivers, when they receive permanent residence, are more likely to stay in caregiving, rather than working in their field of experience and expertise (Siyuan, 2018, 45). As Rupra (2010, 31) suggests, it is not the colour of their skin that is the cause of what she terms "oppression;" rather, it is the racism that is also rooted in racial stereotyping. Likewise, it is not gender that causes "oppression;" but discrimination and prejudice towards female workers. Further, it is not their low social position that causes "oppression," but the lack of access to services and lack of equality in that access. In line with the literature, racism, sexism, and classism constitute systems of oppression that construct migrant workers as "inferior" resulting in lack of access to social benefits; inadequate labour protections in their workplaces; restrictions of movement; and physical exploitation and abuse.

Live-in caregiver programs & 2014 and 2019 caregiver streams: Findings from the literature

Migrant caregivers come to Canada to take care of children, the elderly and the disabled and fill labour-care needs. They are mainly women from the Philippines (approximately 90% of participants).

LCP (1992-2014)
- Is a "stand-alone stream" with Temporary Residents (TR)-Permanent Residents (PR) model
- Eligibility criteria were "pre-assessed" before arrival in Canada and did not include language and post-secondary education
- Upon completion of a twenty-four month period of employment and live-in requirement with employers, caregivers may apply for PR
- The literature notes that caregivers have a "guaranteed" and "automatic" pathway to PR meaning that there were no significant structural barriers to participation in the program and that PR was "automatic" once the live-in and work requirements were met

Criticisms of the LCP:
- Employer-specific work permit
- Live-in requirement

Critics note that these features increase the potential for exploitation and abuse

Caregiver Streams (2014)
- No longer a "stand-alone" stream with TR-PR model: applicants first come through the TFWP
- Two PR streams: "Caring for Children" and "Caring for People with High Medical Needs"
- The live-in requirement has been removed
- Additional language and education requirements
- A cap applies (5,500 yearly cap or 2,750 for each stream)
- Once caregivers under the TFWP obtain the required work experience, they qualify for PR pending they meet additional requirements

Caregiver Streams (2019)
- TR-PR model and applicants come through the IMP
- Two PR streams: "Home Child-Care Provider" and "Home Support Worker"
- Removal of employer-specific permit and introduction of an occupation specific permit
- Spouses/Common-law partners and dependent children may accompany caregivers and obtain work and study permits
- Caregivers are required to be eligible for PR before they can obtain a WP. Once they complete the in-Canada work experience, they may apply for PR
- Language and education requirements remain unchanged

Criticisms of the 2014 and 2019 Caregiver Streams:
- No longer a "stand-alone" stream
- Changes are confusing for employers and caregivers
- New language and education requirements
- New yearly cap
- Transition to PR is more challenging and costly which inhibits participation
- Backlogs, longer processing times even before the pandemic
- For 2014 stream: criticism of the employer-specific permit

- For 2014 stream: fewer caregivers have been granted PR
- For 2019 stream: very few work permits have yet been approved
- Positive changes such as removal of live-in requirement and introduction of occupation-specific work permit have yet to have a significant impact in the context of structural barriers to participation in the streams and challenging transition to PR

PART 4: "LOW-SKILLED" WORKERS, ACCESS TO PERMANENT RESIDENCE AND DISCRIMINATION

The identities of migrant workers as "racialized," intertwined with socio-economic groupings and provenance from "poor" countries, researchers observe, play a role in discriminating against them – a discrimination that is described not only as exclusion from social benefits and permanent residence for some, but also as a reflection of the aforementioned power imbalance between employers and an already precarious migrant population. This is, as noted by the literature, a result of historical immigration patterns. Marsden mentions that while race-neutral policies replaced race-specific structures in the post-1967 immigration system, they failed to erase racial stratification[79] in temporary migration programs and policies.

> "The continuing development of law and policy segregates migrant groups through differential entitlements justified by presumed economic suitability, regardless of actual economic contributions. The groupings tend to correlate with place of origin, race, and socio-economic class, thus entrenching segregation and stratification" and may constitute a basis for "anti-discrimination claims against exclusion from social benefits"
>
> (see "Systemic Racism: Discriminatory Recruitment/Selection of Agricultural Workers, for more details on stratification").
> Sarah Marsden, 2011

In the same vein, the Library of Parliament (2020, 15) notes, "Despite protections, reports indicate that temporary foreign workers may be subjected to various kinds of injustices, on the work site and off, with those holding an employer-specific work permit (such as those in the low-wage stream, the SAWP and the caregiver streams) being at greater risk of abuse." Cohen (2017; see also Basok and George, 2020, 9) also argues that "the denial of membership at the nation-state level renders temporary migrants vulnerable to workplace rights violations." In light of an extensive literature that reveals the strongly racialized, gendered, and class-based nature of temporary migration programs, as well as their rootedness in racism (see Section 2), the important indication is that the rootedness of racism within these programs allows for discrimination to be entrenched within, and to flow from, this exclusionary racist historical premise. One such discriminatory feature, as highlighted by the literature, pertains to access to permanent residence.

