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Foreign Domestic Worker: Surrogate Housewife or Mail Order Servant?

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Canadians often associate indentured labour with a remote past, and a racially stratified labour market with the legacy of slavery and colonization in other countries. The existence of a Canadian immigration scheme known as the Foreign Domestic Movement (FDM) program challenges this naive complacency and raises the possibility that these phenomena are neither passé nor confined beyond Canada's borders.

The FDM program is designed to import domestic workers who will provide childcare and other services on a live-in basis. Virtually all live-in domestic workers are women, and the majority of these are Filipina. Foreign domestic workers enter on temporary workpermits but are permitted to apply for permanent residence in Canada after 2 years as live-in domestic workers. The author examines the provisions of the FDM scheme and its role in the social construction of the foreign domestic worker. The author employs the concept of the "inside/outsider" to describe the phenomenon of partial inclusion and exclusion experienced by foreign domestic workers. Four themes inform the article. First, that the assigned character of the foreign domestic worker is forged through the power relations of North/South nations, master/servant, man/woman, white/non-white, citizen/alien. Second, that the state reproduces, at the level of immigration law and policy, the invisibility of the domestic worker in the home/workplace. Third, that the FDM program may actually operate to facilitate exploitation of domestic workers in the workplace. Fourth, that the case of foreign domestic workers presents both a site for feminist inquiry and an opportunity to contemplate the competing interests of women whose race, class or citizenship shape the means available for mediating the effect of patriarchy on their lives.

After this article was submitted for publication, the FDM program was replaced by the Live-in Caregiver program. In a postscript, the author describes the new scheme and offers preliminary observations about the changes in light of her critique of the FDM program.

Les Canadiens associent l'exploitation sociale avec un passé lointain, et la stratification raciale du marché du travail avec l'esclavagisme et la colonisation qui ont surtout marqué l'histoire d'autres pays que le nôtre. Mais le programme d'embauchage des travailleurs domestiques étrangers du ministère de l'Immigration défie cette complaisance naïve et soulève au contraire la possibilité que ces phénomènes ne soient ni du passé, ni confinés outre-frontières.

Le programme du ministère de l'Immigration vise à attirer sur le marché canadien des travailleurs domestiques étrangers, afin de satisfaire la demande pour la garde d'enfants à domicile et l'accomplissement d'autres tâches ménagères. Pratiquement toutes ces aides domestiques sont des femmes, et la majorité d'entre elles viennent des Philippines. Elles sont admises sur la base de permis de travail temporaires et on leur permet de demander le statut de résidentes permanentes une fois qu'elles ont accompli deux années de travail domestique, pendant lesquelles elles doivent habiter chez leurs employeurs. L'auteure examine les exigences du programme et le rôle qu'il attribue à la travailleuse domestique en tant que femme et en tant qu'employée. L'auteure invoque l'antinomie « inside/outsider » pour décrire les sentiments simultanés d'inclusion et d'exclusion qu'éprouvent les travailleuses domestiques en relation à leur citoyenneté, leur race, leur sexe et leur classe. Quatre principaux thèmes se détachent de cet article: premièrement, le rôle attribué à la travailleuse domestique est façonné par les relations de pouvoir Nord/Sud, maître/serviteur, homme/femme, blanc/non-blanc, citoyen/étranger. Deuxièmement, l'État canadien, par le biais du droit et des politiques en matière d'immigration, perpétue et renforce l'invisibilité et le statut subordonné de la travailleuse domestique dans son milieu de travail, qui est en même temps son domicile. Troisièmement, le programme sert potentiellement à faciliter l'exploitation des travailleuses domestiques dans leur milieu de travail. Enfin, le contexte du travail domestique offre un champs fertile d'analyse féministe et la possibilité d'aborder de manière critique les tensions qui naissent entre les femmes de divers milieux cherchant à maîtriser les effets qu'ont les structures patriarcales dans leurs vies.

Depuis la soumission de ce texte pour publication, le programme d'embauchage de travailleurs domestiques étrangers a été remplacé par le programme concernant les aides familiales résidentes. Dans un post-scriptum, l'auteure décrit le nouveau programme à la lumière de son analyse du régime précédent, et fournit quelques observations préliminaires au sujet des changements apportés par ce nouveau programme.

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Synopsis

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> The notion of boundaries is thus contradictory. One can be within but at a subordinate level, to the point where those within feel as if they were outside.[1]

Prologue: Variations on a Theme

"Not again," Mary thinks to herself. But that's not what she said. No, when the senior partner came into her offiee and casually asked her to stay late to help out on the closing, she said "OK." She might have even managed a smile. Not that she agreed with any enthusiasm, mind you. Mary is tired, she wants to get out of the office, go home, spend time with Dan and the kids. But that's not how you make partner in the firm. Mary already knows about the dreaded "mommy track" and she knows what it means: being left out, left behind, not really *being a part of the firm. Oh sure, they let you in the door, give you an office, then shut you out of the "corridors of power." The rules to this boys' game are the same as they ever were. It's not as if you can't be a successful*

[1]Rosaura Sánchez, "Ethnicity, Ideology and Academia" (1987) 15 Americas Rev. 80 at 82.

downtown lawyer and have a family, you just have to make sure you have a wife at home if you want to make it work! No point kicking up a fuss though — then they will really freeze you out. So here she goes, another late night, another deal that just can't wait. "I sure hope they remember this when partnership time rolls around next year," she fumes. "Damn!" —Mary has just remembered that Dan was going to be entertaining clients (again) that night, and the nanny is only supposed to work until 6:30 p.m. Of course, since she and Dan have a "live-in," it's not as if the nanny is going anywhere —she lives downstairs. "I'll just give Delia a call and see if she wouldn't mind staying with Emma and Joey for a few extra hours. It sure makes life easier to have someone who lives with us," she thinks to herself. Mary picks up the phone...

* * *

This is a story about exclusion, about being an outsider on the inside, about how they tell you that you're one of them but you're not, you can't be, and you're not even sure you want to be. It could be a story about Mary, but it's not.

* * *

... Delia hangs up the phone and sighs. She recalls telling her employers that Tuesday nights she goes to her computer course. They must have forgotten. She hates missing classes —she wants to get a good grade so she can hand her diploma to the man at Immigration and say, "See, I did what you told me to do. I learned to do something else besides being a domestic. Now am I good enough to stay?" She wishes she could have said "no" just now on the phone, but this is her second employer this year, and her friends have told her that it doesn't look good on your record to have too many employers when you apply to immigrate — they'll think you are lazy, or a troublemaker. So it's not worth making a fuss over. Better to stay on good terms with Dan and Mary and not risk antagonizing them. They seem nice enough anyway. "Oh well," Delia thinks to herself, "maybe these ones will at least pay me the overtime for all the extra hours I'm working — not like the last ones." Now Emma is tugging at her sleeve, and Joey is waking up from his nap. Delia bends down to see what Emma wants...

This is a story about Delia, the woman Mary and Dan employ.

I. The Setting

Delia is a foreign domestic worker. Some refer to her as a "domestic," others call her the "live-in," and almost everyone calls her a girl, even though she is well past thirty.[2] I will use the term "domestic worker." She came to Canada

[2]Throughout this article I construct a narrative involving Delia to illustrate the operation of the Foreign Domestic Movement (FDM) program. I am neither Filipina nor a domestic worker, and I do not wish to convey the misleading impression that through Delia, I speak with the authority of experience. Rather, I use Delia to personalize the phenomenon of being an immigration commodity. The thoughts, feelings and experiences I impute to Delia represent a composite drawn from my research, and I cite my sources (anecdotal and statistical) where apposite. To avoid giving the appearance that all women of colour are constructed identically, I identify the region of origin of particular domestic workers (Filipino, Caribbean/West Indian, British etc.) wherever possible.

from the Philippines via Singapore on the FDM program. The FDM program is the latest in a series of schemes designed to attract live-in domestic workers to Canada. Because Canadian citizens have virtually always refused to do this work, the labour is imported from abroad. Approximately 97% of domestic workers are women.[3]

The need for childcare in Canada accelerates every year as more women enter the workforce. In 1988, 57% of Canadian women with children under 16 worked full or part-time.[4] In 1989, there were 240 000 licensed daycare spaces for 630 000 children of working parents.[5] Since women were traditionally designated as primary caretakers of children, the availability of affordable and practical childcare arrangements is clearly a critical variable in women's labour force activity.

The dearth of licensed daycare spaces suggests that most parents utilize alternative arrangements, including extended family members, neighbours, babysitters, or unlicensed daycare operations. At least 22 000 middle and upper-class Canadian families hire live-in domestic workers.[6] Canadian parents typically choose this option to facilitate the pursuit of professional careers without sacrificing the ideal of the nuclear family. Though more women are penetrating formerly male professional bastions, most still do so on male terms. In other words, the workplace is still structured around the anachronistic model of the male breadwinner with the stay-at-home wife. In particular, live-out daycare is not considered feasible by dual career couples or single parents who must work long or erratic hours.[7]

Under the FDM scheme, the government of Canada acts as a broker for potential employers in Canada and domestic worker applicants abroad. The Canada Employment and Immigration Commission (Employment and Immigration) issues Delia a special employment authorization restricting her to domestic work. The terms of the FDM program also require her to live at her employer's residence because, according to the government, there is no scarcity of Canadian live-out domestic workers.[8]

I am, of course, keenly aware of the contradictions inherent in my project. The narrative/storytelling technique is increasingly prominent in legal scholarship, both as an analytical subject and a vehicle of exposition. I employ narrative here in the latter sense. For recent, randomly selected examples of both approaches to "narrative," see "Pedagogy of Narrative: A Symposium" (1990) 40 J. Legal Educ. 1; Paulette Caldwell, "A Hair Piece: Perspectives on the Intersection of Race and Gender" [1991] Duke L.J. 365; Anthony Alfieri, "Reconstructing Poverty Law Practice: Learning Lessons of Client Narrative" (1991) 100 Yale L.J. 2107.

[3]Canada Employment and Immigration Commission (Policy Branch), *Foreign Domestic Workers — Preliminary Statistical Highlight Report* (Ottawa: Canada Employment and Immigration Commission, January 1991) [unpublished].

[4]Lindsay Scotton, "The Day Care Dilemma" *Toronto Star* (24 November 1989) C1 at C9.

[5]Dana Flavelle, "The Dilemma Over Domestic Workers" *Toronto Star* (1 February 1990) C5.

[6]Deborah Wilson, "Immigration Review Worries Domestic Workers" *The Globe and Mail* (6 January 1990) A5. The figure applied to 1988. The number of entrants to the FDM program has increased 25% since 1988, leading one to speculate that the number of families employing live-in domestic workers continues to rise.

[7]*Supra*, note 5.

[8]The government bases this claim on the numbers of unemployed women who list childcare or domestic work as an occupational skill when they register for unemployment insurance payments.

If Delia completes two years as a live-in domestic worker, she may then apply for landed immigrant status from within Canada and be assessed according to her capacity to establish and become self-sufficient in Canada. The ability to apply for landed status from within Canada is a clear advantage, since all other prospective immigrants (except refugee candidates) must apply and be assessed from outside the country under a strict point system. At the same time, Delia has no guarantee that her application will be accepted. In essence, the FDM program offers a trade-off of two years of semi-indentured labour in exchange for a shot at the prize of landed immigrant status.

This may appear to be a good deal for migrant women, especially in comparison to the plight of undocumented Mexican and Central American women employed in similar jobs in the United States who live in perpetual fear of being discovered and deported.[9] One objective of this article is to reveal how, in certain respects, the legal regime governing foreign domestic workers in Canada operates less to eliminate their structural vulnerability than to simply relocate it within the boundaries of the law.[10]

My thesis is that the law constructs the foreign domestic worker as an "inside/outsider." The term "inside/outsider" is borrowed from another context, where it was defined as someone subject to the state's power but excluded from participation in the political processes: "Such persons are inside from the perspective of who can be bound but outside from the perspective of who can participate."[11] I wish to modify and extend that definition of an inside/outsider beyond the narrow ambit of the franchise to encompass a variety of situations where a person is simultaneously part and not part of a social structure in which she finds herself. In these settings, being an outsider means not only exclusion from participation, but also denial of the protections normally accorded to insiders.[12]

Deploying this thematic construct as a vehicle, I will contend that the idiosyncratic immigration status of a foreign domestic worker such as Delia puts

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Interview with Barbara Stewart, Canada Employment and Immigration Commission (Policy Branch) (20 August 1990) Ottawa.

[9]See generally "INS Arresting Nannies Who Seek Legal Status" *Los Angeles Times* (21 March 1991) A22; Suzanne Goldberg, "In Pursuit of Workplace Rights: Household Workers and a Conflict of Laws" (1990) 3 Yale J. L. & Fem. 63.

[10]Ironically, undocumented workers in the United States actually fare better in some ways than foreign domestic workers in Canada, at least on paper. For example, undocumented workers are "employees" under the *National Labour Relations Act* and the *Fair Labor Standards Act* which means, *inter alia*, that the illegal domestic workers can join unions and are entitled to minimum wage guarantees. See *Sure-Tan* v. *NLRB*, 467 U.S. 883 (1984), 104 S. Ct. 2803 (union participation); *Patel* v. *Quality Inn South*, 846 F.2d. 700 (11th Cir. 1988) (payment of back wages). Compare this to the situation in various provinces *infra*, note 94ff and accompanying text.

[11]Lea Brilmayer, "*Carolene*, Conflicts, and the Fate of the 'Inside-Outsider'" (1986) 134 U. Pa. L. Rev. 1291 at 1316.

[12]It may seem simpler to describe domestic workers using the more familiar terms of exclusion or marginalization current in contemporary feminist and critical race discourse. I employ the more obscure phrase "inside/outsider" as a linguistic reminder of the essentially paradoxical position of foreign domestic workers. Michael Walzer develops a similar theme in his discussion of guest workers in *Spheres of Justice* (New York: Basic Books, 1983) at 56-63.

her inside Canada, yet outside the legal categories currently applied to non-citizens. As a live-in caregiver, Delia is inside the household but outside the family. As an employee, she partakes of the market yet is excluded from many of the protections offered to market actors. Finally, as a migrant woman of colour, Delia, like most foreign domestic workers, confronts what Vicki Ruiz terms the "quadruple whammy" of class, gender, ethnicity and citizenship.[13] These multiple disadvantages place foreign domestic workers both within and without monist theories[14] that implicitly grant primacy to a single source of oppression.

By identifying a domestic worker as an inside/outsider, I hope to emphasize that the very spheres from which the foreign domestic worker is excluded also need her in order to function in their present form, both materially and ideologically. I suggest that the dominant society suppresses awareness of its dependence on foreign domestic workers by rendering domestic workers socially invisible within the household and legally invisible within immigration and employment protection legislation.

I explore the theme of domestic workers as inside/outsiders as follows. In Part II, I offer a brief historical account of the historic dependence upon migration as the solution to the "servant problem" in Canada. In Part III, I bring the inquiry up to the present day, using Delia's journey to Canada to explain how and why women come to Canada under the FDM program. Against this background, Part IV chronicles Delia's experience as a domestic worker in a Canadian home. Part V critically evaluates the criteria for obtaining landed status. Part VI considers possible litigation strategies for empowering domestic workers. I conclude in Part VII with some thoughts about the problematic nature of Mary and Delia's relationship from a feminist perspective.

A final note concerning method: Many feminist legal scholars have written eloquently and cogently about sexism in the legal profession and in the academy and have, I believe, furnished insights from time to time about sex inequality that transcend the narrow context of lawyers and law professors. Here I have chosen to focus on the situation of women who are neither middle class, nor professional, nor predominantly white, in order to expose a practice of subordination that is at once highly specific in form and (in certain respects) quite unexceptional in nature. By this I mean that the experiences of foreign domestic workers cannot be comprehended apart from factors of citizenship, race/ethnicity, class, etc. At the same time, recurring themes of sex-role stereotyping,

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[13]"By the Day or Week: Mexicana Domestic Workers in El Paso" in Carol Gronemen & Mary Norton, eds, *"To Toil Livelong Day": America's Women at Work, 1780-1980* (Ithaca, N.Y.: Cornell U. Press, 1987) 269 at 282; See also Agnes Calliste, "Canada's Immigration Policy and Domestics from the Caribbean: The Second Domestic Scheme" in Elizabeth Comack & Stephen Brickey, eds, *The Social Basis of Law*, 2d ed. (Halifax: Garamond Press, 1991) 95 at 99. Another scholar uses the term "multiple jeopardy" to convey the concept (Deborah K. King, "Multiple Jeopardy, Multiple Consciousness: The Context of a Black Feminist Ideology" in Michelle Malson *et al.*, eds, *Feminist Theory in Practice and Process* (Chicago: U. Chicago Press, 1989) 75 at 84).

[14]A monist theory is a political claim that one

> particular domination precipitates all really important oppressions. Whether Marxist, anarchist, nationalist, or feminist, these 'ideal types' argue that important social relations can all be reduced to the economy, state, culture or gender (King, *ibid.*).

the devaluation of "women's work" and the public/private distinction are as salient here as they are in other areas of feminist inquiry. Nevertheless, by telling a story about Delia's experiences while keeping Mary's life at the periphery, I invite readers to encounter Delia in the text rather than as a footnote to a story about the problems lawyers like Mary face in securing adequate childcare.

II. The History of Migration of Foreign Domestic Workers to Canada

A. *Confederation–Pre-World War II*

A survey of the historical literature on the "servant problem" in Canada reveals that, with few exceptions, local demand has always exceeded supply.[15] Live-in domestic service provided the least desirable type of legal employment open to women. Few were attracted to it, and most left it as soon as possible. The reasons were much the same as they are today — abysmal pay, long hours, hard labour, low status, isolation, denial of privacy and lack of independence and respect.[16]

The chronic shortage of Canadian women entering domestic service in the last century prompted associations of upper middle class women such as the National Council of Women (NCW) to seek relief from abroad. Soon after Confederation, they commenced pressuring the government into co-operative schemes directed at recruiting domestic servants from Great Britain.[17] The NCW was basically a forerunner of the modern day "nanny" recruitment agencies. Though cloaked in righteous maternalistic tones of morality and "nation-building," their immigration policy was basically a thinly veiled quest for servants. Meanwhile, on the other side of the Atlantic, the British Women's Emigration Association (BWEA) actively encouraged the departure of unemployed, unmarried British women whom it viewed as social and economic liabilities. Ideally, these women would take up domestic labour in one of the colonies before locating husbands, establishing families and hiring their own servants. Thus would they contribute to the material, ideological and physical reproduction of the Empire.[18]

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[15]The history of domestic work in Canada is thoroughly surveyed in the following works: Marilyn Barber, "The Women Ontario Welcomed: Immigrant Domestics for Ontario Homes, 1870-1930" in Alison Prentice & Susan Trofimenkoff, eds, *The Neglected Majority: Essays in Canadian Women's History*, vol. II (Toronto: McClelland & Stewart, 1985) 102 at 104-06; Geneviève Leslie, "Domestic Service in Canada, 1880-1920" in Janice Acton, ed., *Women at Work, 1850-1930* (Toronto: Women's Educational Press, 1980) 71 at 85-89; Barbara Roberts, "'A Work of Empire': Canadian Reformers and British Female Immigration" in Linda Kealey, ed., *A Not Unreasonable Claim — Women and Reform in Canada 1880s-1920s* (Toronto: The Women's Press, 1979) 185.

[16]Susannah Wilson, *Women, Families and Work*, 3d ed. (Toronto: McGraw-Hill Ryerson, 1991) at 72-74.

[17]Up until 1920, the only non-British domestics came from Northern Europe and Scandinavia; it is not clear whether they were actively recruited (Varpu Lindström-Best, "'I Won't be a Slave!' — Finnish Domestics in Canada, 1911-30" in Jean Burnet, ed., *Looking into My Sister's Eyes: An Exploration in Women's History* (Toronto: Multicultural History Society of Ontario, 1986) 30 at 33; Leslie, *supra*, note 15 at 98).

[18]Small wonder the Winnipeg Commissioner of Immigration referred to domestic worker recruitment as "this matrimonial agency business" (Leslie, *ibid.* at 106).

By the 1880s, a comprehensive network of selection, transport and delivery of domestic workers to Canada had evolved. The role of Canadian immigration agents in this scheme was to advertise domestic employment and/or offer reduced fares to suitable applicants. Since prospective emigrants often lacked the funds to pay their own way (even at the reduced rate), the fare for passage was sometimes advanced to the Canadian immigration agent by her future employer or, more commonly, by one of the various organizations and businesses engaging in the import/export of domestic servants. The women would subsequently be contractually bound to a specified term of service ranging from six months to a year and would also be required to repay the cost of the assisted passage from wages. So began indentured servitude in Canada.

Under this scheme, the demand for domestic workers continued to outstrip supply; thus the "servant problem" continued. Following the First World War, the government assumed a more aggressive role in the recruitment and selection of British domestic workers, but without notable success.[19] The government, therefore, extended its recruitment efforts to the so-called "non-preferred" countries of Central and Eastern Europe, such as Poland, Romania, the Soviet Union and Hungary. These individuals were literally shipped as "bulk orders" to the prairie provinces.[20]

Hiring non-white workers to fill the labour gap was clearly the last resort. In British Columbia, Chinese male contract labourers were grudgingly employed by white middle class households (when they were not being put to work constructing the Canadian Pacific Railway).[21] Approximately 100 women were also brought from Guadeloupe in 1910-11 to meet the scarcity in Quebec.[22] Unlike their white counterparts, Caribbean servants were bonded for two years and earned less than half the monthly wage of white servants, though employers reported favourably on their performance.[23] Three quarters of the 768 Caribbean Blacks who immigrated to Canada between 1922-31 arrived as domestic servants.[24] Some were subsequently deported, either because they were rumoured to be single parents (and thus immoral), or because they were deemed likely to become public charges. Agnes Calliste notes that deportation seemed to coincide with periods of recession where Blacks could be fired to make room for white servants.[25] The government was reticent about admitting Blacks to Canada, even during wartime when the supply of European nannies was cut off. It was abundantly clear that Caribbean women were not meant to partake in the

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[19]Barber, *supra*, note 15 at 113-17.

[20]Employers considered these women to be of inferior quality (*ibid.* at 118).

[21]In a curious twist of logic, the 1902 "Report of the Royal Commission on Chinese and Japanese Immigration" blamed the Chinese themselves for creating the dearth of suitable white girls and then filling it themselves. According to the Commissioners, if not for the fact that single male Chinese labourers displaced white labour by working for lower wages, the labouring class would migrate to British Columbia, marry, reproduce and have female children who would grow up to be servants. (Canada, "Report of the Royal Commission on Chinese and Japanese Immigration" by R.C. Clute in *Sessional Papers* (1902) at 267).

[22]Calliste, *supra*, note 13 at 137.

[23]*Ibid.* at 136-37.

[24]*Ibid.* at 133.

[25]*Ibid.* at 137-38.

"nation-building" enterprise.[26] Nobody promoted domestic work as a conduit to marriage for *these* women.

B. Post-World War II–1981

With minor exception, the aftermath of war in Europe did not precipitate significant emigration of British or West European women willing to do domestic work,[27] nor did East European "Displaced Persons" rush to fill the void.[28]

Meanwhile, British Caribbean governments (with whom Canada had strong economic ties) lobbied the federal government to dismantle its edifice of overtly racist immigration policies. Canadian employers joined them in urging the government to permit Caribbean domestic workers to enter in large numbers. The Director of Immigration opposed the entry of West Indian women on the grounds, *inter alia*, that "coloured people in the present state of the white man's thinking are not a tangible asset.... They do not assimilate readily and pretty much vegetate to a low standard of living."[29] The demands of employers and Caribbean governments prevailed, however, and culminated in a 1955 agreement between the governments of Canada, Jamaica and Barbados that became the framework for the second Caribbean Domestic Scheme (Scheme).

Under the Scheme, single women between the ages of 18 and 40 with no dependants and at least an eighth grade education were admitted to Canada as landed immigrants on condition that they remain in live-in domestic service for at least one year. Racist beliefs about the sexual behaviour of Black women motivated the government to ensure that new arrivals were "healthy" by subjecting them to extensive gynaecological examinations for venereal disease when they arrived.[30]

Two factors contributed to the decision to admit Caribbean domestic workers as landed immigrants rather than on a temporary basis: First, the government retained the power to deport a woman during the first year if she proved "undesirable" by, say, becoming pregnant or severing her contract with her employer. Second, the prevailing belief was that Caribbean domestic workers, unlike their white cohorts, would remain in domestic service long after the one year compulsory period expired, presumably due to a natural affinity of Black women for domestic service.[31]

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[26]*Ibid.* at 138.

[27]A few women came from Germany and the Netherlands (Franca Iacovetta, "'Primitive Villagers and Uneducated Girls:' Canada Recruits Domestics from Italy, 1951-52" (1986) 7 Can. Woman Stud. 14 at 15).

[28]In 1951-52, the government experimented with a "bulk order" of 500 Italian women destined for domestic service. Though considered ethnically undesirable, employers would compensate by paying them less. The program was suspended after less than a year, however. The reasons had less to do with the alleged incompetence of the women as domestic servants than with the acts of "defiance" by participants who would complain about their placements, insist on job transfers, state their preferences, and abandon their employers or domestic service altogether. They were variously described as primitive villagers, backward and slovenly, feisty, and naturally inferior (*ibid.*).

[29]Quoted in Calliste, *supra*, note 13 at 142.

[30]See Daiva Stasiulis, "Rainbow Feminism: Perspectives on Minority Women in Canada" (1987) 16:1 Resources for Feminist Research 5 at 6.

[31]Calliste, *supra*, note 13 at 143.

Because the Caribbean governments involved in the Scheme were anxious to make a good name for their citizens abroad, their selection process gave priority to educational attainment and ambition over domestic skills. Many candidates were actually nurses, teachers or civil servants in search of better job opportunities in Canada.[32] This "brain drain" of educated women was depicted in a mordant Trinidadian newspaper cartoon featuring a Caribbean girl saying: "I'll be a Civil Servant when I grow up and get a chance to go to Canada as a Domestic Servant!"[33]

Employers expressed general satisfaction with Caribbean domestic workers, finding them to be "more educated, 'fond of children,' obliging and less demanding than other domestics."[34] Caribbean domestic workers were also cheap — one commentator found that employers paid them up to $150 less per month than their white counterparts.[35]

Caribbean women did tend to stay in the occupation longer than white domestic servants, though this had less to do with racist assumptions about how amenable Black women were to domestic service than with barriers to exit. Calliste suggests that these were related to discrimination in employment, a lack of recognition of education and skills attained abroad, the stigmatization of domestic work, and a lack of networks within the Canadian Caribbean community. The situation began to change by the late 1950s so that less than a quarter of Caribbean domestic workers stayed in the occupation for more than three years.[36]

This increasing occupational mobility of women who arrived on the Scheme troubled the Canadian government, as did the attempt by some women to sponsor family members. The latter proved to be a delicate matter because only single, childless women were supposed to be eligible under the Scheme. As subsequent discussion will reveal, the state's antipathy toward women immigrants with dependants has been preserved in immigration policies regarding domestic workers which followed the Scheme.[37]

In 1967, various significant changes to the existing *Immigration Act*[38] were effected through regulatory amendment. Under one such provision, it became no longer necessary to apply for admission as an immigrant from one's country of origin.[39] Instead, a person could come to Canada as a visitor, secure a job, and apply for landed immigrant status from within Canada. This had the effect, *inter*

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[32]*Ibid.* at 143-44.

[33]*Ibid.* at 144.

[34]*Ibid.*

[35]*Ibid.* at 149. The Scheme brought 2,940 women to Canada as domestics between 1955 and 1966 (*ibid.* at 145).

[36]*Ibid.* at 145.

[37]*Infra*, text and notes following note 114.

[38]R.S.C. 1952, c. I-2.

[39]Jane Turrittin, "'Doing Domestic' — Work Relationships in a Particularistic Setting" in Katherine Lundy & Barbara Warme, eds, *Work in the Canadian Context* (Toronto: Butterworths, 1981) 93 at 98.

alia, of rendering the Caribbean Scheme superfluous.[40] In 1973 however, this feature of the 1967 revisions was revoked by Order in Council[41] so that the option of arriving as a visitor and applying for landed status from within Canada was abolished (save in exceptional circumstances) and all prospective immigrants would be required to apply from outside the country.[42] For present purposes, it is sufficient to note that domestic workers would not have qualified as external applicants under the criteria of the *Act* and would have effectively been excluded from Canada.[43]

The demand for domestic workers continued unabated as more Canadian women began to enter the paid work force. The government responded by providing for the entry of domestic workers as visitors on employment visas. The program was known as the Temporary Employment Authorization Program.[44] Domestic workers were issued visas which stipulated that the holder could only remain in Canada as long as she was employed as a domestic worker. The visas could be renewed annually but the domestic workers had no real prospect of converting their status from visitors to immigrants.

The visa system effectively transformed domestic workers into a class of disposable migrant labourers, not unlike European "guest workers." This was a very efficient system for Canada, since the workers' labour power was produced at the expense of sending countries and extracted in Canada. Once their labour power was exhausted, the domestic workers could be returned.[45] Domestic workers under the visa program were cheap, exploitable and expendable.

And exploited they were — economically, physically and sexually. During this period, however, various Black, immigrant and women's organizations began to agitate on their behalf. Domestic workers' associations organized nationwide to protest the treatment of domestic workers by the employers and the state.[46] Horrific tales of abuse at the hands of employers (including govern-

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[40]For a description of the 1967 reforms see Christopher Wydrzynski, *Canadian Immigration Law and Procedure* (Aurora, Ont.: Canada Law Book, 1983) at 60-61.

[41]SOR/72-443.

[42]See Department of Manpower and Immigration, *Green Paper on Immigration Policy*, vol. 2 (Ottawa: Queen's Printer, 1974) at 36-37 [hereinafter *Green Paper*].

[43]The reason is that they would not have earned enough points under the new point system. See *infra*, note 73 and accompanying text for a discussion of the point system.

[44]SOR/73-20. See also *Green Paper*, *supra*, note 42, c. 7. Though the admission of persons on employment visas is described, domestic workers are not mentioned as a category of entrants.

[45]Estimates of the number of women who entered Canada on the Temporary Employment Authorization Program between 1973 and 1981 range from 27 000 to over 60 000 (Canada Employment and Immigration Commission (Policy Branch), *Foreign Domestic Workers: Preliminary Statistical Highlight Report* (Ottawa: Canada Employment and Immigration Commission, August 1990) [unpublished]; Canadian Advisory Council on the Status of Women, *Immigrant Women in Canada: Current Issues* (Background Paper) by Alma Estable (Ottawa: Canadian Advisory Council on the Status of Women, 1986) at 30.

[46]In British Columbia: Domestic Workers Union, the Committee for the Advancement of Domestic Workers, British Columbia Domestics' Association and the Labour Advocacy and Research Association; in Ontario: INTERCEDE (International Coalition to End Domestics'

ment officials)[47] and Immigration authorities garnered media attention, especially during the highly publicized "Case of the Seven Jamaican Women."[48] The rallying cry, "good enough to work, good enough to stay,"[49] voiced domestic workers' demand for dignity and a recognition of their social and economic contributions, by way of permanent admission into the Canadian community. The campaign culminated in changes to federal policy in late 1981, permitting foreign domestic workers to apply for landed immigrant status from within Canada under a new scheme entitled the Foreign Domestic Movement (FDM) program.

III. The Contemporary Context

> It's really hard you know, working for somebody and looking after their children because every day it's a reminder of your own children.
>
> I know a lot of people say that we shouldn't come here and leave our children back home, but what else can we do? Our children have to eat. You can't talk to some people about things like that because they don't know what it is like to live in one room with seven other people, all sleeping on one bed and some on the floor. It's hard. If I didn't have to, I wouldn't be here. But I couldn't stay home and see my children suffer. At least working here, I can send home money and clothes for them.[50]

A. The Women Who Come

From the mid-1950s until the early 1980s, West Indian[51] women comprised the single largest group of non-white domestic workers in Canada. Since the inception of the FDM program, the overall number of women admitted as domestic workers has soared. The Philippines now surpasses all other regions as the predominant country of origin, and both the proportion and absolute numbers of Caribbean women has dropped sharply. The following table lists the number of entrants to the program by region:

Exploitation) and Labour Rights for Domestic Servants; in Quebec: Association du personnel domestique (Rachel Epstein, "Domestic Workers: The Experience in B.C." in Linda Briskin & Lynda Yan, eds, *Union Sisters* (Toronto: The Women's Educational Press, 1983) 222 at 228, 236).

[47]See Linda Martin & Kerry Segrave for a 1979 incident involving Larry Grossman, then a Progressive Conservative cabinet minister in the Ontario government. He and his wife employed a domestic worker at less than the minimum wage. She allegedly worked 14-15 hours a day, and when she disclosed to them her illegal status, her work week was extended from 5½ to 7 days and her duties expanded to include laundering and house cleaning (*The Servant Problem: Domestic Workers in North America* (Jefferson: McFarland, 1985) at 123).

[48]See text accompanying note 249.

[49]See Judith Ramirez, "Good Enough to Stay" (1983-84) 1 Currents 16.

[50]Myrtle, West Indian domestic worker. Quoted in Makeda Silvera, *Silenced: Talks with working class Caribbean women about their lives and struggles as Domestic Workers in Canada*, 2d ed. (Toronto: Sister Vision, 1989) at 76.

[51]I use the terms West Indian and Caribbean interchangeably to denote women from Jamaica, Barbados, Antigua, St. Kitts-Nevis, the Bahamas, Haiti and Guyana.

TABLE 1

FOREIGN DOMESTIC MOVEMENT
ENTRANTS TO PROGRAM BY REGION OF ORIGIN
1982-1990[52]

Year	Total	Phil.	U.K.	Eur.	Car.	Other
1982[a]	11327	24.5%	27.0%	18.2%	18.3%	12.0%
1983	3511	15.0	18.8	29.2	15.6	21.4
1984	4570	16.9	12.6	28.1	20.4	21.9
1985	5479	28.0	13.6	26.3	15.7	16.4
1986	6938	37.0	12.2	24.2	11.1	15.5
1987	7889	40.7	11.7	24.3	8.0	15.3
1988	8056	46.0	9.4	23.0	6.8	14.9
1989	8842	49.6	8.3	19.0	6.2	16.9
1990	10946	60.2	6.4	13.2	5.4	14.8

[a] 1982 figures include domestic workers in Canada prior to establishment of the program.

In 1990, over half of the domestic workers who fell into the category labelled "Other" came from Less Developed Countries (LDCs) in Africa, Asia and Latin America.[53] Added to the number of migrants from the Philippines and the Caribbean, the aggregate proportion of Third World women entering the FDM program in 1990 was almost 75%, or three quarters of the total. Unlike women from Europe, women from the Third World overwhelmingly take advantage of the opportunity to apply for landed immigrant status.[54]

Unfortunately, Employment and Immigration has issued no recent statistics on the total number of entrants to the FDM program who apply for landed status or the proportion who are rejected. A tentative analysis of data up to 1985 suggested that very few (4.4%) were rejected outright on the grounds of inability to establish or become self-sufficient. On the other hand, some 40% were either directed to further training or were "on hold." The ultimate success of the latter

[52]*Supra*, note 3; Canada Employment and Immigration (Policy Branch), *Entrants to the FDM Program by Country of Origin — 1990* (Ottawa: Canada Employment and Immigration Commission, 9 April 1991) [unpublished].

[53]The status of certain countries which I have designated as LDCs may be debatable. These are Algeria, Brazil, Chile, Colombia, Jordan, Lebanon, Malaysia, Mexico, Morocco, Syria and Tunisia.

[54]In 1987, ten countries accounted for 71% of the foreign domestic workers who obtained landed immigrant status. Within this group, 84% came from LDCs (Canada Employment and Immigration Commission, *Immigration Statistics 1987* (Ottawa: Minister of Supply & Services Canada, 1989) at 10 (table S8)). I would speculate that the proportion of Third World women applying for landed status has risen since 1987 in accordance with their increased representation among the entrants to the program (see Mary DeVan, *Social, Economic and Political Factors Influencing the Supply and Demand of Foreign Domestic Workers* (M.A. Thesis, U.B.C., 1989) [unpublished] (on file with author) at 83-84). I suggest elsewhere in this paper that the divergence in motivation between domestic workers from LDCs (especially Filipino women) and those from developed countries has an impact on the working lives of these women in Canada (*infra*, notes 215, 218 and accompanying text).

is unknown.[55] Informal estimates suggest that about 18 000 women, or half the number who entered through the program up to 1987, had obtained landed status as of 1990.[56]

Recent statistics also indicate a wide variation in landing rates according to country of origin. FDM participants from the Philippines and Caribbean ultimately land at rates of 85% and 70% respectively whereas British and European participants land at rates of around 50% and 30% respectively.[57] These data suggest that women from LDCs are, as a group, proportionately more interested in using the FDM program as a route to immigration than are Anglo-European women, who may simply use the FDM as a temporary "work abroad" program.

Obviously, prospective immigrants from LDCs who seek to escape harsh living conditions and create a better life in Canada may prefer to endure hardship here en route to citizenship rather than return to their countries of origin. Hana Havlicek, owner of a domestic worker employment agency and vice-president of the Canadian Coalition for Child and In-Home Care, turns this prosaic observation into a deemed consent by domestic workers to all subsequent treatment in Canada:

> If our situation in Canada is so bad, why are we getting thousands of letters? I am getting thousands of letters from the entire world to please help them come to this wonderful country of ours in order for their future to be assured.[58]

Aside from the fact that many women may not know what is in store for them as domestic workers in Canada,[59] Havlicek's rhetorical question elicits at least two responses. First, as Michael Walzer declares:

> [T]his kind of consent, given at a single moment in time, while it is sufficient to legitimize market transactions, is not sufficient for democratic politics. Political power is precisely the ability to make decisions over periods of time, to change the rules, to cope with emergencies; it can't be exercised democratically without the ongoing consent of its subjects. And its subjects include every man and woman who lives within the territory over which those decisions are enforced.[60]

Second, it is important to recognize the role developed countries, including Canada, play in generating the conditions in the LDCs which motivate foreign women to "consent" to wages and working conditions that Canadians spurn.

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[55]Canadian Advisory Council on the Status of Women, *Immigrant Women in Canada: A Policy Perspective* (Background Paper) by Shirley Seward & Kathryn McDade (Ottawa: Canadian Advisory Council on the Status of Women, 1988) at 42-43. The authors caution that the data may not be entirely accurate.

[56]Telephone interview with Joanne Roberts, Canada Employment and Immigration Commission (Policy Branch) (18 April 1991) Ottawa.

[57]Canada Employment and Immigration Commission (Strategic Planning and Research Directorate), *Statistical Profiles and Forecasts of the Foreign Domestic Movement* (Ottawa: Canada Employment and Immigration Commission, November 1990) at 7 (table 4) [unpublished].

[58]Quoted in "Living on the Job," *W-5*, CTV Television Network (25 March 1990) [hereinafter "Living on the Job"].

[59]See text accompanying notes 189-194 regarding the employer/employee agreement.

[60]Walzer, *supra*, note 12 at 58.

Consider Delia's country of birth, the Philippines.[61] Her country is heavily indebted to Western commercial banks. In the name of maximizing repayment of outstanding loans and interest, the International Monetary Fund (IMF) has pressured the Philippines into adopting "belt-tightening" policies. One of the first casualties of IMF policies in debtor nations are social service budgets, resulting in reductions of food subsidies, wage restrictions, public service cutbacks, and shrinking health and education expenditures. Political scientist Cynthia Enloe suggests that political leaders of these countries can mitigate the politically destabilizing effect of the IMF restraint package if women can "figure out ways to stretch the kerosene and cooking oil, if women can find more ways to earn a bit of money in the casual labour sector, if women are willing to care for a sick child without resorting to the public clinic."[62] Another option for some women is to leave their families behind, migrate to other countries, and work for the foreign exchange so desperately needed to keep foreign creditors at bay:

> The "debt crisis" is providing many middle-class women in Britain, Singapore, Canada, Kuwait and the United States with a new generation of domestic servants. When a woman from Mexico, Jamaica or the Philippines decides to emigrate in order to make money as a domestic servant she is designing her own international debt politics. She is trying to cope with the loss of earning power and the rise in the cost of living at home by cleaning bathrooms in the country of the bankers.[63]

Desperate families in the Philippines have thus discovered how cheap female labour can be substituted for cheap products as an export commodity.[64] In the Philippines, overseas contract workers are the single largest source of foreign exchange, most of which is sent through informal remittances from the worker to her family.[65] Half the migrant labourers are women, and half the women migrate as domestic workers.[66] This pattern is mirrored by the increasing "feminization" of the migrant worker population in recipient countries. As of 1985, 40% of temporary workers in Canada were women, and 90% of the women were employed in domestic service.[67]

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[61]This section draws heavily on Cynthia Enloe, *Bananas, Beaches & Bases: Making Feminist Sense of International Politics* (London: Pandora, 1989). For an application of similar principles in the Caribbean context, see Lynn Bolles, "IMF Destabilization: The Impact on Working Class Jamaican Women" (1983) 2 Transafrica Forum 63.

[62]Enloe, *ibid.* at 185.

[63]*Ibid.*

[64]This is often produced by cheap female labour (See Delia Aguilar, *The Feminist Challenge: Initial Working Principles toward Reconceptualizing the Feminist Movement in the Philippines* (Manila: Asian Social Institute, 1988) at 9).

[65]In a recent survey conducted by the West Coast Domestic Workers Association (West Coast DWA), 70% of respondents sent money home monthly (West Coast DWA, *Summary of Results: Foreign Domestic Worker Employment Survey* (Vancouver: West Coast DWA, March 1990) [unpublished] (on file with author) at 4 [hereinafter *Summary of Results*]).

[66]Estimates of the money remitted in this way range between $3.5 to $7 billion annually. At least 3.5 million Filipinos work abroad as overseas contract workers. According to Fely Villasin, official figures regarding the number of migrant workers abroad (522 984 processed in 1989) drastically underestimates the reality because it does not include workers who left as tourists rather than official overseas workers (*Domestic Workers from the Philippines: One-Month Observation Report* (Toronto: INTERCEDE, November 1990) [unpublished] (on file with author) at 1).

[67]Temporary workers are non-immigrants who are permitted to work in Canada by virtue of an Employment Authorization which "authorizes workers to be employed in a designated occupation

As a developed country, Canada benefits from the international sexual division of labour and this so-called "warm body export."[68] Western consumers can buy cheap appliances produced by Third World women; now they can also import Third World women to operate them.[69] As Rosaura Sánchez reminds us, Delia may be outside Canada's borders, but the forces propelling her toward this country are causally connected to the exigencies of North-South relations in which all nations are implicated:

> In fact the inside/outside antithesis ... hides the fact that the inside is capitalism and that even the seemingly outside, as regards the international labour force of the Third World, is very much inside, within the spheres of multinational capitalism, but that at the same time all that is inside is not center.[70]

B. Foreign Domestic Movement

The legal status of a foreign domestic worker cannot be understood without reference to Canada's immigration scheme as a whole. While a thorough survey of this subject is beyond the scope of this paper, a rough sketch will assist in setting the legal landscape upon which the FDM program has been grafted.