The paper here lays out the rationale, as found in the literature, behind claims of discrimination in relation to access to permanent residence for low skilled migrant workers. As Basok and George (2020, 1) have pointed out, "The Canadian system has been widely criticized for its failure to provide protections and address migrant needs… as many critics of this migration management approach point out, the temporariness of labour migration makes it possible … to

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[79] Verdugo (2018, 70-71) explains, "Racial stratification assigns roles and functions to individuals based on their ethnic-racial group membership…." Racial stratification is premised on the ideology of biological superiority and is also described by structural mechanism which involve "the regular and patterned forms of separate or unequal treatment of groups."

deny certain rights to workers, especially if they are low-skilled." Similarly, the HUMA committee heard from witnesses that current pathways to permanent residence favour high-skilled workers. As Faraday (2016, 54) explains, "… since 2012… the range of pathways to permanent residence that are available to professional, managerial, and skilled workers has expanded. By contrast, recent revisions to the TFWP have not provided any new routes that enable low-wage migrant workers to secure permanent status in Canada despite their years of labour in the country." In Nakache's (2013, 88 and 91) words, "Canada wants low-skilled workers to leave the country after a certain period of time and offers skilled workers a pathway to settle permanently… it sends a message that Canada wants low-skilled workers only as workers but skilled individuals as future citizens." Macklin (cited in Depatie-Pelletier and Khan, 2011, 48) echoes this finding, "Temporary workers have a place in the economy but not in the nation."

The Canadian Council for Refugees (CCR) has deemed this uneven access to be discriminatory, as reported by HUMA (2016). Providing opportunities for permanent residence pathways to low-skilled workers, according to the CCR, would go a long way in tackling the fault-lines underpinning temporary migration programs. More than this, it would address the root causes of exploitation some programs, including the SAWP, are said to embody (Baines and Sharma, 2002, 76). Depatie-Pelletier (2011, 8) remarks that though "low-skilled" is commonly used, it can be considered a controversial expression: **"It might implicate that the workers employed in this kind of occupation are less skilled or of less social value than the ones commonly referred to as 'high skilled' workers."** The CCR indicates this may attach lesser value to some peoples' contributions to the economy, when all types of contributions are worthy (Depatie-Pelletier, 2011, 8).

This suggests that low-skilled workers, are differently skilled, rather than "lesser" skilled, in relation to other workers in a diverse and multifaceted Canadian economy. Moreover, in relation to the "low skill" label and the further classification of workers into low-wage and high-wage streams in 2014, Faraday (2016, 23) observes that "the redefinition of "low wage"… obscures the extent to which NOC levels remain the controlling concept that determine eligibility and entitlements within Canada's economic immigration/labour migration system and obscures which workers are denied access to permanent residence." Indeed, "low-skilled" workers may have years of work experience in purportedly low-skill occupations, but may still be unable to qualify for permanent residence.

From CCR's perspective (in HUMA, 2016, 22), "low skilled" migrant workers should be given the same opportunities to access permanent residence as "high skilled" workers. According to this rationale, limited access to permanent residence does not put them on an "equal" footing with other workers despite existing labour shortages and demand for their skills, thereby constituting discrimination.[80] These observations have been amplified during the pandemic in view of the "essential" nature of the work that they provide (Triandafyllidou and Nalbandian, 2020).

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[80] According to the Library of Parliament (2020, 10), "The agricultural sector, for example, was said to experience one of the highest job vacancy rates in Canada between 2015 and 2017, at approximately 7% which was significantly higher than the national average of approximately 2.5%."

In this context, the rationale underlying the literature's criticism is that when temporary workers fill permanent positions and cannot access permanent residence, equal opportunities are denied them on the basis of "skill-level," regardless of their actual economic contributions.

Lack of access to permanent residence based on skill level is deemed unfair and discriminatory for authors specializing in migrant scholarship, law and advocacy. Faraday (2012, 15-16) has summed up the issue as follows, "the fundamental question of why broad classes of workers who have historically played a significant role in building Canada are now, in law, generally ineligible for pathways to permanent residence and citizenship?"

Liew (cited in HUMA, 2016, 22) echoes the discrimination evoked by the CCR and others and addresses migrant worker contributions:

> Many temporary foreign workers do some of the most difficult work in our society that allows our communities to function, including picking the fruit we eat, cleaning our toilets, and caring for our children, elderly and dying.

These tasks will always need to be done, and addressing long-term labour needs with short-term disposable labour creates a two-tiered society with a growing population of workers who have access to fewer rights than others and are not permitted to integrate and further contribute to Canadian society.
Jamie Chai Yun Liew, cited in HUMA, 2016

Relatedly, authors note that skill level is intertwined with considerations of both "race" and class, according to which, in Guo's words, "skill has colour" and "low-wage/skill" are racialized and gendered, reflecting the same racialization of the wider Canadian labour market characterized by poorer economic outcomes of racialized individuals relative to White Canadians (Esses, 2021, 520; Guo, 2015; Ku et al, 2019, 292).[81] According to scholars, when migrants work in Canada for years, even decades (Caxaj, 2021) and cannot be eligible to settle in Canada due to language skills, educational attainments and so on, this approach may discriminate at the intersections of "class," "race," "entry class," and "geographic origin" exacerbating precariousness and permanent exclusion – despite the labour and skills they bring to Canada and Canadians.

In this context, Stasiulis (2020, 46) refers to "two Canadas" in which different rules apply on the grounds of "race," geographic origin and, concomitantly, class – and depending in which Canada one lives, perceptions on how non discriminatory, multicultural, and promising the country is, may sharply differ based on lived experiences. Baines and Sharma (2006, 96; Preibisch, 2007, 7) expound on the role of discriminatory immigration policy in explicitly developing "the possibility for people to live and work in Canada without full social rights," and Faraday (2016, 30) situates migrant workers as existing within unhospitable "zones of exceptionalism."

Weiler and Cohen (2018) similarly argue, "Workers and critics of the program argue that permanently categorizing migrants as "non-citizens" means they have fewer rights and protections than Canadian workers." In the same vein, Landry et al (2021, citing Han, 2020) and Caxaj (2021) explain that access to permanent residence is not necessarily about migration

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[81] "In Canada, skilled ethnic and religious minority immigrants are particularly likely to experience employment disadvantage, even when potentially relevant factors are taken into account" (Ng & Gagnon 2020; Reitz 2007).

(or permanent settlement), but about the ability to exercise rights and about human dignity. Caxaj (2021) spoke of migrant workers feeling "undignified" when being told they could not access permanent residence even if they had not planned on settling permanently in Canada). Likewise, Aceytuno (see Lynch and Aceytuno, 2021) expressed that it was the option of obtaining permanent residence that was key to migrant workers, regardless of their settlement intentions.

PART 5: INTERNATIONAL MOBILITY PROGRAM (IMP)

Description

Over the past decade, particularly since 2014, the overall number of workers entering Canada through the TFWP has declined, while the numbers entering through the IMP have grown substantially. As of 2020, three times as many work permits were issued under the IMP than as under the TFWP, with international graduates representing the largest and fastest-growing category within the IMP (Library of Parliament, 2020, ii and 9; Faraday, 2016).[82] Nonetheless, there is a gap in the literature on race and discrimination in the IMP, though research is growing in this area.[83] In the same vein, Faraday (2016, 15) points out, "The migration streams under the International Mobility Program have been subject to considerably less public scrutiny and study than the low-wage programs under the Temporary Foreign Worker Program." It is worth noting that prior to the 2014 reforms to the TFWP, all temporary labour migration streams in Canada fell under the umbrella of the TFWP. Following these reforms, the labour market test exempt streams of the TFWP were re classified under the newly-branded IMP.

As previously noted, the IMP, which is the other "arm" of the temporary labour migration programs, includes work permit applications that do not require a LMIA (Library of Parliament, 2020, ii). The IMP is meant to advance Canada's cultural, social, economic and cultural national interests. Boyd, Taylor, and Delaney show that, in view of their reciprocity, many subprograms of the IMP were once subprograms of the TFWP which did not require labour market testing (cited in Vosko, 2020, 4). Accordingly, Vosko describes the IMP as a "rebranding" of the former TFWP subprograms that purportedly reinforce mobility (IMP) vs migration (TFWP) (Vosko, 2020, 4). Since the rebranding, the IMP has grown significantly and is now considerably larger than the TFWP, outpacing it in a short period of time.

Countries in Latin America and the Caribbean represent main source countries in the TFWP, while the IMP's source countries are primarily from countries in Asia and Europe, as well as the United States and Australia, except for some of its sub-programs. The two largest sources of countries for workers entering under the IMP are India and the United States (Chartrand and Vosko, 2020, 8). There is a growth in the volume of certain sub-programs, such as the post-graduate and spousal subprograms, with increasing participation from China and India. Workers from the United States dominate the trade-oriented sub-programs under North American Free Trade Agreement (NAFTA), while the International Experience Canada (IEC)

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[82] The overall number of international students has almost tripled from 2008 and 2018. International students are permitted to work during their studies, and thereafter they can stay for up to three years in Canada under a post-graduation permit (Library of Parliament, 2020, ii and 9).

[83] See Chartrand and Vosko, 2020; Faraday, 2016; Vosko, 2020; see also Aceytuno, 2021, who notes, in relation to compensation or compliance issues, that very little information on the IMP is publicly available.

sub-program (a youth working holiday stream), is dominated by participants from France, Australia, Japan and Ireland (Vosko, 2020, 6).

Between 2013 and 2018, eight of the 10 top source countries held trade agreements with Canada: the United States, France, the U.K., Australia, Ireland, Korean, Japan, and Germany (Chartrand and Vosko, 2020, 14). Over 90% of workers from these countries were IMP participants. Conversely, 90% of TFWP participants were from the Caribbean and Latin America (Mexico, Jamaica, Guatemala and Trinidad & Tobago) (Chartrand and Vosko, 2020, 9). "According to the federal government, the majority of workers admitted through the IMP are highly skilled, earn a high wage, and are mainly from developed countries" (Library of Parliament (2020, 9)). Among admitted workers in 2019, IMP workers were more likely to hold permits associated with high-skilled occupations – a trend also noticeable before 2019 (Library of Parliament, 2020, 11). (Conversely, TFWP workers were more likely to hold permits for low-wage/low-skilled occupations).

To note, the vast majority of work permits are issued to male migrants under both the IMP and the TFWP, with higher numbers for the TFWP: 80% of work permits issued for the TFWP were intended for male migrants.

> While it may seem that the IMP provides "more freedoms" for its workers, scholars have started uncovering the potential fault-lines of this program, arguing that some subprograms tend to replicate some of the same injustices found in the TFWP, and that greater scrutiny of these trends should be carefully monitored.
>
> Chartrand and Vosko, 2020; Vosko, 2020 and Vosko's work generally.

The Organisation for Economic Co-operation and Development (OECD, 2019) notes that the bulk of beneficiaries of international mobility obtain open work permits, therefore, limiting the availability of information on their intended occupation and destination. The OECD (2019) writes, "this hampers both monitoring and assessment of the labour market impacts."