The *Immigration Act*[71] distinguishes between two classes of non-citizens who request entry into Canada: immigrants and visitors. An immigrant is a person who seeks landing, which is defined in section 2.1 as "lawful permission to come into Canada to establish permanent residence." Once an immigrant is landed, she is called a "permanent resident" and is eligible for citizenship after accumulating a minimum of three years of Canadian residence. The category of immigrant includes persons who apply as independent immigrants,[72] family class (*i.e.* immediate family), assisted relatives (*i.e.* extended family) and refugees.

Since 1967, the eligibility of potential immigrants has been assessed according to a point system. Broadly speaking, the categories of assessment are education, experience, occupational demand, langnage skills, demographic factors, and "personal suitability." Applicants are required to score a minimum total number of points in order to qualify for entry. The requisite number of points varies according to the class of applicant.[73] One may ask why foreign

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with a designated employer for a designated time period" (Monica Boyd & Chris Taylor, "The Feminization of Temporary Workers: the Canadian Case" (1986) 24 Int'l Migration 717 at 717).

[68]Aguilar, *supra*, note 64 at 9.

[69]There would appear to be a thriving international traffic in Asiau women as prostitutes and mail order brides. In a broad sense, they would appear to be exported as female sex-role commodities to perform some combination of sex, housework and childcare. See Aguilar, *ibid.* at 8ff.

[70]*Supra*, note 1 at 82.

[71]R.S.C. 1985, I-2.

[72]This category in turn includes several subgroups that can be roughly classified as independent workers whose sole asset is their occupation, business class applicants and retirees.

[73]There are different categories of immigrants each requiring different numbers of points to become permanent residents. The following is a list of criteria for acceptance:

(1) Independent immigrants must accumulate at least 70 points (*Immigration Regulations, 1978*, SOR/78-172, s. 9(1)(b)(i); a useful compilation of the *Immigration Act* and *Immigration Regulations, 1978* is Frank N. Marrocco & Henry M. Goslett, *The Annotated 1992 Immigration Act of Canada* (Toronto: Carswell, 1991);

domestic workers do not simply enter as immigrants. The short answer is that they would rarely earn enough points according to the point system as presently administered. How and why the point system systematically rejects a class of persons whose labour is in demand will be pursued in Part VI.

The second category of persons recognized under the *Immigration Act* are visitors, defined as those who come to Canada "for a temporary purpose."[74] Visitors are permitted to stay in Canada for up to three months, though they may apply to extend their stay. Visitors may not work in Canada without an employment authorization stipulating the terms and conditions of their employment.[75] There are only two criteria for issuance of an employment authorization: the applicant must be capable of performing the duties required by a particular employer, and no qualified Canadians or permanent residents are available for the job.[76]

The *Immigration Act* presumes that a person seeking entry to Canada is an immigrant and the burden is on her to prove that she is not.[77] The categories of immigrant and visitor are ostensibly discrete and exhaustive. The operative assumption is that one either intends to remain in Canada permanently, in which case one is an immigrant, or one intends to remain temporarily, meaning that one is a visitor.[78]

The foreign domestic worker, however, occupies the technically non-existent category of "visiting immigrant." To be more exact, her application to enter Canada as a foreign domestic worker is assessed as if she had the intention

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(2) assisted relatives (extended family members of a landed immigrant or citizens who do not fit within the family class definition) need obtain only 60 points, because they enter subject to an undertaking by a permanent resident of citizen to assist that person in becoming established in Canada (*Immigration Regulations, 1978*, ss 2(1), 10);

(3) family class applicants (including spouses, fiancés, parents, unmarried children, and orphaned siblings, grandchildren or nieces and nephews under the age of 18) may be sponsored by a permanent resident and need not qualify under the point system (*Immigration Regulations, 1978*, s. 4);

(4) business class applicants, which includes entrepreneurs, investors and self-employed individuals need fewer points (between 25 and 40, depending on their designation). Their preferential treatment is based on the assumption that they will stimulate the economy by starting a business undertaking or investing significant sums of money in the country. Entrepreneurs need only obtain 25 points; the price of their admission is an undertaking to invest at least $500,000 in a business or commercial venture in Canada and create a job for at least one Canadian (*Immigration Regulations, 1978*, s. 2(1)); and

(5) refugees are assessed according to the criteria contained in the point system, but are not formally required to attain a minimum score (*Immigration Regulations, 1978*, s. 2(1)).

For a "plain langnage" explanation of the different categories, see Gary Segal, *Immigrating to Canada*, 9th ed. (North Vancouver: Self-Counsel Press, 1990).

[74]S. 2(1).

[75]*Immigration Regulations, 1978*, ss 18, 19.

[76]*Ibid.* s. 20(3).

[77]S. 8(2).

[78]David Matas, *Canadian Immigration Law* (Ottawa: Canadian Bar Association, 1986) at 7.

of remaining in Canada permanently,[79] but once admitted she is officially labelled a visitor unless and until she successfully applies for landed status two years hence. Immigrants must meet a higher threshold than visitors in order to enter Canada; visitors have fewer entitlements than immigrants once they are in Canada, are subject to greater constraints in their occupational mobility and may be liable to removal for a variety of reasons not applicable to immigrants. In other words, it is easier to enter as a visitor, but easier to stay if one is an immigrant. In practice a domestic worker bears the burdens of both immigrants and visitors, yet receives the benefits of neither. This is how the inside/outsider paradox manifests itself for domestic workers in the context of immigration law.

Inscribing the foreign domestic worker with the legal label "visitor" is wholly arbitrary as it does not necessarily capture her subjective intention. Furthermore, the "visitor" label cannot be attributed to the temporary nature of their occupation, since there is a chronic, persistent demand for domestic work.[80] If anything, the designation of "visitor" signifies nothing more than the government's desire that these women not remain in Canada permanently.

Given her anomalous position in the legislative scheme, it is perhaps unremarkable that the foreign domestic worker has been hitherto legally invisible.[81] One searches in vain for any acknowledgement of her status in the *Immigration Act* or in the *Immigration Regulations, 1978*. Though section 114(1) of the *Immigration Act* delegates to the Minister authority to promulgate regulations pertaining to selection standards for entrants into Canada, none exist with respect to foreign domestic workers.

The FDM program and its rules are buried in a morass of administrative policies and gnidelines contained in the voluminous *Immigration Manual*.[82] Unlike the *Immigration Act* and the *Immigration Regulations, 1978*, which are publicly promulgated, formal, legal instruments, the *Immigration Manual* consists of several binders packed with informal instructions addressed to bureaucrats charged with administering immigration policy. The *Immigration Manual* has no legal authority; its purpose is to gnide bureaucratic discretion in applying the *Immigration Act* and *Regulations*. The Preface to the Manual makes this point explicit:

> The contents of this component are therefore NOT to be regarded as binding instructions, nor are they intended to envisage every contingency. Rather, they are

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[79]Although she is not assessed under the point system, the factors taken into account when she applies under the FDM program are qualitatively similar.

[80]Farm workers are also admitted as temporary workers to fill a chronic need. The difference is that farm work is episodic (Sedef Arat-Koc, "In the Privacy of Our Own Home: Foreign Domestic Workers as Solution to the Crisis in the Domestic Sphere in Canada" (1989) 28 Studies in Political Economy 33 at 46-47).

[81]The government has very recently resolved to enact regulations pertaining to domestic workers, claiming as one motive for its action the decision of the Federal Court in *Pinto*. The case and its implications will be discussed *infra*, note 106 and accompanying text. See also the Postscript for the most recent regulatory statement.

[82]The *Immigration Manual* is a looseleaf service of three volumes in the public domain containing guidelines and procedures for recruitment and selection of immigrant, visitor, and refugee applicants, examination and enforcement processes, and backlog clearance guidelines. Each volume will be cited when it is first referred to or quoted from.

> presented as guidelines to assist officers in applying sound judgement in the performance of their duties under the *Immigration Act*, Regulations and related legislation... . Where conflict or inconsistency exists between these guidelines (including related Operations Memoranda) and the provisions of the *Immigration Act*, Regulations and related legislation, *the latter must take precedence.* [emphasis in original][83]

By situating the foreign domestic worker astride the categories of immigrant and visitor, the FDM program necessarily generates conflict with the enabling legislation. The inconsistencies become graphic upon close examination of the selection process that brings a woman like Delia to Canada.

Delia first left the Philippines to work in Singapore as a domestic worker. She heard through the grapevine that long term opportunities might be better in Canada, so she approached a private recruitment agency in Singapore. The first thing she learned was that she would have to pay a non-refundable agency fee of $300.00. She went away and returned several months later after scraping together the money. She was then told to fill out a form giving her work history and personal information. When she got to the part about marital status and children, the agency told her to say she was single and childless. They told her that Canada would reject her otherwise.[84] Delia hesitated, but she could not afford to be rejected. So she did as she was told. She lied.

The agency sent Delia's name and application back to a Vancouver affiliate which charges potential employers a fee for importing and placing domestic workers. A few days later, a young professional couple entered the office. They had one toddler and the woman was pregnant with their second child. They had never hired a live-in domestic worker before, and they requested information about what kind of person they ought to hire. They first learned about a hierarchy of labels that varies in accordance with the duties a domestic worker is expected to perform in addition to childcare. The heavier the workload, the lower the status of the title.[85] As one employment agency representative explained it:

> A domestic is a general term for a nanny house-keeper/cook/driver whatever. A nanny, a true nanny is looking after the children only. A nanny house-keeper which is what most people are doing in the Vancouver area is looking after the children and doing the house-keeping.[86]

The couple felt that with their busy schedules having a person who would do all the housework would be advantageous. The woman was particularly anx-

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[83]*Immigration Manual (Selection and Control)* (Ottawa: Minister of Supply & Services Canada, 1984) at s. 1(c) of the Preface. The IS (Selection and Control) component of the *Immigration Manual* contains guidelines and procedures for the recruitment, selection, and processing of immigrant, visitor and refugee applicants.

[84]Many domestic workers report that recruitment agencies counsel them to lie about their marital/family status (West Coast DWA, *Foreign Domestic Workers in British Columbia: Recommendations for Change* (Vancouver: West Coast DWA, 30 November 1989) [unpublished] at 16 [hereinafter *Recommendations for Change*]).

[85]DeVan, *supra*, note 54 at 87.

[86]*Ibid.*

ious since, like most women, she did most of the housework.[87] The agency representative informed them that they could not expect an Anglo-European to do all the "dirty work." Happily, a Filipina would do it, and for the same price:[88]

> I think if you were talking about a Filipino you would probably use the term domestic, and if you were talking about Australia, New Zealand it's nanny housekeeper, and if you were talking about a plain nanny it's someone who only does the work for the children.
> When a family wants a very professional, trained nanny they will hire an English nanny, but they can't expect a lot of house-keeping. When they want somebody who will do light house-keeping. tidying, maybe preparing the evening meal, and lots of child care they'll hire a European. If they want somebody who can do all the house-keeping and maybe they have babies or small children they'll hire the Filipinos.[89]

The couple also learned how quiet and docile Filipino women were, and how "naturally suited" they were to childcare and domestic work. Here is a sampling of employment agencies' portrayals of Filipina domestic workers:

> They're ... great with kids. They really like small children. They're very loving, they're very calm. A lot of families though with older children don't want Filipinos because Filipinos have a problem with discipline. They're too loving, they're not firm enough with the kids, but with young families they're great and so they have a big demand.
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[87]Even in families where both partners work outside the home, women still perform most of the domestic labour (see Sylvia Walby, *Theorizing Patriarchy* (Oxford: Basil Blackwell, 1990) at 80-83).

[88]British nannies sometimes demand higher wages than Filipina domestic workers, in recognition of their formal accreditation acquired through the NNEB training course. Since the onset of the recent recession, employers are using their superior bargaining position to depress wages of formally trained British nannies (Interview with Pat Henry, Vice-President, Canadian Coalition for In-Home Child and Domestic Care (6 June 1991) Toronto). See also Jane Gaskell, "Conceptions of Skill and the Work of Women: Some Historical and Political Issues" in Michele Barrett & Roberta Hamilton, eds, *The Politics of Diversity* (London: Verso, 1986) 361 at 379. Employers' contemporary market behaviour is dispiriting in its predictability; it virtually mimics the conduct of employers a hundred years ago as documented by Geneviève Leslie:

> Although employers demanded a high level of skill, they were reluctant to pay for it. Because her skills were believed common to all women, the domestic was more vulnerable to competition than other workers. Experienced domestics distinguished between themselves and "outsiders," but many people looked upon service as a catch-all occupation that could absorb society's misfits.
>
> Employers exploited the ambivalent status of domestic skills. They complained loudly that trained servants could not be found, and that the shortage was approaching a national emergency. They put extreme pressure on government and recruitment agents to import large numbers of highly trained servants, thereby raising the general level of skill. At the same time, they would employ unskilled workers whenever it was convenient or economical to do so. In a pinch, any woman could do housework, though her work might not be as good as employers would like. Competition from untrained workers kept down the wages of trained servants, and the demand for skills undermined job security for the untrained. Employers, however, won either way (*supra*, note 15 at 92).

[89]DeVan, *supra*, note 54 at 87.

> Filipino people stay the longest. They don't go out at night, they're not as social. Young girls from Europe are lively... . It's a quieter living girl [*sic*] in your home, and not only that, they're better housekeepers and laundresses.
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> ***
>
> Filipinos, you could eat off the floor they're that clean. For some people that's a priority. Filipinos as a rule are very quiet people. They would not get overly friendly with and, um, get friends with the extended family members and all that.
>
> ***
>
> The Filipinos tend to be quite domesticated in their upbringing ... it's their whole nature. They are a little more subservient, whether families want to treat them like that or not it's their whole nature — some families like that — they like to know that they are going to have someone who's going to be hard working.[90]

The couple liked what they heard about Filipino women. It seemed consistent with what other couples had told them,[91] and it made sense to them that Filipino women would be the tidy, diligent, submissive, child-loving type. Asian women were like that, weren't they? It was a feature of their culture, after all. (Of course, had the couple walked into the same office a decade earlier, they might have heard similar stories about West Indian women).[92]

The couple decided to hire a "domestic," that is to say, a Filipina.[93] The agency gave them Delia's profile. She sounded fine. The couple next went to the local Canada Employment Centre (CEC) to arrange for an official job offer. They required government validation of their job offer in order to hire a non-resident of Canada. The employment officer instructed them to fill out a form outlining the duties of the position and the proposed terms and conditions of

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[90]*Ibid.* at 88-89.

[91]Not all employers agree, however. One woman was appalled by the way in which an agency representative constructed Filipino women:

> One woman proceeded to tell me how Filipinos are such wonderful housekeepers, how you can get them to wash your windows and floors and do laundry and everything. She implied they were very quiet and would never complain. I was so offended. She made it sound like slavery (Eva Herbermann, employer, quoted in "Beyond Mary Poppins" *[Vancouver] Sun* (20 July 1987) B1).

[92]Like Filipino women, the West Indian women who preceded them had similar stereotypes about their fondness of children, obliging nature and affinity for housework foisted upon them. At the same time, some researchers have suggested that the arrival of Filipino women has exposed the variegated nature of racism experienced by women of colour. In particular, some employers appear to rank Filipinos above Caribbean women in terms of perceived facility for childcare, the most highly regarded of domestic tasks. One Jamaican domestic worker reported being refused a job because the employer's children were "more used to" Filipina domestic workers (Interview with Mary Banasen, West Coast DWA (25 January 1991) Vancouver). Other findings also suggest discrimination against Black women in domestic worker positions requiring childcare: Rina Cohen, "The Work Conditions of Immigrant Women Live-In Domestics: Racism, Sexual Abuse and Invisibility" (1987) 16:1 Resources for Feminist Research 36 at 37.

[93]The process of classification and naming that constructs women of colour as suited to particular kinds of work thus culminates in the fusion of personal characteristic with occupation: "Filipino" becomes synonymous with "domestic;" Afro-American poet Audre Lorde's infant daughter becomes "a baby maid" in the eyes of a little white girl encountered at a supermarket (Audre Lorde, "The Use of Anger: Women Responding to Racism" in Audre Lorde, ed., *Sister Outsider* (New York: Crossing Press, 1984) 124 at 126).

employment.[94] The form already contained various stipulations, including a five-day week, provision of overtime after 40 hours, and days off. All the couple had to add were the domestic worker's duties and the wages. The employment officer told them that their offer would not be validated unless they offered at least the provincial hourly minimum wage. The couple offered the minimum wage, which amounted to $5.00 per hour.

It is noteworthy that the minimum hourly wage and overtime provision inserted by the Canada Employment Centre into the British Columbia version of the employer/employee agreement is an improvement over what Delia would be entitled to receive under the British Columbia employment standards legislation. Under the provincial legislation, domestic workers are only entitled to a fixed daily wage of $40.00 regardless of number of hours worked.[95] Most provinces in Canada either exclude domestic workers from a minimum hourly wage and overtime provisions entirely or confine them to a fixed daily or weekly rate.[96] Only Ontario and Manitoba guarantee minimum wage and overtime to domestic workers, though the former permits the employer to give time-off in lieu of overtime and the latter requires domestic workers not to work for more than 12 hours daily.[97]

The compensation rate that the CEC requires employers to offer varies throughout the country. Regional CEC offices determine the rates appropriate to that area in consultation with the Ottawa headquarters. Typically, the regional office imposes at least the prevailing hourly minimum wage (regardless

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[94]Canada Employment and Immigration Commission, *Employment Manual* (Ottawa: Minister of Supply & Services Canada) at EA 17.42(6)(b)(iii). The terms and conditions described herein represent those adopted by the British Columbia region of Employment and Immigration. Each region develops its own version of the document (which becomes the employer/employee agreement) in consultation with Ottawa. In general, most regions require the employer to pay at least the minimum wage whether or not provincial minimum wage legislation applies to domestic workers (Telephone interview with Glen Knapp, Canada Employment and Immigration Commission (Halifax) (11 July 1991) Halifax).

[95]*Employment Standards Act Regulation*, B.C. Reg. 37/81, ss 3, 9.

[96]Alberta, Saskatchewan, Nova Scotia and New Brunswick exclude domestic workers from the application of minimum wage, hours of work and overtime provisions (*Employment Standards Code Exemption Regulation*, Alta Reg. 296/88, s. 6; *Labour Standards Regulations*, Sask. Reg. 317/77, s. 17; *Regulations Pursuant to Sections 4 and 7 of the Labour Standards Code*, N.S. Reg. 298/90; *Employment Standards Act*, S.N.B. 1982, c. E-7.2 as am. S.N.B. 1984, c. 42, s. 1). Prince Edward Island excludes "persons employed for the sole purpose of protecting and caring for children ... in private homes" (*Labour Act Minimum Wage Order*, P.E.I. R.Reg. c. L-1, s. 1).

That these provisions effectively deny domestic workers are employees is articulated most starkly by the New Brunswick statute, which literally defines domestic workers out of existence by interpreting employer to exclude "a person having control or direction of or being responsible, directly or indirectly, for the employment of persons in or about his private home (*ibid.*)."

Newfoundland provides domestics with an hourly minimum wage of $3.00, compared to $4.25 for other employees, though no deductions may be taken for room and board (*Labour Standards Regulations, 1988*, Nfld Reg. 74/88 as am. by Nfld Reg. 254/88, s. 8). Quebec guarantees a weekly minimum of $215.00 with overtime after 53 hours. Other Quebec workers are entitled to $5.55 per hour and overtime after 44 hours (*Labour Standards Regulations*, R.R.Q. 1981, c. N-1.1, s. 3 as am. by O.C. 1201-91, 28 August 1991, G.O.Q. 1991.II.5046).

[97]*Domestics, Nannies and Sitters*, O. Reg. 308/87, as am. by O. Reg. 933/87, s. 7; *Domestic Workers Regulation*, Man. Reg 99/87R, s. 3.

of whether provincial legislation requires it), though not necessarily overtime.[98]

The *Immigration Regulations, 1978* pertaining to employment authorizations for visitors state that employers must first demonstrate efforts to hire locally by offering wages and working conditions "sufficient to attract and retain in employment qualified Canadian citizens or permanent residents."[99] In specific reference to the FDM program, the *Employment Manual* conditions approval of offers of employment on a determination that "wages and working conditions offered are *sufficiently above the norm* to attract Canadians with professional skills and special aptitudes in childcare and home management."[100] This is meant to ensure that employers have access to skills unobtainable in the Canadian labour market while precluding them from importing cheap foreign labour as a substitute for guaranteeing wages and working conditions acceptable to qualified Canadian residents.[101] Nobody knows what, if anything, is "the norm" for domestic work, nor what might amount to acceptable wages and working conditions for Canadians qualified to do live-in domestic work. The reason is that employers have always wielded enough political power to ensure a supply of foreign labour desperate enough to work for minimum or subminimum wages. A 1980 government task force admitted that domestic workers are "underpaid because domestic work — when it is done by our relations as well as by our employees — is seriously undervalued."[102] In effect, the FDM scheme exists because domestic work is undervalued *and* it exists in order to keep it that way.

Michael Walzer's description of the relation between industry and the state with respect to European guest workers is equally apposite to Canadian parents and the state vis-à-vis domestic workers. Walzer explains how certain socially necessary work has come to be disparaged as "menial" in wealthy European nations. Busting unions and dismantling the social welfare state is a politically unpalatable route for driving the most vulnerable among the local working class into performing the necessary labour. Equally unappealing to government and business elites is the option of raising wages and working conditions of undesirable jobs in order to render them more attractive. In Walzer's view, this latter gambit would "raise costs throughout the economy and, what is probably more important, challenge existing social hierarchy."[103] Economic managers, with the cooperation of European governments, avoid both of these local solutions by

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[98]For example, the British Columbia version of the employer/employee agreement contains an overtime provision. Conversely, the Nova Scotia form is silent with respect to overtime, though employment officers verbally "encourage" prospective employers to pay it, albeit at regular rates. In neither province does legislation compel payment of overtime to domestic workers.