As a case in point, Faraday (2016, 15) writes that the two streams "do not reflect a clear demarcation between workers who are vulnerable and workers who are secure. There are relatively privileged workers in high paying jobs who enter Canada under the Temporary Foreign Worker Program. Likewise, there are workers in low-paying jobs, with limited labour market security and capacity to enforce rights employed under the IMP. In following this rationale, Faraday (2016, 11) goes on to state that the TFWP "does not encompass all low-wage migrant workers with precarious status. Meanwhile, entry under the International Mobility Program does not guarantee that a migrant worker is highly paid or secure, or that the employer's use of migrant labour is subject to close oversight for its impact on the Canadian labour market."

Knowledge gap: International mobility program, race and exploitation

Chartrand and Vosko (2020, 5) explain, "Even as temporary migrant worker programmes change, they maintain deep continuities with their colonial pasts, continuities that demand greater scholarly attention." This, all the more, demands greater scholarly attention precisely because it has a direct bearing on policy work. Knowing the historical context in which temporary migration programs emerged – some having barely changed – may reveal that past prejudices may still have a direct bearing on current policies and their structures. Vosko and

others have extensively studied the IMP, in its relation to colonization, subordination and racialization.[84] However, the IMP remains understudied and represents a gap in the literature in relation to "race" (contrary to the well documented sources on the TFWP), probably due to a combination of factors. These factors would include a tendency to make correlations between the open-work permit and its purported protections for workers, the geographic origin of IMP workers from countries of the global North, and the challenges in gathering information about open work permit holders. Due to these features, it may therefore be inferred that the IMP has fewer fault-lines than the TFWP, but without substantiating evidence, conclusive statements cannot be made.

However, scholars have pointed out that potential aspects of the IMP surprisingly mirror some of the features of the TFWP.[85] Vosko writes (2020, 3), "Some subprograms of the IMP project the image of the mobile worker but reinforce the temporary migration status of participants, such that their conditions of work and residency closely resemble those of participants in the TFWP." Among programs that demand greater scrutiny, scholars point to the Intra-company Tranfers (ICT), as well as the post-graduation and spousal subprograms (Vosko, 2020, 3.) While Vosko (2020, 2 and 12) has produced innovative work on the IMP in relation to issues of "race," **she also indicates that it is an "under-studied side of temporary migration" or that "much less is known under the employment authorized under the IMP".** These knowledge gaps stem partly from the absence of the LMIA process which allows for collecting administrative data on occupations, wage levels and contract provisions. The absence of the inspection regime for the IMP additionally leads to lack of data (Vosko, 2020, 12). In spite of such gaps, the following points can be substantiated: 1) mobility under the IMP is stratified as a variety of permit conditions is being unevenly applied throughout its subprograms; 2) major source countries of the Caribbean and Latin America are under-represented; 4) less traditional source countries such as China and India are gaining greater representation (Vosko, 2020, 12).

The post-graduate and spousal subprograms

While some sub-programs of the IMP are far removed from the characteristics of the TFWP, the post-graduate and spousal subprograms have shown potential for exploitation along the racial lines embedded in the historical antecedents of temporary migrant worker programs (see Section 2) insofar as these programs are disproportionately represented by participants from India, China, other source countries in Asia, as well as the other BRICS countries (Brazil, Russia, and South Africa, (Chartrand and Vosko, 2020, 2)).[86] Between 2004 and 2018, India and China represented 60% of new postgraduate permit holders (Vosko, 2020, 6).

Chartrand and Vosko (2020, 2) go on to observe, "Certain new arrangements falling under the IMP also have the potential to cultivate conditions associated with exploitation long

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[84] According to Chartrand and Vosko (2020, 2), subprograms of the TFWP emerged from a legacy of "policy-making rooted in racialized relations of exploitation as well as expropriation of migrants from sources which were colonized or otherwise caught up colonial projects." As such, they note that temporary migrant programs are strongly rooted in the recruitment of labour presumed to be "highly exploitable." While noting that India and China represent the sole source countries in which the number of IMP work permits increased significantly between 2013 and 2018, Chartrand and Vosko (2020, 14) revisit the history of these two source countries with complex experiences with colonialism and racialization that have "long-standing links to Canada" (see also Section 2 on Asian immigration).

[85] See McGregor (CBC, 2021) for an example of exploitation under the IMP, where 112 work permits had been issued for Canada Royal Milk and its two contractors. The workers are from China and experience overcrowded living conditions, but also inadequate working conditions. The permits were issued with the aim of bringing "significant economic benefit to Canada" (see Appendix A for the structure and purpose of the IMP). This demonstrates what scholars observe in terms of the IMP replicating some of the injustices commonly found in the TFWP (but will less scrutiny and monitoring).

[86] See also the ICT in Vosko (2020).

characterizing older arrangements under the TFWP, particularly for the growing number of migrants from China and India." From 2004 to 2018, the ICT, IEC and post-graduation and spousal subprograms experienced significant growth. Some of these expanding programs include participants on closed work permits. In fact, closed work permits constitute one-third of all work permits under the IMP and fall under such subprograms such as the IEC, NAFTA,[87] Provincial Agreements and ICTs (Library of Parliament, 2020, 3, Vosko, 2020, 12; Canada Gazette, 2018).