[99]S. 20(3)(c).

[100]*Supra*, note 94 at EA 17.42(6)(a).

[101]Boyd & Taylor, *supra*, note 67 at 719.

[102]Canada Employment and Immigration Commission, Task Force on Immigration Practices and Procedures, *Domestic Workers on Employment Authorizations* (Ottawa: Canada Employment and Immigration Commission, 1980) at 96 [unpublished], quoted in Jenifer Aitken, "A Stranger in the Family: The Legal Status of Domestic Workers in Ontario" (1987) 45 U.T. Fac. L. Rev. 394 at 410.

[103]Walzer, *supra*, note 12 at 56.

recruiting from the international labour market and making the jobs "available to workers in poorer countries who find them less undesirable."[104] A parallel story could be told about why Canadian families recruit women from LDCs to perform domestic labour on a live-in basis. Delia unquestionably left the Philippines because she found it very difficult to support herself and her family there, and she certainly hopes that domestic work in Canada will be better than domestic work in Singapore — or at least more remunerative.

Once the Canada Employment Centre validated the couple's offer of employment, the document was forwarded to Delia, who brought it to the Canadian embassy in Singapore. Delia was subsequently called in for an interview by a visa officer to determine her eligibility for the position. In order to qualify for the FDM program, she had to have a minimum of one year's full-time experience as a domestic worker or a certificate from a recognized school showing successful completion of a domestic worker training program.[105] Though Delia had no formal training as a domestic worker, she brought up her education and experience as a primary school teacher for seven years. She did not mention, of course, her experience as a mother. The visa officer responded that being a primary school teacher had nothing to do with childcare.[106] Luckily, she had been employed in Singapore as a domestic worker for almost a year and a half, so she qualified on the basis of that experience.[107]

Not all applicants are as fortunate as Delia in this regard. The recent case of *Pinto*[108] demonstrates how the rigid requirements of the program are used to exclude women who have acquired relevant skills through other means. It also illustrates the inherent conflict between the FDM admission requirements and the law governing the issuance of employment authorizations to visitors. The case arose because the employer (Pinto) wished to employ a distant relative in India (Ms Quadros) as a domestic worker to care for his daughter and his elderly parents. The Canadian visa officer in Delhi rejected Quadros' application on the basis that she did not meet the FDM criteria contained in the *Immigration Manual (Selection and Control)*. Though she was a school teacher and mother, and also spoke the only language (Konkani) understood by Pinto's parents, she

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[104]*Ibid.*

[105]*Immigration Manual (Selection and Control)*, *supra*, note 83 at IS 15.61(3).

[106]See *Pinto* v. *Canada (Minister of Employment and Immigration)* (1990), [1991] 1 F.C. 619 at 625-26, 39 F.T.R. 273 [hereinafter *Pinto* cited to F.C.] (visa officer refusing application because applicant school teacher/mother had no outside experience as domestic worker).

[107]Had Delia attempted to enter as an immigrant, the amount of prior training (formal or on-the-job) required of her would be determined by the designation of her occupation under the *Canadian Classifications and Dictionary of Occupations* (Ottawa: Minister of Supply & Services Canada, 1986) [hereinafter *CCDO, 1986*]. In descending order of specific vocational training required, the following six classes of domestic occupations are embraced by the FDM program: Housekeeper (6 months-1 year), Children's Nurse (3-6 months), Domestic Servant (1-3 months), Babysitter (up to 30 days), Companion (up to 30 days), Parent's Helper (up to 30 days). The content of the duties required by the various occupational categories seems rather arbitrary and there is considerable overlap between them. What is important to note in this context is that the requirement of at least one year prior experience in lieu of a training course required under the FDM program exceeds the training period demanded under the *CCDO, 1986* for any of the six categories.

[108]*Supra*, note 106.

failed because she lacked direct experience as a domestic worker as required by the terms of the FDM program.[109]

The first telex transmitted from the Canadian visa office in New Delhi conveys the visa officer's distrust of Ms Quadros:

> She is a cousin of employer. She has had no outside experience as a domestic, nanny or senior citizens care worker. ... Subject lacks relevant experience in either child or elderly persons care. Within her own household, sister and mother have maintained home during the day while she carried on her teaching career. Believe application motivated by eventual desire to settle herself and daughter in Canada for greater opportunities for the latter [*sic*], whom she reiterated during the interview is a very [brilliant] student. ... She also does not meet earlier FDM criteria. This decision is final.[110]

The second telex was even more resolute in its intransigence:

> If need for domestic is as critical as they wish us to believe difficult to understand why they persist in sponsoring subject rather than someone qualified as domestic. ... Believe as stated in earlier telex offer of domestic position simply intended to facilitate entry of subject and child to Canada. Do not believe applicant meets FDM requirements. ...[111]

After reviewing the evidence, the Court in *Pinto* observed that there was no specific authority in the *Immigration Act* or the *Immigration Regulations, 1978* for the selection criteria of the FDM program. The only relevant provisions governing the withholding of employment authorizations were contained in section 20 of the *Immigration Regulations, 1978*, which instructed an immigration officer to reject a qualified applicant if it would adversely affect employment opportunities for Canadian citizens or permanent residents. It was not disputed that Ms Quadros could not be disqualified on this basis.

Mackay J. found that Ms Quadros' unique language skills, along with the experience she acquired as a teacher and as a mother, should have counted favourably in measuring her qualifications for the position of domestic worker. The Court concluded that the visa officer unlawfully fettered his discretion by using the FDM guidelines to hold Ms Quadros to a higher standard than required under the *Immigration Regulations, 1978* and ordered a reconsideration of her application. The necessary but tacit implication of the judgment in

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[109]The fact that she was related to her employer probably did not enhance her chances of success. Though the judgment in *Pinto* is silent on this point, the *Immigration Manual (Selection and Control)* explicitly instructs immigration officials to be leery of such applicants:

> Some domestics may be destined to family members. The fact that the employer is a relative should not preclude the domestic from participation in the FDM program. Provided the job offer is bona fide and both the domestic and the employer meet the requirements of the program, the case should be facilitated. Nevertheless, officers should be mindful of the potential for abuse and resultant damage to the integrity of the program. For this reason, extra care should be taken to ensure that the employer's offer is bona fide and that the domestic has the necessary qualifications (*supra*, note 83 at IS 15.61(4)).

[110]*Pinto, supra*, note 106 at 625. It is curious that the visa officer refers disparagingly to the applicant's eventual desire to settle in Canada with her daughter, since the prospect of immigration is the obvious incentive driving the FDM scheme.

[111]*Ibid.* at 627.

Pinto is that the selection criteria for the FDM program were *ultra vires* to the extent that they were more stringent than those contemplated under the statutory requirements for employment authorizations issued to visitors.[112]

Job training and experience are not the only factors relevant under the FDM program, as Delia discovered. After establishing her work history, the visa officer tested her English language ability.[113] He next inquired into her background, education, whether she had ever been in debt, how she would handle emergencies and what her ambitions were.[114] He must have asked her a half dozen times if she was married and if she had children. Delia was firm in her denial though frankly, she wondered why it wasn't apparent to visa officers that women in her position were supporting dependants in the Philippines. If it wasn't children, it was parents, or siblings, or cousins... Why else would a 32 year old woman be moving half-way around the world to take care of someone else's household?

Though Delia was wrong in believing that having a husband and children would automatically exclude her from the program, she was correct in her understanding that it would disadvantage her. The *Immigration Manual (Selection and Control)* addresses the marital and familial status of the applicant in an equivocal manner:

> The fact that applicants may be married and/or have dependants should be considered in relation to their background and work history and the eventual self-sufficiency of the family unit; however, applications should not be refused only on the basis that the applicant has dependants.[115]

The policy leaves visa officers considerable latitude for interpretation. Some women report being told openly by visa officers that married women

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[112]The result in *Pinto* leaves unresolved whether Ms Quadros would receive an employment authorization *qua* ordinary visitor, in which case she would have no opportunity to apply for landed status from within Canada and little hope of ever being accepted as an independent immigrant under the point system. The other option would be to admit her to the FDM program even though she did not meet its requirements. In the former case, Ms Quadros would be relegated to the same vulnerable position as the foreign domestic workers on employment visas between 1973 and 1981. In the latter case, admission of Ms Quadros on the FDM program would eviscerate the government's own admission criteria under the FDM guidelines, leaving employers free to generate their own individualized standards for foreign domestic workers. In the short term, the government would cede control over the definition of a foreign domestic worker to Canadian employers. In the long term, private citizens would effectively participate in selecting future immigrants to the extent that many domestic workers ultimately apply for landed immigrant status. A third alternative would be to admit Ms Quadros into Canada on an employment authorization and to allow her to apply to the FDM program after completing one year of service. At this point, she would meet the requirements of the program as far as job experience goes.

[113]"The applicant must be able to communicate orally and in writing in either French or English" (*Immigration Manual (Selection and Control), supra*, note 83 at IS 15.61(3)(d)).

[114]FDM candidates must be "resourceful, mature, stable and possess the initiative required to deal with possible emergencies" (*ibid.* at IS 15.61(3)(e)). In *Pinto*, the visa officer recorded that

> [w]hen asked what she might do in Canada three or four years from now if no longer required by employer, she had no idea what she would do... . Subject fails current criteria as set out in IS 15.61(3). As she failed to demonstrate motivation, resourcefulness or initiative about any future ability to settle successfully in Canada [*sic*] (*supra*, note 106 at 625).

[115]*Ibid.* at IS 15.61(3)(f).

and/or women with children were ineligible, contrary to the policy articulated in the *Immigration Manual (Selection and Control)*.[116] Filipina domestic worker Pura Velasco recalls the basis of her initial rejection from the FDM program: "[The immigration officer] was telling me, 'Your job wouldn't be able to support your family.' I agreed with her but I had no intention of bringing my children at that time. I told her of my options, that maybe I could do better than domestic work in the future."[117]

Until recently, women like Delia who misrepresented their marital and/or family status risked deportation upon discovery. In *Re Fernandez*[118] an inquiry under the *Immigration Act* was ordered to investigate the allegation that Ms Fernandez, *qua* visitor, was in violation of section 27(2)(g), which states:

> 27(2) Where an immigration officer or peace officer is in possession of information indicating that a person in Canada, *other than a Canadian or a permanent resident*, is a person who
>
> (g) came into Canada or remains in Canada with a false or improperly obtained passport, visa or other document pertaining to that person's admission or *by reason of any fraudulent or improper means or misrepresentation of any material fact*, whether exercised or made by himself or by any other person... . [emphasis added]

Like Delia, Ms Fernandez lied about her marital status to immigration authorities when she applied from Singapore for admission under the FDM program. She repeated the misrepresentation on a subsequent occasion when she changed employers in Canada. She admitted that she did this because she feared that the fact of being married might adversely affect her immigration status.

The adjudicator noted that nowhere in the *Immigration Act* or the *Regulations* are spouses and/or dependants considered material to the assessment of visitors;[119] they are only germane to the evaluation of immigrants. Ms Fernandez, however, had not yet made an application for landing and the inquiry was premised on the government's insistence that Ms Fernandez was a visitor, not an immigrant. Consequently, Ms Fernandez could not be deported *qua* visitor because of her misrepresentation with respect to marital status. Like *Pinto*, *Fernandez* reveals the incoherence of the FDM program within the current immigrant/visitor dichotomy established under the *Immigration Act* and the *Immigration Regulations, 1978*. Unlike *Pinto*, the government has since moved to close this loophole by making misrepresentation of marital status by foreign domestic workers relevant only at the time of application for landing.[120]

Meanwhile, Delia passed her interview with her putative single, childless status intact. After a lengthy and costly series of medical examinations, Delia was called in once again and given an offer setting out the terms and conditions

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[116]INTERCEDE, *Report and Recommendations on the Foreign Domestic Movement Program* by Sedef Arat-Koc & Fely Villasin (Toronto: INTERCEDE, October 1990) [unpublished] (on file with author) at 17 [hereinafter *Report and Recommendations*].

[117]Quoted in Flavelle, *supra*, note 5 at C-6.

[118](14 March 1989), Vancouver 9530-01-5955 (Bd Inquiry) [hereinafter *Fernandez*].

[119]*Ibid.* at 3.

[120]See *infra*, notes 251-53 and accompanying text.

of employment. Her future employers had already filled out a description of her duties. These included childcare, cooking and general housework. Once she signed it, it would become their employer/employee agreement.[121] Delia was relieved when she saw the contract. It made working in Canada look "like heaven" compared to what she was enduring in her present job.[122] Five dollars an hour (minus deductions for room and board) seemed like a good wage compared to what she was earning in Singapore, though of course she was unfamiliar with the cost of living in Canada. The provision guaranteeing overtime after 40 honrs per week was especially important to her, since she noticed that her future employers expected her to be on duty from 8:00 a.m. to 6:30 p.m.

Delia was also pleased by the provision requiring her employers to grant her $20.00 per month and a minimum of three hours off per week to put toward upgrading courses.[123] Delia looked forward to an opportunity to upgrade her skills. She was concerned that her teaching qualifications would not be recognized in Canada and she certainly did not want to do domestic work forever.[124] The other provision in the agreement that caught her attention stated that "[f]ailure to honour the terms of this contract by the employer may result in the denial of future requests" by the Canada Employment Centre. Delia was impressed that the government took an interest in her employers' compliance as well as her own.

A few months after her interview she was informed of her acceptance into the FDM program. She returned to the visa office and was issued a one-year Employment Authorization permitting her to work as a live-in domestic worker for her new Canadian employers. The document cost her $50, and was renewable for her second year. Eight months after her initial application, Delia was on her way to Canada. Her new employers met her at the Vancouver airport...

IV. Home/Work: The Illusory Liue

> Why are [aliens] admitted? To free the citizens from hard and unpleasant work. Then the state is like a family with live-in servants. That is not an attractive image, for a family with live-in servants is — inevitably, I think — a little tyranny. The principles that rule in the household are those of kinship and love. They establish the underlying pattern of mutuality and obligation, of authority and obedience.

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[121]*Employment Manual, supra,* note 94 at EA 17.42(6)(b)(iii).

[122]One reason Filipina domestic workers choose Canada is to escape the horrendous working conditions for them in the Middle East, Hong Kong and Singapore. "Before we come, the contract which domestic workers think is a legal contract is heaven compared to wherever we are coming from" (Banasen, *supra,* note 92). For a description of working conditions in Hong Kong, Singapore and the Middle East, see J.Q. Maglipon, "In Hong Kong, 'Filipino' Means Maid" (1990) 5:36 *The [Manila] Sunday Inquirer Magazine* 14; Patria Amor, "POEA in Quandary on Plight of Domestics" (1990) Philippines Journal 1; L.T. Montreal, "For Better, For Worse: One Community's Adventures and Misadventures in the Land of the Petrodollar" (1990) 5:28 *The [Manila] Sunday Inquirer Magazine* 8.

[123]This is another "boiler plate" provision inserted in the agreement by Employment and Immigration (*Employment Manual, supra,* note 94 at EA 17.42(6)(b)).

[124]Educational attainments from non-Western universities are frequently discounted (see Roxana Ng & Alma Estable, "Immigrant Women in the Labour Force: An Overview of Present Knowledge and Research Gaps" (1987) 16:1 Resources for Feminist Research 29 at 30-31).

> The servants have no proper place in that pattern, but they have to be assimilated to it. Thus, in the pre-modern literature on family life, servants are commonly described as children of a special sort: children, because they are subject to command; of a special sort, because they are not allowed to grow up. Parental authority is asserted outside its sphere, over adult men and women who are not, and can never be, full members of the family.
>
> –Michael Walzer[125]

> Whenever they want you to give your all in their favor or anyway to feel comfortable to do what they want you to do, they use the word "we are family." That's the one I hate. "You are one of the family." That's not true. ... If you're one of the family, do not let me eat after you.
>
> –Joyce Miller, West Indian domestic worker[126]

A. *Outside the Nucleus/Inside the Cell*

... Delia arrived on Snnday and began work on Monday. The baby was almost four months old by the time Delia arrived and the woman had used up her maternity leave. The woman was being pressured by her employer to return to work, so Delia had to take over responsibility for the two children and the house almost immediately. Over the weeks and months that followed, Delia learned that life as a live-in domestic worker in Canada had less to do with meeting the terms of her contract than with adapting her time, life and behaviour to her employers' schedule and lifestyle.

Delia's situation was worse than some, better than others.[127] Her hours were supposed to be 8:00 a.m. to 6:30 p.m., but she often worked 12 hours a day, sometimes more.[128] Occasionally her employers worked late; other times

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[125]Walzer, *supra*, note 12 at 52-53.

[126]Shellee Colen, "'Just a Little Respect:' West Indian Domestic Workers in New York City" in Elsa M. Chaney & Mary Garcia Castro, eds, *Muchachas No More: Household Workers in Latin America and the Caribbean* (Philadelphia: Temple U. Press, 1989) 171 at 181.

[127]In making this assertion about the circumstances I construct around her, I rely not only on anecdotal accounts of domestic workers' experiences, but on statistics compiled by two domestic worker advocacy groups, the West Coast DWA and Toronto's INTERCEDE. West Coast DWA sent out 300 questionnaires in the Vancouver area and received 62 replies (20.6%) describing 85 work situations (some women had worked for more than one employer). Eighty-three percent of the respondents were Filipino women. The results are set out in *Summary of Results*, *supra*, note 65.

INTERCEDE distributed an undisclosed number of surveys in Toronto and Guelph, Ontario, and received 592 replies between November 1989 and June 1990. Their results are tabulated in *Report and Recommendations*, *supra*, note 116. Ontario attracts the largest share of foreign domestic workers in Canada (64%); British Columbia runs a distant second (12%) (*ibid.*).

[128]The average working day for the Vancouver domestic worker was 11.3 hours, or 56.5 hours per five-day week (*Summary of Results*, *ibid.* at 7). Sixty five percent of the respondents in the INTERCEDE survey worked more than the legislated provincial standard 44 hour work week. Almost one quarter worked more than 50 hours weekly (*Report and Recommendations*, *ibid.* at 6). Anecdotal accounts by domestic workers frequently depict 14 to 16 hour work days. Rosita's story is not unusual:

> An agency in the Philippines got me a job as a domestic worker with a family in North Vancouver. I had to wear a uniform with a white apron. I worked from 5:30 in the moruing until 8 or 9 in the evening, seven days a week. If they were having a party, I would have to work until 2 or 3 in the morning. ... When I asked my employers for a whole day off, they started to complain that I wasn't doing my duties well enough (*Recommendations for Change*, *supra*, note 84 at 5).

they had social engagements. They just expected Delia to be there, though they often neglected to inform her of their plans in advance. Here is how Julie, a West Indian domestic worker, describes her schedule:

> I'd say my day started at about 7:30 in the morning when the kids got up and I would work until about 6:00 p.m. when my employers came home from work, but that depended from day to day, because sometimes they came home later. They just took it for granted that I didn't have anyplace to go, even though they never asked me if I had anywhere to go.[129]

Here is how the situation looks from the employer's perspective:

> [B]oth husband and wife are out there supporting the mortgage and ... have babies as well. They all have to have a nanny or otherwise they can't work. Either it's live-in or it's live-out or it's day-care ... live-out costs more. The difference with day-care is that nobody does your housework. You have to drop the kids off, and you can't be late coming home from the office or go and meet your husband for dinner. You can phone your nanny and say we're going to be an hour or two late and would you please take care of the kiddies.[130]

It troubled Delia that she was perpetually on call. She could never really make herself at home, knowing that at any moment she could be put to work. If she happened to be home during her "off hours," her employers thought nothing of asking her to watch over the sleeping children or stay around to await deliveries or repair persons.[131] They did not seem to regard this as work, judging by the fact that they never paid her extra for her time. She heard that some domestic workers spent their weekends and holidays elsewhere,[132] but she had arrived only recently and did not know much about these arrangements. She spent most of her weekends at home, at work, on call.[133]

See also B.C. Human Rights Coalition, *Human Rights Newsletter* (Winter 1990) at 5-7; Turrittin, *supra*, note 39 at 101; Deborah Wilson, "Immigration Review Worries Domestic Workers" *The Globe & Mail* (6 January 1990) A10.

[129]Silvera, *supra*, note 50 at 26. See also Primrose, a West Indian domestic worker, in Silvera, *ibid.* at 94.

[130]DeVan, *supra*, note 54 at 72.

[131]Some 46.6% of domestic workers reported being asked to undertake these responsibilities during designated non-working hours. INTERCEDE records that "[o]ne common problem voiced by live-in domestics to INTERCEDE counsellors has been the reluctance by employers to recognize those activities or responsibilities which did not involve visible, tangible effort or drudgery on the part of the domestic as real work" (*Report and Recommendations, supra*, note 116 at 6-7).

[132]Almost half of the live-in domestic workers surveyed by INTERCEDE had their own place on weekends and holidays. Living-in full time (including weekends) was the least preferred arrangement (15.4%); 46.7% preferred live-in/weekend out and 37.4% preferred live-out (*ibid.* at 4).