Experts suggest that exploitative practices are linked to source countries with a subordinate history to Canada[88] allowing certain types and conditions of work for its migrants where "temporary labour migration operates through the specificities of colonialism and racialization unique to each context" (Chartrand and Vosko 2020, 7; Vosko, 2020, 4).

The point made by scholars in the nascent literature on "race" and the IMP lies not in the fact that Indian and Chinese immigrants are also well-represented in permanent, non-temporary, programs and can, therefore, be considered "successful" in certain instances. Rather the point made here – and an important one – is that when they come as "migrants," a process of racialization and migrantization occurs, which imitates previous patterns of subordination and racism that are reflected in today's policies, and produce similar patterns of exploitation of cheap, racialized labour which are now normalized, and often unquestioned.

Experts suggest that when cheap, racialized labour, drawn from specific source countries, is implanted in an immigration system, then there is a need to interrogate the system's longstanding biases whenever policy-making is at stake.

What is more, the appearance of equality can be unravelled to reveal differential treatment based on source countries and histories of racial discrimination and subordination wrapped in a seemingly neutral unbiased policy. This history, described in greater detail in Section 2, explores the patterns of exclusion for India and China:

> India and China, already top sources for permanent and temporary migration, are becoming increasingly central to Canadian policy aimed at maintaining Canada as a competitive destination for migrant labour. But while analyses of the long-term trajectories of Indian and Chinese immigrants in Canada show that these two groups are large and 'better off than those from other countries,' they still confront underemployment and 'brain waste.' Processes of migrantization are… deeply rooted historically… As Cho suggests, 'the problem… was not finding cheap labour but doing so without appearing to do so.' In this sense, the early treatment of Chinese immigrants coming to Canada to engage, paradoxically, in projects in the national interest represented an effort to balance public anxiety, especially the expression of xenophobic sentiments, with employers' demand for cheap labour – a tension that continues to shape the parameters of contemporary IMP subprograms for which China serves as the leading source. Distinctively, yet working towards similar ends, the early treatment of Indian immigrants to Canada illustrates how racialized processes of migrantization often come hand-in-hand with 'post-colonial' state sovereignty… Early requirements for passports effectively authorised racialized difference

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[87] Canada-US-Mexico Agreement (CUSMA) replaced NAFTA on July 1, 2020.
[88] Vosko (2020, 20), for instance, explains: "Here, it bears emphasis that large numbers of participants in Canada's fast-growing IMP subprograms with the potential to foster exploitation migrate from China and India – two source countries whose emigrants have faced subordination through differential inclusion perpetuating migrantization historically" (see also Section 2 for more details on historical aspects, especially those related to racialized immigration and temporary labour practices).

on the basis of nation. In this era, from an immigration standpoint, nationals of India were transformed from 'British subjects' into Indian immigrants. This sleight-of-hand enabled Canada to limit the number of immigrants from India without 'drafting restrictive immigration legislation specifically targeted towards Indians since this would have exposed, in an indubitable way, that notwithstanding citizenship of Empire, different 'British subjects' were endowed with differential access to mobility' (Vosko, 2020, 11).

What is more, open work permits can also have specific conditions imposed on them (e.g. restrictions on the type of work, periods of employment etc.). Vosko (2020, 12) provides the following details, "Arguably, the proportion of IMPs subject to some form of work permit restrictions is substantial. Yet, it still bears mention that, even where formal restrictions on the ability to move freely in Canada in the labour market are absent, little is known about the degree to which open work permit holders have practical access to workplace rights and protections and genuine mobility."

> Open-work permit holders are also highly represented in food and accommodation services, often characterized by layers of insecurity, including low wages, lack of control over the labour process, and the absence of enforcement of labour standards
> Vosko, 2020, 12 and 16.

This may be linked to the "temporariness" (also described as precariousness throughout the literature) of status, in which workers do not want to jeopardize their employment chances, work permits, and in some cases permanent residence prospects, by denouncing labour violations. In a similar way, though some IEC participants may be able to change employers, they are akin to a group of "working holidaymakers," a group associated with experiencing labour violations such as underpayment and non-payment of wages (Campbell et al, 2016).

Faraday (2016) highlights that while the IMP includes young professionals from OECD countries, it also includes racialized workers employed in janitorial and construction work. Moreover, Faraday (2016, 15) notes that international students, who are a growing stream of migrant labour, have raised concerns about "exploitative recruitment and employment practices similar to those raised by low-wage workers under the TFWP."[89] Vosko and Chartrand (2020) underline that the aforementioned-issues have the potential to replicate the well-documented exploitative conditions of the TFWP and warrant further exploration.

Overall, scholars have highlighted the following:

- Migrants from Latin America and the Caribbean do not participate in the full range of temporary migrant worker programs.
- The contraction of the TFWP, which accompanied the expansion of the IMP, did not mean a reduction in exploitation. Some of the older arrangements of the TFWP which were under LMIA-exempt categories had been transposed to the IMP. It is, however, noteworthy that one-third of participants in the IMP are under closed work permits.
- When IMP workers are under open work permits, they may include above-mentioned restrictions (an open work permit may restrict the occupation or location of

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[89] Faraday (2016, 15) explains, "Increasingly international students are raising concerns with community organizers that they have been subject to the same predatory practices by private third-party recruiters that low-wage migrant workers face, being charged as much as $10,000 to $15,000 each to be placed in post-secondary institutions with the promise that securing a Canadian post-secondary diploma or degree will secure a pathway to permanent immigration."

employment, for example, or workers may be employed in occupations known for their lack of enforcement of labour standards) that may increase the propensity for labour violations and exploitative practices.

- The understudied ICT, Postgraduation, and Spousal IMP subprograms contain a propensity for exploitation or analysis based on "race." Their participants come from source countries with a historical imprint that is a legacy from explicitly racist immigration policies" (Vosko, 2020, 2).

- Challenges have been found with regards to access to permanent residence for postgraduates and spouses of skilled workers and students who hold open work permits when their jobs do not fall within certain categories (professional, technical, skilled-trades, and management occupations).

- Some of IMP's subprograms seem to perpetuate insecure employment (Vosko, 2020, 20; Vosko and Chartrand, 2020, 15).

SUMMARY

The review concludes with a summary of key messages embedded in the wider literature:

- "Race" is biologically meaningless; however, it is a social construct, as conveyed by the term "racialization." Racialized peoples are only "racialized" in relation to a dominant norm.

- Racism and discrimination are realities experienced by Black, other racialized, and Indigenous peoples in Canada, and the existence of this reality and its impacts are supported by statistics and research; social scientists refer to this process as "racialized disparities."

- The terms systemic racism and systemic discrimination are commonly used to describe policies, practices and institutional behaviours that routinely produce, and result in, adverse outcomes for Black, other racialized, and Indigenous peoples.

- Most scholars argue that discrimination may be measured by the outcomes policies produce, regardless of their purported neutrality; in other words, if they reinforce historical bias towards certain groups; perpetuate socio-economic disadvantage, prejudice and stereotyping; or disproportionally impact racialized persons, they may be discriminatory.

- As per much of the scholarship, Canada has the right to discriminate with regards to immigration (section 6 of the Charter), this right is not absolute and should not diminish core Charter values and human rights. Such values include reciprocal respect, substantive equality, respect for human dignity and caution as to whether laws and policies may augment xenophobia, and/or stereotypes, and enhance historical disadvantage based on "race," or other grounds.

- Canadian immigration history is replete with examples of overt racism and discrimination. The time period from the beginning of the 20th century until the Second World War is commonly referred to as the building of "White Canada" or the "Keep Canada White" era. It was primarily bolstered by beliefs in scientific racism which shaped immigration policy.

- A Domestics Scheme for migrant women from the Caribbean coming to Canada to work as domestic workers was created in the post-war years (1955); this was followed by the creation of the SAWP (1966), and subsequently the NIEAP (1973), the precursor to the TFWP.

- The aftermath of the Holocaust and the emergence of a global human rights culture in the 1950s and 1960s brought about the discrediting of racism, resulting in significant reforms to Canadian immigration policy, including its formal "deracialization," epitomized by the creation of the points system in the late 1960s. Scholars suggest, however, that these changes to policies did not signify "complete deracialization" in practice.

- After the 1967 changes to Canadian immigration policy, including the introduction of the points system, growing numbers of racialized peoples from the global South were admitted as permanent residents, and scholars note that Parliament became concerned about the growing numbers of racialized peoples in Canada. The design of the NIEAP, scholars argue, was intended to resolve the issue of an increasing racialized presence in Canada. The NIEAP was designed to fill acute labour shortages while admitting racialized and low-skilled workers on a temporary rather than permanent basis – a phenomenon dubbed as "migrantization" in the literature.

- Most scholars observe that the SAWP has barely changed since its 1966 inception, except for an expansion of participating countries. They also argue that the racist roots underpinning its creation continue to impact, and potentially inform, the current policy formation of this program as well as the disproportionate numbers of racialized and classed participants.

- Some scholars argue that "although … racist ideas no longer explicitly sustain or justify the program [the SAWP], it is arguably a continuing example of institutional racism in Canada because it had its origins in racism… In other words, certain policies and programs are racist in origin, and even though racism may no longer sustain them, the policies and practices continue to exist" (Satzewich and Liodakis, 2007, 166).

- As an example, the seasonality of the SAWP is premised on the racist belief that racialized peoples could not adjust to the Canadian weather on the grounds of their inherent nature; and therefore would be unable to "assimilate" to, and permanently settle in, Canada.

- In relation to the caregiver programs and streams, most scholars underline the intersectionality (e.g. gender, class, entry class, country of origin, "race") that impacts and shapes the experiences and the integration outcomes for caregivers, most of whom are Filipino women.

- Scholars note that social groups' identities, such as "race, gender and class" and "migration status" coalesce with the racialization and gendering of caregiving work to produce systemic forms of discrimination, sustained by dynamics embedded in stereotypes or racism.

- With regards to migrant caregivers, many scholars argue that the disparities and inequitable processes between the global North and the global South that are associated with globalization, are replicated on a microcosmic level (that is the household) through processes of migration.

- There is a nascent and growing literature on "race" and the IMP, which suggests that some of the exploitative features of the TFWP could be replicated in some of the subprograms of the IMP, but subject to less scrutiny and monitoring than the TFWP.

- Temporary programs, such as the SAWP and the caregiver streams, reveal discriminatory practices with regards to labour practices and access to services that impact short- and long-term health – processes that have been exacerbated by the COVID-19 pandemic. They also reveal a pattern of subordination of migrant workers to Canadian employers.