[133]Disregard of days off is a common complaint of live-in domestic workers. Guyanese domestic worker Savitri recounted how her employers took advantage of her presence whenever possible:

> The work is hard, and with both of the family I work with, there was always problems when it comes to my days off. You know, just because you live in the house, they make you work like a horse all the time. Once you stay in that house on your days off, you know it's trouble you calling down on yourself because they always going to call you to come and do something for them. Little things that they could do for themselves, they will call you to do, like getting a glass of water for them, when the kitchen so close to the living room. But once they in front of the T.V. they don't want to leave it. It is really harassing, getting up and doing these things for them when I already work all

It seemed to Delia that her activities did not qualify as "real" work to her employers — when she was playing with the children, she was doing "nothing."[134] Like Noreen, a West Indian domestic worker, Delia learned how "work that isn't seen isn't valued, except when it isn't done!"[135]

> You know how housework is; you could tidy up the house and wash the dishes twenty times a day. At the end of the day, especially with three growing boy child, the house look like a hurricane pass through it, so when she is in a bad mood she wants to know what I do all day.[136]

Hana Havlicek, employment agency operator and vice-president of the Canadian Coalition for In-House Care advances the notion that domestic workers are not really "at work" during the day:

> Not every job can be measured by hours. You see, a live-in girl lives in a home. It is different than a secretary who has to be on a job at 9:00 in the morning and leaves at 5:00 with an hour for lunch. [The domestic worker] has time during the day to write letters... . She has time to wash her hair, to do her personal laundry. Therefore, she is not really on duty.[137]

Between caring for a newborn, a toddler and doing most of the cleaning and cooking, Delia certainly felt that she put in a full day. And she never had an hour for lunch![138]

When she first arrived, Delia's employers told her to make herself at home, to think of herself as "one of the family." She was not quite sure what that meant. It did not mean dining with the family, even though it was she who usually cooked supper. She had to feed the baby while her employers ate, and settle for whatever was left over. It certainly did not mean that she was trusted. Her employers even refused to give her a set of house keys. If she went out on her days off she had to wait outside until someone else arrived to let her in.[139]

> day, but I just keep quiet. Right now I don't even get my full days off. I am entitled to two full days off, but instead, my employer told me that I must take two half days off. I don't say anything though, I just pretend that everything is fine (quoted in Silvera, *supra*, note 50 at 46).

See also Silvera, *ibid.* at 84; Rachel Epstein, "I thought there was no more slavery in Canada!" (1980) 2 Canadian Woman Studies 22 at 26; *Recommendations for Change*, *supra*, note 84 at 5.

[134]One domestic expressed how her employer viewed some of the work she did: "When I am playing with the child, I am doing nothing!" See *Report and Recommendations*, *supra*, note 116 at 7.

[135]Sheila Neysmith, "From Community Care to a Social Model of Care" in Carol T. Baines, Patricia M. Evans & Sheila M. Neysmith, eds, *Women's Caring: Feminist Perspectives on Social Welfare* (Toronto: McClelland & Stewart, 1991) 272 at 293.

[136]Noreen, quoted in Silvera, *supra*, note 50 at 17.

[137]"Living on the Job," *supra*, note 58.

[138]"I didn't even have time to eat my lunch and dinner," said domestic worker Angelina (quoted in Peter Howell, "Domestics Tell of Abuses Endured in Canadian Homes" *The Toronto Star* (12 March 1989) C20 [hereinafter "Domestics Tell of Abuses"]).

[139]This incident is described in *Human Rights Newsletter*, *supra*, note 128 at 6. Another domestic worker described how her employer would carry her purse with her from room to room. Remarked the woman ruefully, "no wonder if I'd pay someone as little as she pays me I'd also hold on to my purse" (Cohen, *supra*, note 92 at 37). Cohen also notes another study in which almost all domestic workers interviewed reported that they were tested by their employers for honesty with money (*ibid.*). See also Evelyn Nakano Glenn, "A Belated Industry Revisited: Domestic Ser-

Being "like one of the family" also did not mean that her employers displayed any interest or concern in her welfare. They did not ask if she was homesick or inquire into how she was adapting to Canada.[140] She did not have to worry about concealing her family or marital status because her employers rarely asked about her life in the Philippines. It was as if they did not want to acknowledge that she had a family and an identity completely unconnected to them.[141]

Indeed, just as her work often went unnoticed by her employers, so too did Delia feel ignored. Her employers would carry on conversations around her as if she was not there.[142] Often her male employer would even walk around the

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vice Among Japanese-American Women" in Anne Statham, Eleanor Miller & Hans Mauksch, eds, *The Worth of Women's Work* (Albany: SUNY Press, 1988) 57 at 69-70; Shellee Colen & Roger Sanjek, "At Work in Homes II: Directions" in Shellee Colen & Roger Sanjek, *At Work in Homes: Household Workers in World Perspective* [unpublished] (on file with author) 1 at 10-11. Angelina, a Filipina domestic worker, left her employer after he had her charged with theft of a bottle of nail polish remover. The charge was later dropped ("Domestics Tell of Abuses," *ibid.*).

[140]Eldecka, a West Indian domestic worker, commented, "You tell them you don't know anyone thinking they're going to help you, but they have no feeling toward you whatsoever" (quoted in Aitken, *supra*, note 102 at 406).

[141]In her study of relations between domestic workers and employers in Bogotá, Colombia, Bertha Quintero comments on the possessive attitude employers take toward domestic workers: "The attempt is made, although not always in a direct manner, to have the woman who works as a live-in domestic break all affective ties to her former life and become the property of her new family" (quoted in Mary Garcia Castro, "What is Bought and Sold in Domestic Service?" in Chaney & Garcia Castro, *supra*, note 126, 105 at 119). Rosanne Hertz also notes that young immigrant women were "highly desirable" to American employers in the first half of the twentieth century because "they did not have local kinship ties of their own that could foster dual loyalties" (*More Equal Than Others: Women and Men in Dual-Career Marriages* (Berkeley: U. California Press, 1986) at 162).

Helen, a white American woman working as a live-out domestic worker, describes her employers' casual disregard for the life and identity that exists independent of them:

> I come over there every day. When they go away, I stay. They've given me a room. They say I can live with them. They mean to be nice, but I get upset. They don't stop and think that I have a family, too. Yes, they 'know' I have a family, but they don't want to remind themselves of what they know, because they really would prefer that I live with them. They've been telling me for years that I should 'stay over,' and they'd pay me more. I say I'd love to do it, but I can't. What about my daughter? What about my son? They remind me that my mother is there to take care of my children; but *I* am their mother (quoted in Robert Coles & Jane Hallowell Coles, *Women of Crisis* (New York: Delacorte Press, 1978) at 236).

[142]See Cohen, *supra*, note 92 at 38. Sometimes employers physically erase domestic workers. In one incident related to me, a Scottish nanny was ordered not to sit in the family room after working hours. In another, the domestic worker, whose bedroom was in the basement, was actually locked out of the upper floors of the house (including the kitchen) on weekends. Requiring the domestic worker to eat in a separate room or at a different time reinforces her separate and unequal status. Colen and Sanjek observe that:

> Household workers must operate within a different social geography of the home from those who live, not work, there. As several studies show, household workers are restricted in where they may eat, sleep, rest, and use toilet facilities; they may work in some places within the home, but not sit down or even speak there. This geography is also time-linked: there are times when household workers may be in certain spaces within the home, or may eat with household members; and there are other times when they may not (*supra*, note 139 at 7).

house in nothing but his underwear. This made her extremely uncomfortable.[143] Her female employer noticed Delia's uneasiness once and commented "Oh, Delia, don't be so skittish. We're all family." Delia smiled nervously and said nothing. The man did not notice Delia's reaction. Delia finally realized that he was completely oblivious to her presence. Delia was certain that the situation would have been quite different had it been her wandering about in her underwear, or lying on the couch watching TV in the evening, or eating the food she liked,[144] or taking her meals in the dining room, or doing many of the other things that "one of the family" did.

Delia's experience is typical of domestic workers. Writing about domestic service in nineteenth-century America, historian David Katzman explains:

> One peculiar and most degrading aspect of domestic service was the requisite of invisibility. The ideal servant as servant (as opposed to servant as a status symbol for the employer) would be invisible and silent, responsive to demands but deaf to gossip, household chatter, and conflicts, attentive to the needs of mistress and master but blind to their faults, sensitive to the moods and whims of those around them but undemanding of family warmth, love and security.[145]

A parallel analysis of invisibility also applies to relations between dominant and subordinate racial groups.[146] Clearly, the invisibility of the servant and the invisibility of the oppressed race converge and are mutually reinforced where the servant class is comprised primarily of people of colour. In reference to Afro-American domestic workers, Judith Rollins posits that:

> [T]hough the mechanism [of invisibility] is functioning at all times when whites and people of color interact in this society, it takes on an exaggerated form when the person of color also holds a low status occupational and gender position — an unfortunate convergence of statuses for the black female domestic servant.[147]

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[143]This incident, as reported in *Report and Recommendations*, *supra*, note 116 at 9, raises the matter in the context of possible sexual harassment. My analysis is not intended to detract from such a characterization of the incident.

[144]Many domestic workers are dissatisfied with the quality and quantity of food they eat. Norma, a Filipina domestic worker, described her experience:

> My employers didn't give me enough food. They even counted the cans in the kitchen. I was not allowed to eat the same food they did, and I had to eat my dinner when I finished work at 8 or 9 in the evening. When I asked for some meat and fish like I used to eat in the Philippines, my employers bought me pig's feet and herring. That year I went from 120 pounds to 97 pounds. I started to gain weight when my employers let me out to go to church on Sundays. After church I would go and buy meat with my salary (quoted in *Recommendations for Change*, *supra*, note 84 at 9).

INTERCEDE interviewed a number of domestic workers who complained of inadequate diets for various reasons. "In all these cases," INTERCEDE concluded, "the domestic went half-hungry, ate food she did not like or was forced to undergo double expenses for food — being automatically deducted fixed amounts for her board and buying it outside" (*Report and Recommendations*, *supra*, note 116 at 9-10). See also Silvera, *supra*, note 50 at 84; "Domestics Tell of Abuses," *supra*, note 138.

[145]Quoted in Judith Rollins, *Between Women: Domestics and Their Employers* (Philadelphia: Temple U. Press, 1985) at 210.

[146]*Ibid.* at 210-11.

[147]*Ibid.* at 212.

Add to this the invisibility of her labour *qua* woman's work, her legal invisibility *qua* domestic worker, and Delia becomes a veritable non-entity in the country and the household in which she works and resides.

Invisibility had its advantages though, especially with respect to her male employer. Aside from his habits of undress, Delia's male employer seemed fairly benign. He did not "tease" her, touch her, wink at her or make insinuating remarks about "those girls in Manila." She had heard of other women being harassed and even raped by their employers,[148] so on the whole she thought she was better off being ignored by him.

While both INTERCEDE and West Coast DWA deal with disclosures of harassment and sexual abuse by domestic workers, the real extent of the abuse is difficult to gauge.[149] Knowing that women generally under-report incidents of harassment and abuse, one can only speculate that foreign domestic workers tend to be especially reticent. At the very least, there can be little doubt that live-in domestic workers are more vulnerable to sexual abuse and harassment by virtue of having to live on the premises. The risk escalates if the employer

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[148]West Indian domestic worker Hyacinth describes how her white employer raped her soon after she arrived:

> He tried to push me down on the bed but I wouldn't let him, and he had his hand over my mouth so I couldn't scream. ... I remember him telling me that if I had sex with him he would raise my pay. I tell him that I conldn't do that because he was married and his wife was upstairs. ... He laugh and ask me what Black girls know about marriage. ... Is like it was the end of the world for me. I was so frightened ... he was blowing so hard, so I could smell the alcohol strong on him. ... After he finish he jump off me, spit on the floor and tell me if I tell his wife or anybody he would see that they send me back to St. Lucia or that I go to jail. I was really frightened. ... It happened again seven or eight other times. I was just scared to say anything to anybody, further I didn't know where to turn to. I didn't know anybody here (quoted in Silvera, *supra*, note 50 at 56).

Here is what happened when she returned to her employer's house:

> When I go in I get one big cussing from his wife. She call me ungrateful-jealous-slut-black-bitch. I can't even remember some of the words. ... Before I know it his wife just come into my room, open the door without knocking and started slapping me up, telling me that is me bring sex argument to her husband, and that we "nigger girls" are good for nothing else, and asking me if I like it when her husband have sex with me. I was crying the whole time, because I wasn't used to this treatment. Then she tell me I had to leave her house. So I pack up my little things and went and stay with my friend (*ibid.* at 57).

Hyacinth's ordeal is virtually indistinguishable from slaveowners' practice of raping Black women slaves in antebellum America, where slaveowners' wives refused to recognize the practice for what it was, or tacitly endorsed it as preferable to their husbands having "affairs" with white women (see bell hooks, *Ain't I a Woman: Black Women and Feminism* (Boston: South End Press, 1981) at 57); for a recent case, see Rollins, *supra*, note 145 at 151 (director of support and training program for domestic workers in 1970's calls employer about sexual harassment by husband): "So we called this woman, now this is a prominent Bostonian, mind you, and we explained the problem. And you know what she said? 'What do you think I brought her up here for?' I was shocked. We got her out of there, found something else for her."

[149]Felicita Villasin, Director of INTERCEDE, stated in a television interview that INTERCEDE had received at least five reports of sexual abuse from members in 1989 ("Living on the Job," *supra*, note 58).

is a single male. Thus, many women try to avoid working for a single man or in an environment where a single man is frequently present.[150]

Occasionally her employers did involve Delia in family outings, like going to the zoo or a movie with the children. Even when they involved her in these activities though, Delia felt that she was still "on duty." For example, they occasionally invited her to accompany them for dinner at friends' homes. They expected her to serve dinner there, too.[151] They once offered to take her with them on a long weekend camping trip, but she declined because she feared that her employers would have a holiday and she would end up doing all the work.[152] The couple went on the camping trip without her, but left the children with her for three days.[153]

As long as she was in their home or in their presence, she was never simply Delia; she was always Delia-the-domestic, ready and available for work.[154] Around her own family and friends, Delia could be quite lively and assertive, but she noticed that her employers had a way of staring coldly at her when she initiated conversations or disagreed (even mildly) with something they said. Her opinions were neither solicited nor welcomed. They liked her to be quiet, obedient and deferential — "discreet" — so she was.[155]

Like Gail, a West Indian domestic worker, Delia began to feel that her identity had become little more than a projection of her employers' definition of her:

> The man was nice too, but still, I always feel very uncomfortable because the woman had this attitude that you-are-here-to-be-a-servant. Let's face it. They are

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[150]See Epstein, *supra*, note 133 at 26; Cohen, *supra*, note 92 at 37; Rollins, *supra*, note 145 at 151:

> [T]oday, live-in domestics are increasingly immigrants (particularly from the Caribbean and Latin America) and sometimes illegal. The material desperation and precarious status of such women make them especially vulnerable to material and sexual exploitation. While using domestics sexually has never been as pervasive in [the United States] as in nineteenth-century England or contemporary Latin America, my research indicates this unspoken problem nevertheless does exist and is widespread enough for all of the domestics I interviewed to give it as this reason for now avoiding male employers.

[151]Anecdote reported by Rosita, a Filipina domestic worker in *Recommendations for Change*, *supra*, note 84 at 5.

[152]In other instances, the domestic worker will be invited to accompany her employers on a holiday, only to spend the whole vacation caring for the children. See for example, Primrose, quoted in Silvera, *supra*, note 50 at 91-93.

[153]Forty-six percent of respondents in the West Coast DWA survey had been left alone to care for the house and children for more than 24 hours (*Summary of Results*, *supra*, note 65 at 7).

[154]Garcia Castro, *supra*, note 141 at 122.

[155]Rollins observes that:

> Ingratiating behavior has been displayed by many categories of subordinate people because of dominant groups' desire for it. Domestic servants, Afro-Americans, and women are three such groups that have been encouraged to incorporate ingratiation into their encounters with employers, whites, and men, respectively (*supra*, note 145 at 168).

Rollins explains how domestic workers self-consciously treat deference as another requirement of the job.

> white elite and I is Black. So I was treated as know-your-place-you-are-here-to-do-this-and-that's-all-there-is-to-it. But it's hard to tell yourself, "I am only here to do this" — domestic work — when really I am living here twenty-four hours a day. I feel as if this is my home. It is my home, this is where I live. It's not like I come to work for them and then evening time I leave and go home. When you are living with them, they make you feel as if you really don't belong, and where the devil do you really belong? It's a funny thing to happen to us, because it make us feel like we don't know if we coming or going.[156]

Social scientist Mary Garcia Castro captures domestic workers' perception of their ascriptive status in her observation about domestic service in Bogota:

> [w]hat is bought and sold in domestic service is not simply the labor power of the *empleada* or her productive work or energy; it is her identity as a person. This is the most specific feature of domestic service.[157]

Delia yearned for the opportunity to just "be herself" — speak her own language once in a while, eat the food she liked, spend time among friends. What with her long hours and erratic schedule, she found little time to socialize, to be just Delia instead of Delia-the-domestic. Though her employers said nothing explicitly, Delia felt uncomfortable inviting one of her few acquaintances over to visit, even in her own room.[158] After all, they gave her dirty looks when she spent more than five minutes on the phone speaking to a friend.[159]

Being like "one of the family" did seem to mean that she did not get much privacy. Like most domestic workers, Delia did have a room of her own.[160] A few are less fortunate, and may be compelled to share a room with the children, give up their room for house guests, or sleep on the floor in the laundry room.[161] Two West Indian women describe their experiences:

> While I was there I had to share my room with the six-year-old boy. The little one-year-old girl had a bedroom by herself, but I had to share with the six-year-old son. They never told me this before they hired me. And they never told me why. The same day I went there to work they showed me the room and said that I had to share. I never had any kind of privacy at all, but I didn't want to go back to Immigration again because I was afraid they would get fed up with me.[162]

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[156]Gail, quoted in Silvera, *supra*, note 50 at 98.

[157]*Supra*, note 141 at 122.

[158]See Cohen, *supra*, note 92 at 36; Molly, quoted in Silvera, *supra*, note 50 at 70. The live-in requirement effectively precludes the possibility of sexual relationships. I am unaware of any views domestic workers have expressed about this particular feature of the live-in situation, though one employer threatened her Filipina domestic worker with deportation if she "socialized with men" (*Recommendations for Change*, *supra*, note 84 at 5).

[159]Many domestic workers complain that their mail is screened and their telephone access monitored, or even restricted (Cohen, *ibid.* at 37).

[160]According to the West Coast DWA, over 90% of the workers surveyed had their own bedroom, though barely half had a private bathroom as well. The quality of the room provided is unregulated and can vary enormously, from a private suite with kitchen facilities to a laundry room with no door (*Summary of Results*, *supra*, note 65 at 4). In the West Coast DWA survey, 8.5% reported sleeping arrangements ranging from shared rooms, a room in the basement with no door, a "guest room" that had to be given up when guests stayed over, and the laundry room (*ibid.* at 4). See also *Report and Recommendations*, *supra*, note 116 at 9-10.

[161]Epstein, *supra*, note 46 at 226; *Recommendations for Change*, *supra*, note 84 at 7.

[162]Julie, a West Indian domestic worker, quoted in Silvera, *supra*, note 50 at 26.

> The employer wanted me to come in and take the job the next day. She wanted me to come and meet the lady who was leaving, to show me what to do. She told me that the last domestic, who was a White lady, didn't want to stay in the basement, so her son gave her his room upstairs on the first floor and the son took the basement. Well, if I take the job, I will have to go in the basement, and give back her son his first floor. So I said, if I was White, I could have continued with the upstairs room but because I am Black I have to go down in the basement.[163]

Like most domestic workers, however, Delia did not have a lock on her door. It was not so much that she was concerned for her personal security, like some domestic workers;[164] rather, it was a question of privacy. Unlike some other domestic workers, she had no particular reason to suspect her employers of snooping in her room or reading her mail[165] but, like other employers, they certainly did not hesitate to enter whenever she was there:

> Once they finished the basement I moved downstairs to my new room but still the childreu were in my room day and night. Sometimes I felt like locking my door but there was no lock... . They had always reasons to come in and ask me to do things for them even on my days off.[166]

Delia eventually discerned that she was most like "one of the family" when her employers wanted her to do something for them that would be a gross imposition on a person who was considered a mere employee. This phenomenon is also noted in the research of anthropologist Shellee Colen, who observes that, "[f]amily ideology, sometimes used to explain why people have to sacrifice for one another, is turned around to induce people who are not in the family to do things that may be exploitative."[167]

Delia had her own family in the Philippines, and she knew the difference between making sacrifices for the sake of one's own family and being manipulated for the sake of another's. Though she liked the employers' children, she

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[163]Epstein, *supra*, note 133 at 26; see also Cohen, *supra*, note 92 at 36.

[164]One woman reported piling suitcases and furniture up against her door at night lest someone try to enter while she was asleep (*Report and Recommendations*, *supra*, note 116 at 8).

[165]Conversely, Julie, a West Indian domestic worker, described how she kept a locked suitcase containing her personal effects. One day she returned to find the lock ruptured. She discussed the matter with her male employer. This is what ensued between her and her female employer:

> The next morning she just never talked to me. It went on like that for an entire week. I felt so alone and upset. ... Well, about the second week she called me and said she understood that my suitcase was broken into. I said yes, and she said how it is quite funny and strange, and she wouldn't like to think that I broke into my own things and then try to say that it was her child who did it. I can't describe to you how I felt, I couldn't believe what I was hearing. This was impossible, because the baby was about one year old, and my suitcase had a lock on it, so it wouldn't be the baby. She said it wasn't her and on and on.
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> After that day, if I even pick up as much as a cup, I always pick up the wrong thing. Anything I did from that day on, it was wrong. Until one day she said to me I am not the person she wanted to look after her child (quoted in Silvera, *supra*, note 50 at 25).

Another woman recounted an incident where her employer "confronted" her with a bag of fruit she found in the domestic worker's handbag which was in her bedroom (Cohen, *supra*, note 92 at 37).

[166]Cohen, *ibid.*

[167]*Supra*, note 126 at 184.

found it draining to meet their constant physical and emotional demands. She could not just care for them; she had to care *about* them as if they were her own.[168] The housework was endless, monotonous, and tiring. Juggling childcare, housework, and cooking was stressful at the best of times, and the added burden of being subject to someone else's authority only compounded the strain. Though she took pride in doing a good job, she was not labouring for love; she was labouring for money.