- The literature coheres on the point that the issues of racism and discrimination have certainly not disappeared when it comes to programs and policies related to migrant workers in Canada. More than this, the fact that these modern-day programs continue to reflect their roots in the explicit racism and discrimination of Canada's immigration history suggests that greater reflection and remedial action on the part of the federal government may be warranted.

DESCRIPTION OF THE TEMPORARY FOREIGN WORKER PROGRAM AND INTERNATIONAL MOBILITY PROGRAM

Migrant workers (as noted, migrant workers refer to TFWs in this review) work and live in Canada on a time-limited basis either under the TFWP or the IMP. Migrant workers have become a significant source of labour supply in Canada (Statistics Canada, 2019).[90] Post-2014, the federal government reorganized the temporary migration framework into two distinct programs: the TFWP, whose primary objective is to fill in labour shortages, and the IMP, whose primary purpose is to advance Canada's economic, social, cultural and labour market interests (IRCC, 2015).[91] The administration of both these programs is shared between IRCC, Employment and Social Development Canada (ESDC), and Canada Border Services Agency CBSA at the federal level, with ESDC having no involvement in the IMP (Chartrand and Vosko, 2020, 12; Nakache, 2006; Sharma, 2006).

Temporary Foreign Worker program

- **High-Wage Stream** corresponds to these occupations for which wages are at or above the provincial or territorial median hourly wage.

- **Low-Wage Stream** corresponds to these occupations for which wages are below the provincial or territorial median hourly wage.

- **Primary Agricultural Stream**:

  - Refers to temporary work engaged in on-farm primary agricultural work;
  - Is divided into four sub-streams: SAWP, Agricultural sub stream, High-Wage sub-stream, and Low-Wage sub-stream (not to be confused with the "high-" and "low-wage" under the broader TFWP);
  - SAWP is the largest program with roughly three-quarters of permits issued over the last decade.

- **Global Talent Stream** provides a shorter processing time for highly specialized foreign professionals.

- **Caregiver Program Stream** refers to positions engaged in the care of children and the care of family members with high medical needs.

Sources: Library of Parliament (2020); OECD (2019)

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[90] Since 2008, the number of temporary workers surpassed the number of permanent residents admitted annually in Canada for the first time. Accordingly, many scholars have commented on the growing importance of temporary migration programs in Canada (Hari, 2014; Statistics Canada, 2018; Thomas, 2010; Faraday, 2016).

[91] Changes to the temporary migration system occurred after 2014 following concerns of abuse of the former TFWP. The 2014 reforms were aimed at limiting employer reliance on migrants (Chartrand and Vosko, 2020, 8; Marsden, Tucker and Vosko, forthcoming). They also intended to ensure respect for compliance mechanisms and program requirements on the part of employers. Among various reforms, the cumulative duration rule, also known as the "four-in, four-out" rule, has since been eliminated. Other measures included a new labour verification process (LMIA) along with higher application fees; new advertising requirements; a 10% cap on low-wage TFWs that an employer is able to hire; an inspection regime applicable to closed work permit holders and a vaster range of sanctions, including a blacklist website listing the names of non-compliant employers. There are exemptions to the cap which encompass on-farm primary positions; caregiving positions (in a private home or healthcare facility), and low-wage positions in seasonal industries that do not exceed 180 calendar days (Library of Parliament, 2020, 6).

Overview of the TFW program. Purpose is to fill labour market shortages in the Canadian economy

- In 2014, the high- and low-skilled streams were re-classified as "high-wage" or "low-wage." Yet, this did not render the terms "low-skilled" and "high-skilled" irrelevant.[92]

- Indeed, the government uses NOC codes/skill levels to determine access to permanent residence; "our immigration programs use the NOC to decide if a job or type of work experience meet their eligibility" (IRCC, 2021a).

- "Skilled" jobs are those with NOC Skill Type 0 (zero), A or B. "Low-skilled" jobs are those with NOC Skill Type C or D.

- The TFWP includes workers in occupations in both low-wage and high-wage positions and from all NOC levels:

  - The TFWP includes two of Canada's longstanding programs, that is, the SAWP and the former caregiver streams (noting as of 2019, caregivers entering under the new pilot programs fall under the IMP). It also includes the newer low-wage stream. These three steams typically include "lower-skilled" workers, while other TFWP participants are mostly "higher-skilled."
  - Though "low-wage" is often conflated with "low-skill" occupations – defined (in 2002) as NOC C and D occupations - "low-wage" positions also includes some NOC B-level positions;
  - Caregivers (NOC C) and agricultural workers (NOC D) are both "low-skilled" and "low wage": they constituted about two-thirds of low-wage workers under the TFWP (noting that starting in 2019, new caregivers coming to Canada must enter under permanent residence pilots and are issued work permits under the IMP).

Sources: Faraday, 2016; Foster, 2012; Stasiulis, 2020; Statistics Canada, 2018b

Through the TFWP, employers can hire foreign workers whenever Canadians or permanent residents are not available. ESDC uses a labour market test, known as LMIA, to verify whether there is an authentic need for hiring a temporary foreign worker, and whether all efforts have been made by employers to first hire Canadians and permanent residents (OECD, 2019).[93] Regarding the low-wage and the agriculture streams, employers must demonstrate that they have attempted to recruit Canadian and permanent resident workers from under-represented groups, including women, Indigenous persons, newcomers, and persons with disabilities (Library of Parliament, 2020, 4).