Even her female employer seemed to forget this.[169] Delia could sympathize with Monica's indignation:

> Monica Cooper tells of her employers' habit of undressing and leaving their clothes on the floor where they step out of them instead of placing them in the available hampers. Resenting this behavior, she once left the clothes on the floor until the following day, staging a one-day strike. When she spoke with her employer about it, Monica was told that it was part of the job; the employer "always picked up after her husband ... that's the way he is, and she accepted him like that. Since she doesn't want to pick ... up, I'm sure she hires somebody who will pick ... up for her."[170]

Delia could hardly believe how her employers expected her to forsake her own welfare for the good of their family. They actually tried to discourage her from attending her evening courses, knowing full well that she would have to upgrade her skills if she wanted to obtain landed immigrant status. "We need someone who is committed to the family,"[171] they said. What that meant was that they needed her to stay home every night in case they made other plans.

Finally, and most pointedly, there was the matter of her wages. Her employer/employee agreement said she was entitled to overtime after 40 hours of work per week. She never saw any of it. After she spent the long weekend alone with the children, her employers promised to give her a few extra days off, but whenever she reminded them, they told her it "wasn't a good time for them." Her female employer did give her "gifts" in the form of old clothes that she no longer wanted. The clothes did not fit Delia, and quite frankly she

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[168]Barbara Rothman describes the intense emotional labour required by a paid caregiver in addition to the manual tasks she performs:

> To do such work ... we must call forth the emotion from our very selves. To soothe a child, it must feel cared for, nurtured, loved. To make the child feel that way, the caregiver must act like she indeed loves the child. To act so convincingly — and children are a tough audience — requires calling forth her own feelings of love, of tenderness (*Recreating Motherhood* (New York: W.W. Norton, 1989) at 207).

[169]As political scientist Sedef Arat-Koc explains:

> Domestic labour is physical as well as mental and psychological work which sustains the reproduction of labour power and the labour force. It is indispensable to the functioning of the economy. *However, intertwined as it is with intimate, personal relations, domestic labour is considered a 'labour of love.' As such, it is ideologically invisible as a form of real work, a status that is hard to change even when it is paid for* [emphasis added] (*supra*, note 80 at 38).

[170]Colen, *supra*, note 126 at 183-84.

[171]An employer related to me how, when she called an applicant's former employer for a reference, she was told that the domestic worker was "not sufficiently committed to the family" because she wanted evenings off to pursue her own interests.

did not like them, but she sensed that her employer would be offended if she refused.[172]

In terms of real wages, Delia received $200.00 per week (the equivalent of $5.00/hour for 40 hours)[173] minus deductions for room and board, income tax, unemployment insurance and Canada Pension Plan. (Delia did not understand why she had to pay into unemployment insurance or Canada Pension Plan, since she knew she could be sent back to the Philippines if she had no job).[174] Her net pay was around $135.00 per week, half of which she sent home to her family. Delia figured that she worked an average of 60 hours per week. At the usual overtime rate of time and a half, her employers owed her another $187.50 per week less deductions.

B. The Employee Who is Not One

Delia did not know where to turn for help. A preliminary obstacle for Delia was lack of information. When she registered her presence in Canada at the local Canada Immigration Centre (CIC) a week after her arrival, she was too disoriented to ask the right questions and the Immigration officer did not explain anything to her. He just requested her Employment Authorization and referred her to the local Canada Employment Centre (CEC) to learn about registering for upgrading courses. She tentatively broached a few of her concerns with the employment officer regarding the criteria for obtaining immigrant status, but the officer just thrust a pamphlet entitled *Domestic Work in Canada*[175] in her hand and told her to return to the CIC because the CEC did not deal with immigration matters. The first time she went to the CIC she had to line up for hours just to get in the door. Where would she find time on a week-day to do that again?[176]

Eight months earlier, when Delia's employers arrived at the same CEC to inquire about hiring a domestic worker, the officer provided them with an infor-

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[172]See Glenn, *supra*, note 139 at 66; Rollins, *supra*, note 145 at 189-94. Some employers tacitly or explicitly treat "gifts" of used clothing or leftover food as payment in kind (*ibid.*).

[173]Noreen, a West Indian domestic worker, describes how her employer did not even pay her the minimum wage:

> You know how much money I get? I shame to tell anyone, I don't even tell my friends for fear they laugh at me. I get $260.00 a month, she claim she take out money for my food and board. I don't question it though, because out of it I gets to send home a little something for my two little ones. I just play dumb, for I know that I am suppose to get around $500.00 a month by law, but I can't afford to cause any disturbauce now. So I keep quiet (quoted in Silvera, *supra*, note 50 at 19).

See also Molly where the employer paid less than the minimum wage, saying that the domestic worker was "on probation" for a year (*ibid.* at 69); Lucy, a West Indian domestic worker, quoted in *Recommendations for Change*, *supra*, note 84 at 3 (employer did not pay domestic worker at all).

[174]Visitors cannot collect unemployment insurance or Canada Pension. If they become unemployed, they must obtain another employment authorization for another job or leave the country. Revenue Canada estimates that foreign domestic workers contributed over $11 million in Unemployment Insurance and Canadian Pension Plan premiums between 1973 and 1979 (Arat-Koc, *supra*, note 80 at 48-49).

[175](Ottawa: Minister of Supply & Services Canada, 1989).

[176]INTERCEDE reports eight hour line-ups at the Toronto CIC office. Domestic workers found the office inaccessible by telephone (*Report and Recommendations*, *supra*, note 116 at 16).

mation kit entitled *Hiring Foreign Household Domestic Workers*[177] containing material on wages, working conditions, deductions, employer obligations and offices to contact with specific enquiries. No comparable kit exists for domestic workers.

It would appear that employment agencies also do not go out of their way to provide domestic workers with information or support. When Delia phoned one to ask how to deal with her employers' failure to abide by the terms of her employer/employee agreement, the woman was polite and sympathetic, but refused to intervene on Delia's behalf. What the agencies knew and Delia did not was that while her agreement guaranteed her $5.00/hour plus overtime, provincial legislation mandated only $40.00/day regardless of hours.[178] The discrepancy between provincial legislation in British Columbia and the employer/employee agreement generates a false ambiguity regarding the rules meant to govern wages and working conditions. Obviously, the provincial minimum standards do not preclude employers from undertaking and being bound by terms and conditions more favourable to domestic workers. Nevertheless, Vancouver employment agencies seem unwilling to acknowledge employers' contractual obligations, as these remarks indicate:

> We just tell the families that if you expect them to work over 40 hours give them extra [money] or give them extra free time ... um, it creates a lot of concerns for families — it's crazy — it's really unclear. What was happening before (the new employer/employee agreement) was that nannies were working 15 hours a day for minimum wage [*ie.* the daily minimum wage of $40.00]. I think they brought the new agreement in to change that ... I don't know if anyone enforces it. I've never known a nanny to enforce it yet. No one really knows what to do.
> when they sign the contract it tells them that they will be working so many hours. If they get here and they get wise, and talk to their friends they can fight for (overtime). Chances are they'll lose their job and they'll go look someplace else 'cause the employers won't want to pay it.
>
> Manpower [Employment and Immigration] says domestics get overtime, but you call the Department of Labour [British Columbia Ministry of Labour] ... they say they are not entitled to overtime pay. So there is some contradiction there.... It is usually a 9 or 10 hour (work)day. You just can't get around that. I just say, "well pay her a little more or give extra time off." It is a give and take situation ... I feel in most cases that it evens out.[179]

According to the West Coast DWA survey, here is how it "evens out:" in 63% of employment situations, workers received no compensation whatsoever for work in excess of eight hours daily. Delia falls into this category. Of those who did receive payment, only one respondent, or 5.0%, received it at the rate of time-and-a-half. The rest received the regular hourly rate, less than the hourly rate, erratic payments that varied according to the employer's whim, or time-off in lieu of monetary compensation.[180]

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[177]*Employment Manual, supra*, note 94 at EA 17.42(11)(a).

[178]See note 95ff and accompanying text.

[179]Quoted in DeVan, *supra*, note 54 at 76-77.

[180]*Summary of Results, supra*, note 65 at 7-8. One worker actually received double time (*ibid.* at 8).

In theory, Delia's counterparts in Ontario ought to benefit from their legislated right to minimum wage and overtime, but in practice few fare better than Delia. According to the INTERCEDE study, 44% of domestic workers received no overtime compensation whatsoever. Twenty-two percent received payment that amounted to less than their legal entitlement. A third received $7.50/hour or the requisite time-off in lieu.[181]

If employment agencies in Canada are diffident defenders of domestic workers' rights, it may be because they align themselves with their employer-clients.[182] Indeed, the two groups actively join forces in the Canadian Coalition on In-Home Child and Domestic Care, a lobby group formed to promote their common interests.

An additional source of some agencies' indifference toward the plight of domestic workers may be the duplicitous conduct of unscrupulous agencies toward domestic workers, some of which Delia has experienced first-hand. Fraudulent activities by agencies abroad and in Canada include bringing over domestic workers for non-existent employers in order to have a "stable" of women available in Canada who they can dispatch to clients on short notice; counselling women in their overseas offices to misrepresent their marital status; charging domestic workers illegal agency fees;[183] attempting to bind the domestic worker to their particular agency; and even requiring domestic workers to sign a separate contract (in addition to the employer/employee agreement) that typically stipulates longer hours, lower pay, and a certain number of nights of "free" babysitting.[184] Although it is not suggested that most or all employers deliberately misinform, mislead, or take advantage of domestic workers' ignorance of their contractual duties and entitlements, it can hardly be gainsaid that employers have no interest as a class in keeping domestic workers apprised of their rights.

Advocacy groups working on behalf of domestic workers, such as Vancouver's West Coast DWA and Toronto's INTERCEDE,[185] devote much of their resources to supplying their clients with information about immigration and

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[181]*Report and Recommendations, supra*, note 116 at 6. With respect to the option of overtime pay versus time-off, 75% of respondents in the INTERCEDE survey who were compensated for overtime work reported that their employer decided unilaterally what form the remuneration would take (*ibid.* at n. 8). This presents particular problems for women like Delia, who send money back to their families. The additional money earned from overtime may be more important to them than the time-off.

[182]West Coast DWA reports that some agency agreements with employers provide that if the domestic worker does not "work out" within three months, the agency will replace her at no additional charge to the employer.

[183]INTERCEDE, "Watch Out for Illegal Agency Fees" *Domestics' Cross-Cultural News* (February 1991) 1.

[184]*Recommendations for Change, supra*, note 84 at 15-16. Pat Henry, Vice-President of the Canadian Coalition for In-Home Child and Domestic Care, says that "cleaning up" the industry is one of her association's mandates (*supra*, note 88).

[185]Similar organizations also exist in Montreal (Association du personnel domestique) and Winnipeg (The Mary Poppins Group).

employment standards.[186] In addition, the West Coast DWA recently published a frank, thorough and accessible guide entitled *Domestic Worker's Handbook*.[187] It contains information about the FDM program, requirements for landing, how to change employers, labour standards, how to deal with government authorities, and a directory of social service agencies. West Coast DWA has offered to make the guides available to the government for distribution to applicants abroad or newly arrived in Canada, but the response has been negative.[188]

Unfortunately, Delia has not heard of the West Coast DWA. Neither the immigration officer, the employment officer, nor the recruitment agency mentioned it to her. She did decide to broach the subject of her wages with her employers though. She approached the woman and pointed out that she and her husband were not abiding by the employer/employee agreement. "Oh that," the woman replied, "that's just a formality. The government doesn't care what we do as long as we sign the paper."[189] Besides, she added, she and her husband were mortgaged to the hilt, the economy was in a slump, and Delia was being plain unreasonable if she thought she should be paid overtime every time she wiped a runny nose or washed a dish in the evening. Furthermore, she should be grateful to them for bringing her to Canada. Didn't she know they could have her deported?

Delia retreated. She was terrified of being deported.[190] Still, she could hardly believe that the contract was meaningless. Certainly nobody told her that when she signed it![191] Her worst fears were confirmed when she finally found the time to go to the CIC.

The officer tried to explain to her how impractical it would be to turn the agreement into a legal contract. A household cannot be run like a factory, after all. It was more like a family, where everyone makes a few compromises and takes care of one another. Every employer and domestic worker ought to have

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[186]INTERCEDE reports that 59% of its services are expended on immigration-related activities and 32% involve employment standards (INTERCEDE, *Report to the 1990 Annual General Meeting* by Felicita Villasin (Toronto: INTERCEDE, December 1990) [unpublished] at 11 (covering the period January-December 1989 and January-September 1990)). West Coast DWA estimates that 75% of the requests it receives are for general immigration and employment information (*Recommendations for Change, supra*, note 84 at 3).

[187]Kyong-ae Kim, *Domestic Worker's Handbook* (Vancouver: Legal Services Society of B.C./West Coast Domestic Workers Association, 1990).

[188]Interview with Lois Shelton, staff lawyer, West Coast DWA (25 January 1991) Vancouver.

[189] She knew exactly what I supposed to get, right, but she never paid it. When I had the second extension [of the employment authorization], I said to her, 'How come you never mention to me about the salary at the Manpower Department?' and she said, "Well, they don't care about what you pay once you put what they want on the form" (quoted in Epstein, *supra*, note 133 at 25).

[190]Employers do threaten domestic workers with deportation for "causing trouble" and many domestic workers believe them (Seward & McDade, *supra*, note 55 at 45). See also Silvera, *supra*, note 50, *passim*; "Domestics Tell of Abuses," *supra*, note 138. As Walzer observes of guest workers, "[d]eparture is only a formal option; deportation, a continuous practical threat" (*supra*, note 12 at 59).

[191]"Slave labor exists ... I thought I signed a real contract in Switzerland," said former domestic worker Silvia Tobler (quoted in Mia Stainsby, "Powerless: The Plight Facing Foreign Domestic Workers in B.C." *Vancouver Sun* (10 November 1989)).

the flexibility to work out their own best arrangement without worrying about the government or the courts invading people's private lives. In any case, if she was really upset she should contact the Employment Standards Branch of the provincial Ministry of Labour.

The enforceability of the employer/employee agreement has never been subject to court challenge. For its part, Employment and Immigration will investigate situations where the domestic worker is accused of misconduct or failure to perform her duties. If an immigration officer decides to conduct an inquiry and makes an adverse finding, the domestic worker may be deported.[192] Conversely, the government has never yet enforced the provision of the agreement stating that employers will be denied future requests for domestic workers if they do not abide by the terms of the contract.[193]

Treating the employer/employee agreement as merely hortatory is defended by Laura Chapman, Director of Immigration Policy for Employment and Immigration, who insists that "[i]f there are concerns about wages, or concerns about problems with working conditions, then there are provincial labour codes and those can be used to defend someone."[194]

Delia was too demoralized and bewildered to take any interest in the vagaries of federal/provincial jurisdiction. She never did contact the Employment Standards Branch, but it would hardly have mattered if she did, given the minimal protection guaranteed to her under the British Columbia *Employment Standards Act*.[195] Had she been in Ontario she would have been legally entitled to more, but in practice few Ontario domestic workers lodge formal complaints with the provincial Employment Standards Branch.[196] There are at least two rea-

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[192]The *Immigration Manual (Examination and Enforcement)* instructs immigration officers to investigate domestic workers dismissed for serious reasons (for example, child abuse, theft, gross neglect, etc.) and to take action requiring the domestic worker to depart Canada "if on balance it is concluded that there are legitimate reasons not to allow the domestic to continue to work within the context of the program" ((Ottawa: Minister of Supply & Services Canada, 1984) at IE 9.16(7)(d) (the IE (Examination and Enforcement) portion of the *Immigration Manual* contains guidelines and procedures dealing with port of entry examination of all persons seeking to enter Canada as immigrants, visitors, or refugees. It also contains information dealing with the various enforcement processes (investigation and arrest, inquiry, detention and removal)).

Khan v. *Canada (Minister of Employment and Immigration)* (1989), [1990] 1 F.C. 30, 30 F.T.R. 161 [hereinafter cited to F.T.R.], illustrates a case where the Federal Court found that investigators "wielded their formidable state power too callously" against a domestic worker (*ibid.* at 167). Immigration officials suspected Ms Khan, a Trinidadian domestic worker, of working in a household that was not the place of residence she had given immigration authorities (*i.e.* "living-out"). Immigration officials exercised their statutory discretion to arrest and detain where "the person poses a danger to the public or would not otherwise appear for the inquiry or for removal from Canada." Though she was detained only briefly, the Court was satisfied that the entire procedure was callous and unnecessary given other alternatives open to immigration authorities. Ms Khan was eight months pregnant at the time.

[193]Interview with Barbara Stewart, Canada Employment and Immigration Commission (Policy Branch) (2 May 1991) Ottawa. The goverument's position is that the *Immigration Act* confers no authority on officials to deny requests by Canadian employers.

[194]Quoted in "Living on the Job," *supra*, note 58.

[195]S.B.C. 1980, c. 10.

[196]*Supra*, note 187 at 10.

sons why a foreign domestic worker may be reluctant to do so, according to Suzanne Silk-Klein, Director of Policy for the Ontario Ministry of Labour. First, domestic workers "often come from countries where they have no reason at all to trust government officials."[197] Second, like most other employees, domestic workers do not typically lodge complaints about an extant employment situation[198] because of the strain it adds to an already tense working environment. The stress is exacerbated in the domestic context because of the live-in requirement. As Silk-Klein concedes:

> How can you go on working? How can you go on living side-by-side with somebody when you've suddenly appeared on opposite sides of a referee. ... very few of us live and work in the same place and far fewer of us work in the employer's house. They can't get away from each other. It's a very difficult relationship.[199]

C. *Changing Employers*

Delia's employment situation did not improve. When she described her circumstances to another domestic worker she met in the park, the other nodded sympathetically and related her own experience:

> Every day and every night I prayed to God to get me out of that house. My room in the basement was so cold that I had to sleep with my clothes on to keep warm. I didn't know that I could change employers.[200]

Neither did Delia. Before she came to Canada, she heard a rumour that any domestic worker who quit her first employer in the first year would be deported.[201] She knew of a similar "one year rule" in Hong Kong, and she didn't want to take any chances.[202]

Though the FDM scheme permits domestic workers to change employers, they cannot do so at will. Unlike ordinary workers, Delia must first present grounds that will satisfy an immigration officer that she is entitled to seek another position. The *Immigration Manual (Examination and Enforcement)* states that a domestic worker may change employers for various reasons: economic improvement, personality clash with the employer, breach of the employer/employee agreement by the employer, or "if either one does not live up to the other's expectations."[203] Immigration officers are instructed that refusal to issue the domestic worker a new employment authorization should be based on "evidence of an inability or unwillingness to perform satisfactorily, of misconduct or of gross incompetence on the part of the domestic."[204] A finding

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[197]Quoted in "Living on the Job," *supra*, note 58.

[198]Interview with Suzanne Silk Klein, Ontario Ministry of Labour (Policy) (16 October 1990) Toronto.

[199]Quoted in "Living on the Job," *supra*, note 58.

[200]Judith, a Filipina domestic worker, quoted in *Recommendations for Change*, *supra*, note 84 at 11.

[201]This rumour was reported to INTERCEDE by several domestic workers in Toronto (*Report and Recommendations*, *supra*, note 116 at 15).

[202]Domestic workers in Hong Kong are not permitted to leave their first employer until completion of one year of service (Aguilar, *supra*, note 64 at 10).

[203]*Supra*, note 192 at IE 9.16(7)(a).

[204]*Ibid.* at IE 9.16(7)(c).

of this nature may in turn form the basis of an inquiry leading to deportation proceedings, though this rarely happens at present.

Government control over domestic workers' mobility is subject to three possible justifications. First, a domestic worker is not the best judge of her own best interests. That is to say, she should be satisfied with her present job, even if she is not. Second, the best interests of the domestic worker should be subordinated to employers' need for employee stability. Third, the government has a legitimate interest in monitoring the movements of domestic workers in order to deter fraudulent use of employment authorizations. The first reason smacks of paternalism at its worst. The second violates the most basic precept of contractual remedies, namely that compelling specific performance of a contract of personal service is tantamount to enslavement. Finally, the governmental interest in monitoring domestic workers may warrant some form of passive registration system; it cannot, however, justify endowing the government with authority to decide whether a domestic worker can switch employers. Indeed, immigration officers have been known to actually deny permission to change employers even where the decision to leave was mutual and the domestic worker already had an offer from another employer.[205]

A domestic worker who requests permission to change employers is usually asked to produce a "release letter" from her current employer commenting on "the quality of the domestic's work and the reason for leaving her employment."[206] Some employers resent a domestic worker's decision to leave and simply refuse to proffer the letter. Filipina domestic worker Yolanda was threatened with deportation when she requested a letter from her employer: "[t]hey said they knew someone in Immigration,"[207] she related.

Delia did not realize that she needed a letter. In fact, when the immigration officer asked her for it, she wondered silently why she had to be "released" — what was she, a prisoner?[208] She explained as best she could why she wanted to leave her present employers: they paid no overtime and she was always "on call." Not only did they refuse to contribute to her tuition fees for her evening course, they expected her to miss classes when they scheduled an engagement for the same night.

The officer listened to her reasons, picked up the phone, and called her employers to get their side of the story. He hung up the phone, turned to Delia and reported that her employers called her lazy and uncommitted to the family. They also suspected her of stealing from them, and were thinking of firing her anyway. Delia fiercely denied the accusations, to which the officer replied,

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[205]*Recommendations for Change*, *supra*, note 84 at 12.

[206]*Immigration Manual (Examination and Enforcement)*, *supra*, note 192 at IE 9.16(7)(b). The title has recently been changed to "letter of reference," but the connotations of bondage remain apposite.

[207]Quoted in Stainsby, *supra*, note 191.

[208]One of the placards carried by domestic workers in the 1989 International Women's Day Parade in Toronto read "We're not prisoners. We don't need to be released" ("Living On the Job," *supra*, note 58).

"[w]hy should I believe a foreigner over two Canadian citizens?"[209] In the end, he grudgingly acceded to her request to change employers though he warned her that if she did not secure another position quickly, she might jeopardize her immigration status. He was clearly disgruntled, however, and he admonished her to try harder next time if she hoped to remain in the country.

It has been almost two months now since Delia found another job with Mary and Dan, a young couple who seem much more considerate than her previous employers. Her days off are respected (she now goes away for the weekend as often as possible) and they are generally supportive of her educational pursuits, except this last week when they asked her to work late. ... She hopes things work out with them, because she is worried that she cannot afford to switch employers again.

When a domestic worker applies for landed immigrant status, she must produce a satisfactory employment record to Immigration authorities. Having more than three employers in two years may jeopardize a domestic worker's chances of success. This is the perception of domestic workers themselves and of the organizations that assist them.[210] One horror story reported in the press concerued a woman who had changed employers three tiines and who was warned by an immigration officer that she would have to leave Canada if she switched employers again. On the first day with her fourth employer, she was raped. She endured continued abuse for four months for fear of being ejected from the country if she tried to switch employers again.[211]

It is much easier to blame domestic workers for creating the bad employment relationships that precipitate their departure than to confront the possibility that the inherent conditions of live-in domestic work potentiate exploitation.[212] In theory, the ability of a domestic worker to quit should help to balance

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[209]Unidentified immigration officer quoted in *Recommendations for Change*, *supra*, note 84 at 16; INTERCEDE also reports bias against domestic workers' credibility (*Report and Recommendations*, *supra*, note 116 at 17). In a similar vein, bell hooks describes an incident in the early twentieth century wherein a young, newly married Black woman employed as a cook testified in court that she was dismissed because she spurned the husband's sexual demands. The husbaud denied the accusation. The judge remarked that "[t]his court will never take the word of a nigger against the word of a white man" (*supra*, note 148 at 56-57).

[210]*Report and Recommendations*, *supra*, note 116 at 12; Kim, *supra*, note 187 at 208.

[211]*Supra*, note 6.

[212]I adopt here the definition of exploitation provided by Iris M. Young as "the domination [that] occurs through a steady process of the transfer of the results of labour of some people to benefit others" ("Five Faces of Oppression" in Iris M. Young, ed., *Justice and the Politics of Difference* (Princeton: Princeton U. Press, 1990) 39 at 49). Young goes on to give an account of exploitation generally as well as gender and race-specific exploitation (*ibid.* at 48-53). The former consists of the unacknowledged and/or undercompensated physical and emotional energy traditionally expended by women to benefit others, usually men. Young locates race-specific exploitation in, *inter alia*, the institution of "menial" labour and notes that "[w]herever there is racism, there is the assumptiou, more or less enforced, that members of the oppressed racial groups are or ought to be servants of those, or some of those, in the privileged group" (*ibid.* at 52).

If the relation of domestic worker to employer is intrinsically exploitative, it is of no particular moral consequence whether she consents at the outset to her wages and working conditions because she prefers them to her available alternatives. Though I make an argument to that effect in my conclusion, I believe it is possible to rest a narrower and perhaps less contentious claim of

bargaining power between employer and employee. After all, parents who suddenly find their domestic worker gone are in a very difficult situation. Unless they can hire a foreign domestic worker already in Canada, they face a delay of anywhere from two months to almost two years in order to sponsor another.[213] Furthermore, parents entrust domestic workers that which is most precious to them — their children — and they often fear that high turnover among childcare providers will be detrimental to their childrens' development. Finally, training a new domestic worker can be stressful, disruptive and costly to the mother, who is usually the one to take time out of her work to do it. As one woman employer declares:

> While I've never developed an ulcer over work, I'm on my way to one over housekeepers. I think about housekeepers all the time. There has not been a day since Jean was born that I don't have insecurities about losing help.[214]

In practice, however, insecurities about the loss of adequate childcare have not translated into systemic amelioration of wages and working conditions of domestic workers. Conversely, legitimate apprehension of "hassles" with Immigration authorities does substantially constrain the exercise of a domestic worker's power to transfer her services to another employer. Employers know this, and so do the agencies:

> The chances of having them fill their contractual obligations are much better, uh, the Filipino and Jamaican women, because most of them, 99.99% of them are working towards a future in Canada. They will be more loyal and more conscientious.[215]

The recruitment agency casts the issue in terms of the domestic worker's fidelity; it might be more aptly framed as an issue of her exploitability.

Mary Banasen, a Filipina ex-domestic worker and current activist with the West Coast DWA acknowledges that the acculturation of Filipino women discourages them from challenging employers' authority. In her view however, fear of jeopardizing one's immigration status is the dominant factor constraining the Filipina domestic worker's assertion of her rights.[216] The same is true for West Indian domestic worker Hyacinth:

> Right now I get $710.00 month, which is what I am suppose to get as Manpower say. But when I took the job, I wasn't told that I was suppose to clean and wash clothes too for that money. I am afraid to go and complain to Manpower, because this is my third job, and they watch this sort of thing, maybe if I go and complain

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exploitation on the fact that many domestic workers do not even receive the benefits of the employer/employee agreement to which they putatively consented, and are essentially paralysed by their precarious immigration status from asserting their rights. Surely this state-induced vulnerability undermines any presumption of voluntary and meaningful consent.

[213]Immigration advises prospective employers that the wait varies from 2-4 months for a Western European to 18-20 months for a Filipino (Canada Employment and Immigration Commission, *Domestic Application Kit* (Ottawa: Minister of Supply & Services Canada, 1990)). One beleaguered mother began the sponsorship process as soon as she discovered her pregnancy. Three months after the birth, the domestic worker still had not arrived. See *supra*, note 5.

[214]Hertz, *supra*, note 141 at 176.

[215]DeVan, *supra*, note 54 at 89.

[216]*Supra*, note 92.

> they might tell me to go home. They might think I am a trouble-maker. I am just sticking it out till I get my landed.[217]

Racism certainly shapes the expression and extent of exploitation of women of colour. As suggested earlier, Filipino and West Indian women are often worked harder and longer than white women for the same monthly salary, which effectively depresses the hourly wage of women of colour. Overt racism emerges in remarks, gestures and the particularity of sexual abuse endured. Banasen cautions, however, that white domestic workers are also vulnerable to exploitation, given the nature of the live-in situation. That is to say, employers frequently attempt to take advantage of white domestic workers, though the absence of a racist "spin" may effect both the manner and intensity of the subordination. In Banasen's view, the paramount reason why women of colour suffer the worst abuse is that white women are proportionately less likely to be interested in immigrating, and therefore, less inclined to tolerate mistreatment.[218]

Those responsible for the FDM program and for enforcement of employment standards legislation may reply that the rules contained in the employer/employee agreement or the applicable employment standards legislation express the aspirations and best intentions of policy makers with respect to the treatment of foreign domestic workers. When the government abstains from intervention in the "private" realm of the family (either through the absence of substantive protection or lack of enforcement) however, existing power relations are reproduced and reinforced. Battered women know this all too well. In the case of the foreign domestic worker, the definition of the household as "private" is even more problematic; it is, after all, her workplace. As such, it is a site of wage labour transactions and should be well within the parameters of state regulation. Privileging a definition of the household as an affective family unit (which is its primary characteristic from the employer's perspective) as opposed to a locus of market transactions (which is its most salient feature to a domestic worker) effectively denies the domestic worker her identity as a worker and the legislated protections that normally attend that designation.

In addition to playing out on the "public/private dimension" (or, to be more specific, the market/family distinction),[219] the rationale for excluding domestic workers from basic worker protections reverberates along the alien/citizen axis. Sedef Arat-Koc argues that "separation of people into 'citizen' and 'non-citizen' categories, into 'insiders' (to whom rights apply) and 'outsiders,' serves to legit-

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[217]Quoted in Silvera, *supra*, note 50 at 59.

[218]*Supra*, note 92. Domestic workers in South America and Britain are primarily drawn from the majority race (often from rural or economically depressed regions), and there is no question that they too are subordinated, exploited and oppressed. See Chaney & Castro, *supra*, note 126 *passim* (domestic workers in Latin America and the Caribbean); "Nannies are 'Slave Labour' to the Rich" *The [London] Independent* (5 January 1990) A6; Thomson Prentice, "Business Couples Underpay their Nannies and Cleaners" *The [London] Times* (5 January 1990) 7 (abuse of domestic workers from Northern England who migrate to homes in the more affluent south).

[219]For the classic elaboration of the market/family dichotomy, see Frances Olsen, "The Family and the Market: A Study of Ideology and Legal Reform" (1983) 96 Harvard L. Rev. 1497.

imize inferior conditions and lesser rights for the latter group."[220] In other words, domestic workers are especially exploitable at least partly because they are disenfranchised, and their disenfranchised status operates in turn to facilitate their exploitation.

The exclusion of domestic workers from the body politic is not a new phenomenon. Native-born domestic servants were denied the franchise in western Europe until the late nineteenth to early twentieth century on the grounds that "anyone in this dependent child-like employment was not a responsible adult, hence any extension of suffrage to them would merely reinforce the political power of the established elites."[221] Today, their exclusion emanates from a different source, but the effect is the same.

As the foregoing discussion suggests, most domestic workers have minimal entitlements and are effectively discouraged from asserting what few rights they do have. Professor Martha Minow asserts that this pattern challenges us to reassess the genuine purpose of the laws at issue:

> When the unenforceability of a norm stems from the burdens it places on those supposed to enforce it, a problem in implementation — or a problem in the feature of the design itself — emerges. Either way, enforcement difficulties modify the norm and point toward the real meaning of the law.[222]

In the case of the FDM program, the real meaning of the law appears to be that employers may exploit domestic workers with impunity, though the government prefers that they behave otherwise. Christina Davidson, adviser to the West Coast DWA, puts it this way:

> It's not that all employers are mean, nasty, dirty, evil people in comparison to lovely domestic workers. The point is, the way the system is set up, it's very easy to abuse domestic workers because they are in a powerless position.[223]

That many (perhaps most) employers choose not to mistreat their domestic workers does not negate the availability of the option. Seen in this light, the claim by Nadine Gomm of Employment and Immigration that she receives few complaints from domestic workers because "most are happy with their situations"[224] rings hollow.

V. The Price of Membership

> I just hope that my landed come through soon. You know sometimes I feel like a slave, sometimes I dream about freedom. You know, I wish I could move where I want to, work in whichever job I want, and have a little apartment of my own.
>
> –Noreen, a West Indian domestic worker[225]

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[220]*Supra*, note 80 at 48.

[221]Theresa McBride, *The Domestic Revolution* (New York: Holmes & Meier, 1976) at 56.

[222]Book Review of *The Civil Rights Society: The Social Construction of Victims* by Kristin Bumiller (1988) 43 U. Miami L. Rev. 493 at 496.

[223]Quoted in Stainsby, *supra*, note 191.

[224]*Ibid.* Ms Gomm admitted that no records of employee complaints were kept.

[225]Quoted in Silvera, *supra*, note 50 at 20.

After completing two years of live-in domestic work, Delia will be eligible to apply for landed immigrant status from within Canada.[226] She will be assessed by a CIC officer whose discretion to recommend in favour of landed status is guided by the following policy objective:

> The Foreign Domestic program is premised on a two-year assessment period which provides an opportunity for candidates to work in Canada and to upgrade their skills. Provided the foreign domestic appears able to establish in Canada, is not inadmissible and has provided satisfactory service while in Canada, a positive recommendation should be made.[227]

In order to succeed, Delia must know what is expected of her and how well she is progressing. Ignorance will cost her more than back wages and overtime; it may cost her her future in Canada. In *Aboc* v. *Canada (Minister of Employment and Immigration)*,[228] immigration officials gave the applicant no explanation of the FDM program requirements when she entered Canada, made negative interim assessments which were not communicated to her, and ultimately rejected her application for landed immigrant status. Jerome J. rebuked the respondent for its callous treatment of the applicant, noting that at no time was she informed of "what she had a right to expect in terms of upgrading herself in the foreign domestic programme." He went on to say:

> Certainly, if she was not given even this most fundamental information, there couldn't be any pretence that she was counselled. It is obvious and it is admitted that counselling to assist her to achieve, to put together a programme of self-sufficiency, is an essential and very important element of the programme. There could never be even the slightest pretence that she was given anything in the nature of counselling that would qualify to fulfil that programme obligation.[229]

Inadequacy of official information and orientation services persists.[230] Delia's best hope for obtaining accurate information is still through informal friendship networks and community organizations.

While each domestic worker may be assessed by an immigration officer at the end of her first year, the *Immigration Manual (Examination and Enforcement)* instructs officers that a "first year assessment is to be conducted only where the immigration officer has evidence that work performance is unsatisfactory; adverse information has come to the attention of the immigration officer; or the employee is not living in the same residence as the employer."[231] Since the criteria for obtaining permanent residence are broader than these three factors, a domestic worker may have her first year assessment waived even in circumstances where she would benefit from counselling for immigration purposes.

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[226]The domestic worker must also pay a non-refundable fee of $125.00 for an application for permanent residence.

[227]*Immigration Manual (Examination and Enforcement)*, *supra*, note 192 at IE 9.06(5).

[228](1987), 7 F.T.R. 236 [hereinafter *Aboc*].

[229]*Ibid.* at 236. See also *Sharma* v. *Canada (Minister of Employment and Immigration)* (29 May 1985) T-40-85 (Fed. T.D.); *De Gala* v. *Canada (Minister of Employment and Immigration)* (1987), 8 F.T.R. 179; *Karim* v. *Canada (Minister of Employment and Immigration)* (1988), 21 F.T.R. 237, 6 Imm. L.R. (2d) 32.

[230]*Report and Recommendations*, *supra*, note 116 at 15.

[231]*Supra*, note 192 at IE 9.16(3)(a).

When conducting the second year assessment, Immigration officers are instructed to consider seven factors in determining whether a foreign domestic worker "has, or is reasonably likely to become successfully established and self-sufficient."[232] The first is a satisfactory employment history as a domestic worker. I have already alluded to the pressures exerted on domestic workers by the dim view Immigration takes of women who have had more than three employers.[233] The second is language proficiency; although this is a criterion for entry in the first instance, progress is regarded "as a significant indicator of actual or potential successful establishment."[234]

The third factor is financial security. Domestic workers are "expected to be capable of managing their financial situation,"[235] taking into account their earnings, expenses, financial responsibilities toward dependants and possible assistance from relatives in Canada. What this means in practice is that domestic workers should be able to show a balanced budget and savings in the bank. Between sending money home to relatives and paying foreign student fees for her upgrading courses, a woman in Delia's position will find it extremely difficult to accumulate savings out of her minimum wage. In *Aboc*, Jerome J. noted that the applicant's ability to save any money at all was commendable and rather remarkable:

> I really wonder how many skilled workers in Canada can claim that they have savings that aren't under attack from the credit card companies. She has some money in the bank. It doesn't matter how much it is, she has some.[236]

Skills upgrading is one of the most critical aspects of the evaluation. Although it was once mandatory that domestic workers enrol in training courses while in Canada, the government now equivocates on the question of whether domestic workers must upgrade.[237] In *Aboc*, Jerome J. admitted that he could not

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[232]*Ibid.* at IE 9.16(3)(e), App. C.

[233]*Supra*, notes 210, 211, 217 and accompanying text.

[234]*Immigration Manual (Examination and Enforcement)*, *supra*, note 192 at IE 9.16(3)(e), App. C.

[235]*Ibid.*

[236]*Supra*, note 228 at 238.

[237]The *Immigration Manual (Examination and Enforcement)* suggests that skills upgrading is optional:

> Of significance under this factor is whether the domestic has successfully completed any skill upgrading or training courses during the period of stay in Canada when it was advised that such was necessary during the counselling interviews. Such courses may be as a result of formal employer/employee agreements or undertaken at the initiative of the domestic. It will be expected that such courses would result in an improvement in the domestic's ability to perform the duties of the current occupation; however, the development or upgrading of non-related or latent skills should also be acknowledged, particularly as they may relate to alternate employment which may be pursued in the future. The successful completion of any such course should be documented by presentation of certificates or attendance records. *Of course, the above is based on the assumption that upgrading was required. It may very well be that the person's qualifications were initially strong enough that the requirements for landing can be met without specific upgrading* [emphasis added] (*supra*, note 192 at IE 9.16(3)(e), App. C).

But see the *Employment Manual*, *supra*, note 94 at EA 17.42(5)(b):

discern the government's position, and worried that "[i]f I am left in some uncertainty ... surely the programme itself, must recognize that it will be infinitely more puzzling to the very kind of person the programme is designed to attract."[238]

The government's equivocation is easily fathomed. On the one hand, it is politically unwise for the government to admit to employers that its own criteria for landing compel domestic workers to learn another marketable skill,[239] since employers express genuine consternation at the rate at which domestic workers exit the occupation as soon as practicable. On the other hand, since domestic work is generally a dead end, low paying job, the prospects of becoming economically self-sufficient as a domestic worker, particularly if one has dependants, seems rather slim.[240] Above all, the government has no interest in granting permanent resident status to persons who it believes will be unable to support themselves and will consequently make demands on the state's resources. Thus, even domestic workers who genuinely enjoy their work are best advised to learn another occupation.

Though the government may dither on paper, in practice its priorities are clear. Failure to upgrade job skills was cited as a factor for each domestic worker rejected for landed status in Ontario between June 1987 and May 1988. In addition, immigration officials who give a domestic worker a negative assessment on her initial application for landed status will often grant her a year's probation for the express purpose of upgrading her skills. Finally, lack of skills upgrade also figured prominently in adverse decisions subsequently challenged in court.[241]

The overarching requirement of self-sufficiency belies the government's claim that upgrading is not necessary. The message conveyed by government policy in action is this: domestic work is good enough for "outsiders," but if a foreign domestic worker wants a chance to become an "insider," she had better prove that she can do something other than domestic work. Thus, the rallying cry "good enough to work, good enough to stay" is as piquant today as it was in the period leading up to the advent of the FDM program. In a real sense, it is not domestic workers who are being permitted to land in Canada. It is women

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Domestics who enter Canada as temporary foreign workers seeking to gain permanent resident status are given the opportunity to gain permanent resident status after working in Canada for two years, *provided* they undertake sufficient training or upgrading during those two years to enable them to successfully establish themselves in Canada.

[238]*Supra*, note 228 at 237.

[239]It is possible but peculiar for a domestic worker to take courses to upgrade her childcare skills. First, she is presumed to have the requisite training and experience as a condition of entering the FDM program. Secondly, it is unlikely that her improved skills would garner her a higher income, or open up to her new career options.

[240]Most domestic workers are receptive to upgrading their skills, even though many of them are highly educated. They do complain about the conflicting pressures that employer demands and the upgrading requirement exert upon them (*Report and Recommendations, supra*, note 116 at 13-14).

[241]These statisties on foreign domestics refused for landing are based on unofficial data collected from the provinces by the Minister of Employment and Immigration (handwritten transcription on file with author). See also cases cited *supra*, notes 228-29.

who have been domestic workers but are about to become something else who are allowed to cross that threshold.

The easy rejoinder is that Canada has no duty to accept those who will be financial burdens on the state. There is something disingenuous, if not downright repugnant, about this argument. In a free market for labour, few people would enter the occupation of live-in domestic work for the wages and working conditions employers currently offer. The FDM scheme responds to this scarcity by creating a population of women held captive in live-in domestic work by their immigration status. This creates a buyers' market and in turn artificially depresses wages. When it comes time to evaluate these women as potential members, the government then assesses them as poor candidates *qua* domestic workers because the work they do is worth so little.

The implications of this attitude extend beyond the domestic workers themselves and speak to the tenuous and contingent status of Canadian women who do not work outside the home. Political theorist Carole Pateman argues that civil society is constituted through and because of the relegation of women to the domestic sphere. Central to her work is the thesis that the social contract is predicated on women entering the marriage contract, the terms of which in turn foreclose on women becoming parties to the former.[242] Women who fulfil the traditional terms of the marriage contract by bearing and rearing children and sustaining the household are thus barred from membership in civil society. The exclusion of domestic workers as an occupational group from membership in the Canadian polity stands as a sobering instantiation of her thesis. The Canadian born housewife may never have occasion to question whether society would welcome her as a member on the basis of the services she has to offer,[243] yet it is instructive to note that her skills and aptitudes would almost certainly not get her past the threshold were she an external applicant. How meaningful is the citizenship status of any housewife if foreign women who do similar work for money are considered unworthy of membership?

The fifth factor relevant to an application for landing is labelled "social adaptation." This is meant to refer to the social integration of the domestic worker into the larger community, as evinced by membership in "ethnic, cultural, religious or recreational organizations" or, on a more personal level, the development of an "interest in current events or development of a hobby, craft or skill."[244] As with skills upgrading, the difficulty with meeting this require-

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[242]*The Sexual Contract* (Stanford: Stanford U. Press, 1988).

[243]Unless she divorces, that is and then attempts to enter the paid workforce. For a leading American study on the devastating economic consequences of divorce on women who worked primarily or exclusively in the home, see Lenore Wertzman, *The Divorce Revolution* (New York: Collier MacMillan, 1985).

[244]*Immigration Manual (Examination and Enforcement), supra*, note 192 at IE 9.16(3)(e), App. C. It is not always apparent to domestic workers what Immigration authorities expect of them, however, as this excerpt illustrates:

> Like the last time I went down to Immigration, they kept asking me if I belonged to any church or group. I think they ask you those things because they want to know if anything happens to you how you are going to manage. But a lot of girls are kind of confused. Are we suppose to join groups or are we not suppose to? Some girls believe

ment is not resistance from domestic workers in principle, but rather the problem of securing enough free time to develop outside interests and contacts.