While migrant workers are protected under federal, provincial and territorial labour standards as well as occupational health and safety legislation, ensuring employer compliance has proven to be challenging, especially as recruiters – businesses offering third-party, worker recruiting

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[92] The high-skilled and low-skilled categories were instituted in accordance with the NOC, a classification scheme that provides a categorization of various types and skill-levels of employment/work in the Canadian Labour Market. The NOC system "rates occupations on a matrix with 10 different skill types (labelled 0 to 9) and four different skill levels (labelled A to D) (Faraday, 2016, 65). The categories relevant to the immigration system are 0, A and B (which the immigration system categorizes as "skilled" labour) and C and D (which the immigration system categorizes as "low-skilled labour)." Labour migration programs facilitate worker mobility into occupations with a variety of "skill levels" (professional (NOC Level A), managerial (NOC Type 0), skilled (NOC Level B), semi-skilled and low-skilled (NOC C and D).

[93] The LMIA application is initiated by the employer and performed by ESDC. Under the TFWP, the employer applies for the authorization to hire to ESDC. If the authorization is granted, the employer receives a positive LMIA. The worker may then apply for a work permit to IRCC with the positive LMIA (OECD; Library of Parliament). If a negative LMIA is issued, the employer may not hire the temporary worker. If ESDC is not satisfied that employers have made the necessary efforts to find workers from within Canada, a negative LMIA may be issued.

services – and employers may subject them to abuse, including harassment, unpaid overtime, inadequate wages and unsafe working conditions (Library of Parliament, ii). As a result, the federal government announced new measures in 2018 and 2019, including unannounced on-site inspections, a Migrant Support Network pilot project and, the above mentioned open work permit for vulnerable workers (Library of Parliament, 2020, ii). The Library of Parliament (2020) observes that longstanding issues of exploitation and abuse within the program are, however, still ongoing.

A HUMA report (2016) has pointed out that low-wage positions may include accommodation, food services and retail trade sectors while high-wage positions include high-tech. Of note, certain industrial sectors, such as farming, retail trade, accommodation and food services, transportation and warehousing, have become reliant on the permanent inflow and presence of low-skilled migrant workers. Given that pathways to permanent residence for these workers are limited, they are more likely to stay longer as temporary residents than other migrant workers (Statistics Canada, 2018b). The demand for workers with "low-skills" is increasing faster than that of workers with "high-skills" (Preibisch, 2010, 410). Statistics Canada (2018b) observes that from the late 2000s, low-skilled categories surpassed high-skilled categories. The SAWP and other "low-skill" work have a number of traits in common, among which are a closed work permit, separation from families while working in Canada, and limited access to permanent residence (Preibisch, 2010, 412).

Overall description of the international mobility program

The second arm of Canada's temporary labour migration programs, the IMP, is a program publicly associated with highly-skilled "mobile workers" in a global economy. Sub-programs or streams under the IMP facilitate the migration of workers under higher skilled occupations, though not exclusively (Faraday, 2016, 11).[94] The IMP is often contrasted with the TFWP in that it includes LMIA-exempt work permits (OECD, 2019). According to Chartrand & Vosko (2020, 7):

> The IMP… facilitates temporary employment of migrant workers under conditions set by international agreements or that promote reciprocity or competitiveness in the global economy. Some segments of the IMP, such as reciprocal youth mobility programs, date to the early post-war era, whereas others, such as professionals from trading partners or intra company transferees, emerged out of the implementation of trade agreements (e.g. NAFTA).

International agreements, intra-company transfers and youth work-exchange programs are among some of the IMP's work arrangements (Library of Parliament, 2020, 1). International Experience Canada grants permits to youth up to age 35 with reciprocal agreements for Canadian youth for short periods of time and Post-Graduate Employment grants three-year work permits to international students who were previously authorized to study in Canada. Most work permits delivered to IMP workers are open work permits on the grounds that IMP

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[94] "The Non-Immigrant Employment Authorization Program (NIEAP) targeted specific groups of people with specialised skills, including academics, business executives and engineers (Nakache and Kinoshita, 2010, 27). Today, most of these high-skilled temporary labour immigrants are part of the International Mobility Program (IMP), who do not need to pass a labour market impact assessment" (OECD, 2019).

workers do not come to Canada to fill temporary vacant positions, but rather to advance Canada's social, cultural and economic interests.[95]

IMP's broad features. Selection of workers based on advancing economic, social, and cultural benefits to Canada.

The IMP includes temporary labour migration under:
- International Free Trade Agreements (e.g. North American Trade Agreement)
- Positions creating or maintaining social, cultural, economic benefits to Canadian citizens or permanent residents:
  - Intra-company transferees
  - Entrepreneurs
  - Visiting academics, post-doctoral PhD fellows, award recipients, and medical residents and fellows
- Reciprocal youth mobility programs (e.g. International Experience Canada)
  - Working holidays
  - International internships
  - International exchanges for young professionals
- Religious and charitable workers
- Positions that support economic interests and policy objectives:
  - Post-graduation and spousal subprograms
  - Certain persons who need to support themselves while awaiting permanent residence, such as refugee claimants awaiting a determination
  - Destitute international students and temporary residents who have no means of support

Source: Faraday 2016; IRCC, 2015; Library of Parliament, 2020; OECD; 2019

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[95] According to the OECD (2019), "Exemptions from the labour market test are provided when there are broader economic, cultural or other competitive advantages for Canada or when Canadians and permanent residents enjoy reciprocal benefits in other countries such as in the case of international exchanges or provisions under trade agreements."

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