The sixth factor is "personal suitability."[245] This nebulous requirement, which also appears on the list of criteria relevant to admission to the FDM program, denotes "adaptability, motivation, initiative, resourcefulness and other similar qualities."[246]

The final factor is the existence of dependent family members:

> A factor which must be considered in evaluating the prospect of successful establishment is the existence of dependent family members residing outside of Canada who may be coming to Canada to join the applicant. The responsibilities which the domestic will undertake with regard to accommodation, care and maintenance of such dependent family members may be significant, particularly in the case of prospective immigrant spouses and minor children for which adequate maintenance may be required. The admission of such dependants may have a negative impact on the successful financial establishment of the domestic/sponsor; however, if such dependants intend to immediately enter the labour force, this may be a positive influence on the domestic/sponsor's establishment.[247]

This ambiguous guideline is the latest incarnation of a long series of immigration policies that will not countenance women as sole or primary heads of households. The Caribbean Scheme of the 1950s and 1960s allowed women to enter as immigrants as long as they were single and childless. The temporary visa system between 1973 and 1981 allowed women to enter regardless of their marital or family status but precluded them from immigrating. Immigration policy is premised on the notion that an independent immigrant is a man who sponsors his dependent wife and dependent children. The notion that the "normal" family unit contains a non-working wife is grossly anachronistic in Canada; it was never true for most women in LDCs.[248]

In the notorious "Case of the Seven Jamaican Women," immigration officials attempted in 1977 to deport domestic workers previously admitted as landed immigrants pursuant to an agreement between the governments of Jamaica and Canada.[249] The grounds were that the women had misrepresented

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> if you join a group you might make it bad for yourself. They feel that maybe the Immigration won't like this (Molly, quoted in Silvera, *supra*, note 50 at 71).

[245]*Immigration Manual (Examination and Enforcement), ibid.*

[246]*Ibid.*

[247]*Ibid.*

[248]Joycelin Massiah's research describes how the legacy of slavery, the fluidity of family unions, male migration in search of work and/or male unemployment have generated high levels of female labour force participation and female headed households in the Caribbean. She suggests that Caribbean womens' combined domestic and wage earning roles are centuries old and not perceived as contradictory (*Women as Heads of Households in the Caribbean* (Paris: Unesco, 1983) at 9-12); See also Carole Yawney, "To Grow a Daughter: Cultural Liberation and the Dynamics of Oppression in Jamaica" in Angela Miles & Geraldine Finn, eds, *Feminism in Canada: From Pressure to Politics* (Montreal: Black Rose Books, 1982) 119 at 127-32).

[249]For various descriptions of the factual background of the saga, see Anne Bayefsky, "The Jamaican Women Case and the Canadian Human Rights Act: Is Government Subject to the Principle of Equal Opportunity?" (1980) 18 U.W.O. L. Rev. 461 at 467; Ronnie Leah & Gwen Morgan, "Immigrant Women Fight Back: The Case of the Seven Jamaican Women" (1979) 7:3 Resources

their marital and family status when applying to the program, a fact that was revealed when they subsequently tried to sponsor their spouses and/or children. At that time, a Manpower circular explicitly disqualified women who were married and/or had dependent children from the program. Domestic workers were the sole group of immigrants for whom existence of a spouse or dependants was an automatic bar to entry.

The case drew the support of various organizations within and outside the Black community, who united in protest against the racist and sexist policy of the government toward domestic workers. The women attempted unsuccessfully to obtain an injunction against their deportation orders pending resolution of their claims of discrimination under the *Canadian Human Rights Act*, but the case was ultimately resolved when the Minister of Immigration publicly stated that the women would receive sympathetic treatment if they applied to return to Canada. A few months later, the women were re-admitted to Canada under Minister's Permits and eventually restored to their landed immigrant status.[250]

Given that the current FDM program preserves the incentive to conceal marital and family commitments, the re-emergence of the same problem in slightly varied legal garb is unremarkable. Following the 1989 decision in *Fernandez*,[251] the government modified its policy with respect to the deportation of foreign domestic workers for misrepresentation of family/marital status. The government's current position is that marital and family status are still criteria in the initial selection process, notwithstanding that these women are being admitted as visitors.[252] However, misrepresentation with respect to the existence of a husband or children will no longer be grounds for deportation while the foreign domestic worker is on an employment authorization. If she corrects her misrepresentation before she applies for landed immigrant status, her application will be considered on the basis of the revised information. If she successfully obtains permanent residence without "coming clean," she may subsequently be liable to deportation for making a material misrepresentation with respect to her application for landing.[253]

On the advice of the employment agency, Delia did not disclose the existence of her husband and children. She now has two options: perpetuate the lie and risk possible deportation afterwards for misrepresentation when she tries to bring over her supposedly non-existent family,[254] or tell the truth when she applies for landing and risk being rejected on the basis that she will be unable to support her dependants.

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for Feminist Research 23 at 23-24; Silvera, *supra*, note 50 at vi-viii. The accounts are not completely consistent, but the disparities are not significant for present purposes.

[250]Bayefsky, *ibid.* at 467.

[251]*Supra*, note 118.

[252]*Supra*, notes 115, 247 and accompanying text.

[253]*Immigration Act*, *supra*, note 71, s. 27(1)(e).

[254]Apparently, immigration data banks are not infallible, and it is possible for a woman to successfully sponsor her family without her earlier misrepresentation emerging. Furthermore, not all immigration officers will ruthlessly seek deportation whenever it is legally possible (Telephone interview with Barbara Stewart, Canada Employment and Immigration Commission (Policy Branch) (5 April 1991) Ottawa).

Melvina Scott chose the latter course.[255] She entered Canada in late 1981 on the claim that she had no children. A year later, she repeated the same claim when applying to enter the newly instituted FDM program. In mid-1983, during an assessment by an immigration officer, she admitted to having four children and a common law spouse in Jamaica who she planned to marry. Immigration authorities required her to formulate a plan demonstrating how she would "support four young children with no skills to fall back on."[256] Early in 1984, her application for permanent residence was provisionally approved. Then she disclosed the demise of the marriage plans, and also the existence of two more adolescent children, but insisted that she had "no intention of sponsoring their entry into Canada."[257]

Once it was established that she had four children and no man, Ms Scott's application for permanent resident status was rejected "for her failure to demonstrate the necessary potential for self-establishment in Canada and to provide for the dependent family members whom she intended to bring into Canada."[258] The Court was asked to rule on the fairness of her treatment by Immigration officials and upheld the rejection of her application for permanent residence. After almost five years in Canada of steady work and study to upgrade her skills, Ms Scott was ordered to leave the country.

Doubtless the facts in *Scott* are unusual in that Ms Scott had many children, and it is to be noted that she was provisionally approved on the basis that she had four children and "intended marriage or at least the possibility of financial assistance from her common law [*sic*] spouse."[259] The question this case raises is not whether the program criteria were applied fairly, but whether the program criteria are fair. If Ms Scott was acceptable with four children, why was her statement that she did not intend to sponsor the other two not given any weight? In other words, was it necessary for Immigration officials to assume that she would seize the first available opportunity to put herself in a situation where she could not support herself and her family?[260] As one domestic worker stated indignantly, "I supported five children *before* I came here, and I've supported five children *since* I came here, and they want to know if I can manage on my own?"[261]

Given the incentive structure of the FDM program, it is virtually inevitable that some women would misrepresent the nature or extent of marital or familial obligations. Unfortunately, no reliable estimates are available regarding the pro-

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[255]*Scott* v. *Canada (Minister of Employment and Immigration)* (1986), 5 F.T.R. 227 [hereinafter *Scott*].

[256]*Ibid.* at 228.

[257]*Ibid.*

[258]*Ibid.* at 229.

[259]*Ibid.* at 230.

[260]It should be noted that the *Immigration Act* does, after all, provide for the removal of a permanent resident who "wilfully fails to support himself or any dependent member of his family in Cauada" (s. 27(1)(f)). It is not as if the government would have no remedy if Ms Scott did, in fact, "wilfully" fail to support her dependants.

[261]Quoted in Ramirez, *supra*, note 49 at 18.

portion of women who are landed on the basis of the claim that they are single and/or childless.[262]

One effect of disclosure that has clearly emerged, however, is the inordinate delay in the processing of applications for landing in these cases. Some women wait over three years for a decision on their application.[263]

If Delia is ultimately approved for landing, she may request a generic employment authorization (*i.e.* an "open permit") enabling her to leave domestic service and seek another job if she wishes.[264] In the meantime, the Immigration officer will process her landing under section 114(2) of the *Immigration Act*.[265] Section 114(2) grants authority to the Governor in Council[266] to circumvent the point system devised pursuant to section 114(1) and admit[267] anyone on an *ad hoc* basis commonly referred to as the compassionate and humanitarian grounds exception:

> The Governor in Council may by regulation exempt any person from any regulation made under subsection (1) *or otherwise facilitate the admission* of any person where the Governor in Council is satisfied that the person should be exempted from that regulation or the person's admission should be facilitated for reasons of public policy or due to the existence of compassionate or humanitarian considerations [emphasis added].

Though section 114(2) was originally intended to be an exceptional remedy for isolated cases, it has come to be the standard statutory route to permanent residence for thousands of foreign domestic workers in the absence of a regulation formally exempting domestic workers from the point system method of assessment.

If Delia someday achieves permanent resident status, she may apply to sponsor family members. In the past, the sponsorship process was particularly slow with respect to sponsors who were or had been domestic workers, as immigration officials doubled their ability to make adequate support arrangements for their family. What this often meant in practice was a potential lag of many years before a domestic worker could sponsor her entire family.[268] Add to this

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[262]INTERCEDE's survey disclosed that a minority of women "felt pressure" to misrepresent their marital status (8.5%) and the existence of dependants (5%) (*Report and Recommendations, supra*, note 116 at 17). Immigration statistics cited by the West Coast DWA indicate that in 1988, less than 8% of foreign domestic worker employment authorizations were issued to women who listed themselves as "married" (*Recommendations for Change, supra*, note 84 at 16 n. 12).

[263]Banasen, *supra*, note 92. INTERCEDE reports ongoing delays of two years or longer (*supra*, note 186 at 7, 10, 11).

[264]*Immigration Manual (Examination and Enforcement), supra*, note 192 at IE 9.16(3)(g).

[265]*Ibid.* at IE 9.16(3)(f)(ii).

[266]In practice, the authority rests with the Minister of Employment and Immigration. See *Abd-El-Razik* v. *Canada (Minister of Employment and Immigration)* (1986), 5 F.T.R. 210.

[267]Meaning to grant entry or landing (*Immigration Act*, s. 2(1)).

[268]See Barbara Jackman, *Immigration and Equality of Women* [unpublished] (on file with author) at 4. In order to sponsor a spouse and children, a woman had to meet a "low income cutoff" guideline in order to satisfy immigration officials that she would be able to support her family. She was not required to do so if she sponsored either her spouse or her children. This disparity is only intelligible if one assumes that the spouse would not be employed and would therefore be a complete financial dependant. This assumption seems unwarranted whether the spouse in question is

the two years of domestic work and any delay in the processing of applications for landing, and the result was a family dismembered.[269] The anguish and desperation experienced by Savitri, who had been separated from her family in the West Indies for five years, finally erupted in her encounter with an Immigration officer:

> From I have been here, I never sick one day, I always at work, working for my own bread. I couldn't just sit quiet so I tell [the immigration officer] that I want my children here with me, just like he and his wife have their family with them, I tell him that we is not wild animal and that we know family life, too. Then I tell him good day and walk out of his office :.. I don't understand the Immigration, I don't know why they want to keep me away from my children and husband. They just feel that we are going to be a burden to the government, which is not true. Look how long I work in this country. Away from my family all this while and still they want me to stay away from them.[270]

Recent changes to the *Immigration Manual* take more seriously the "acknowledged humanitarian aspects of family reunification" and encourage officers "not to refuse sponsored spouses and/or dependent children unless arrangements for care and support are virtually non-existent and offer no prospect of improvement. Refusals should be extremely rare if the sponsor is employed, however marginally."[271] In light of these instructions to immigration officers, Delia may look forward to reunion with her family sooner than many of her predecessors.

VI. Strategies of Empowerment

> You're like chattel. I feel it's not in accordance with what your country professes — democracy, liberty and freedom for all, and the same rights for other people.
>
> –Pura Velasco, Filipina domestic worker[272]

> The market for guest workers, while free from the particular political constraints of the domestic labour market, is not free from all political constraints. State power plays a crucial role in its creation and then in the enforcement of its rules. Without the denial of political rights and civil liberties and the everpresent threat of deportation, the system would not work.
>
> –Michael Walzer[273]

Whatever gains domestic workers have made over the years as a group have been accomplished largely outside the courts. Through their own grass-

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male or female. Indeed, immigrant women show a higher rate of labour force participation than Canadian women (Ng & Estable, *supra*, note 124 at 30).

[269]Some Jamaican-Canadian leaders in Toronto cite the lengthy period of family dislocation imposed by immigration restrictions as one factor accounting for the criminal behaviour of some young Jamaican males. According to Al Peabody, "[t]he women come here as domestics. Their sons — they've been separated five, seven, ten years — when they come up here, they've got a rude boy [troublemaker]." Quoted in "Identifying the Problem" *The Globe & Mail* (13 July 1992) A1 at A7.

[270]Quoted in Silvera, *supra*, note 50 at 49.

[271]*Immigration Manual (Selection and Control)*, *supra*, note 83 at IS 2, 2.08 (12-91). The relevant statutory provisions are *Immigration Act*, s. 19(1)(b) and *Immigration Regulations, 1978*, s. 6.

[272]Quoted in Flavelle, *supra*, note 5 at C5.

[273]Walzer, *supra*, note 12 at 58.

roots organizing,[274] they have formed a number of associations that have lobbied vigorously and passionately against their conditions of oppression. That their struggle has not engaged the legal establishment is hardly surprising considering that lawyers are among the major employers of domestic workers. Though forays into the legal arena have benefitted individual women victimized by a harsh and hostile bureaucracy,[275] the structure of subordination has remained intact: domestic workers continue to be deprived of basic employment rights in most provinces[276] and deterred from exercising whatever rights they do have for fear of jeopardizing their precarious immigration status.[277] Immigration policy makes self-sufficiency a pre-requisite for obtaining landed status, and immigration restrictions on job mobility ensure that domestic workers' labour remains so cheap that self-sufficiency is barely possible.[278] This in turn is used to justify the exclusion of women with dependants.

Thinking about the contribution law might make towards empowering domestic workers calls for a certain amount of circumspection. Listening to foreign domestic workers and taking their struggles seriously affects how we approach our role as lawyers in this process and what battles we fight first. INTERCEDE reports that approximately 70% of its counselling services to domestic workers involve immigration matters[279] and that a plurality of domestic workers surveyed identified immigration requirements for landed status as their greatest source of anxiety.[280] Targeting immigration status as the primary site of foreign domestic workers' oppression for litigation purposes responds to the concerns foreign domestic workers express. Immigration reform thus becomes a precondition to the realization and vindication of all other rights. These include statutory rights under employment standards, labour and work-

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[274]For accounts of domestic workers' organizing efforts, see Epstein, *supra*, note 46; Maria Wallis & Wenona Giles, "Defining the Issues on Our Terms: Gender, Race and State — Interviews with Racial Minority Women" (1988) 17:3 Resources for Feminist Research 43.

[275]See cases cited and discussed *supra*, notes 228, 229. The decision made by Employment and Immigration regarding landed immigrant status is reviewable by *certiorari*.

[276]*Supra*, note 95-97 and accompanying text. In 1983, the British Columbia Domestic Workers Union unsuccessfully attempted to invoke s. 7 of the *Charter* to challenge the exclusion of domestic workers from provincial minimum wage and overtime pay provisions (*Domestic Workers Union et al.* v. *A.G. British Columbia* (1984), 1 D.L.R. (4th) 560 (B.C.S.C.), 84 C.L.L.C. para. 14,004). In addition, Women's Legal Education and Action Fund (LEAF), a legal advocacy organization engaged in sex equality litigation, launched a *Charter* challenge in 1987 directed at improving Ontario domestic workers' protection under provincial legislation. The litigation was scuttled when the government introduced reforms incorporating most (though not all) of LEAF's objectives.

[277]As Carol Smart observes, more "rights" in law do not necessarily translate into "rights" in life without the power to vindicate and enforce them. See *Feminism and the Power of Law* (London: Routledge, 1989) c. 7.

[278]Parallels may be drawn to the situation of divorcing women, who are often expected to become financially self-sufficient relatively soon after termination of the marriage. Unfortunately, years of fulfilling a socially enforced role of traditional wife and mother will often render a woman unable to achieve financial independence.

[279]*Supra*, note 186 at 10.

[280]*Report and Recommendations*, *supra*, note 116 at 13. Other possible answers to the INTERCEDE survey question included the live-in requirement and changing employers. Since both of these are aspects of the regulation of foreign domestic workers' immigration status, I suggest that concerns related to immigration status may concern a majority of respondents.

ers' compensation legislation[281] and contractual rights under the employer/employee agreement.[282]

The focus of this article has been to illustrate, in narrative form, how the existing categories of immigrant/visitor and public/private cannot be mapped onto the world inhabited by foreign domestic workers. If we are inattentive to the implications of this dilemma and devise legal strategies designed to integrate domestic workers into existing "insider" classifications, the price of failure may be to push domestic workers even further into the "outsider" category. I believe the danger of such a simplistic approach is particularly acute in the case of immigration status, as the next passage illustrates.

A. Litigation Strategy

I proceed from the conviction that domestic workers should be admitted as independent immigrants. This would guarantee domestic workers the same job mobility as other immigrants and enable them to sell their services in a free labour market. To the extent that I have focused on the defects of the FDM program, a frontal assault on the FDM program appears to be the optimal gambit. From the standpoint of ordinary administrative law, the FDM program is already on flimsy legal terrain. The judgment in *Pinto* suggests that the entry qualifications under the FDM program are subordinate to the less stringent regulations governing the issuance of employment authorizations to visitors.[283] *Fernandez* stands for the proposition that domestic workers cannot be deported *qua* visitors for misrepresentation about matters immaterial to visitor status.[284] Neither of these judgments detracts from the legal basis of the landing criteria of the FDM, which is authorized under section 114(2) of the *Immigration Act*. Nor can the FDM program be tackled on normative or substantive grounds via the administrative route. Only a *Charter* challenge can accomplish this.

Assume one launches a frontal assault on the FDM program as a violation of section 15 of the *Charter*. One leads evidence to prove how domestic workers

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[281]Though I have focused on minimum wage and overtime, domestic workers are also excluded from workers' compensation and deprived of the right to organize in most provinces. I take these as variations on the theme that the household is not a workplace and domestic workers are not employees.

[282]One potentially fruitful avenue of litigation that has not been considered is to go after the government's "hands off" approach to the fate of domestic workers at the hands of abusive employers. As noted earlier, despite the words of the employer/employee agreement to the effect that "[f]ailure to honour the terms of this contract by the employer may result in the denial of future requests," as a matter of policy the government never refuse employers' requests (*supra*, note 193). West Coast DWA and INTERCEDE keep lists of "bad employers" who hire and mistreat one domestic worker after another. These names are submitted periodically to the Canada Employment Centres, since the government assiduously avoids keeping records of complaints by domestic workers against specific employers. It may be worth considering bringing an action against a notoriously bad employer *and* against the government in tort for negligently exposing the plaintiff to the predictable risk of abuse by repeatedly honouring the employer's requests. Inspiration for this approach is taken from the American strategy of suing the police for failing to intervene in battering situations. A finding of government liability in these circumstances might encourage it to take more seriously the welfare of domestic workers and listen more attentively to their complaints.

[283]*Supra*, note 106.

[284]*Supra*, note 118.

are systematically disadvantaged by the FDM program. Evidence is admitted to prove that virtually all domestic workers are women, most are from LDCs and most are women of colour. One explains how the section 15 grounds of sex, race, ethnicity, and citizenship[285] operate in concert as the basis of the oppression of foreign domestic workers. One demonstrates that the tenuous immigration status of the domestic worker, the bias against women with spouses and children and the mandatory live-in proviso structure and perpetuate material conditions of disadvantage. Any claim that the FDM scheme may be construed as an "affirmative action" program by admitting otherwise inadmissible applicants is successfully disputed. One points out that even in those few provinces where domestic workers are included under employment standards legislation, their structural vulnerability precludes them from complaining. Under the s. 1 argument, one would deny that the impact of the scheme on the lives of foreign domestic workers can be justified in a free and democratic society by countering that exploitation is hardly a fair price to pay for the mere chance of becoming a citizen. One might even bite the bullet and deny that the program can be justified because it facilitates access by women employers to the workplace. Make the heroic assumption that these arguments prevail in court. We win. What then?

Asking the court to replace the existing FDM program with a superior scheme is beyond the range of constitutional remedies currently available in Canada, even on the most generous interpretation of the courts' remedial powers.[286] Because the components of the program function as an integrated whole, selective invalidation of the most egregious aspects of the FDM seems impracticable. The most likely remedy that would be granted under section 24 of the *Charter* is simply striking down the FDM program in its entirety.

Such a result would leave present and future domestic workers in a painful quandary. They would be forced to choose between the two existing legal categories under which they may enter and remain in Canada: visitor or immigrant. The first option represents a retrograde move back to the situation of domestic workers between 1973 and 1981, when they entered as visitors on employment visas and had no hope of immigrating. The second option already exists; nothing currently prevents a domestic worker from applying to enter Canada as an independent immigrant except for the fact that she has virtually no chance of success under the current point system.[287] In sum, a legal strategy that chooses

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[285]Though citizenship is not an enumerated ground of discrimination under s. 15 of the *Charter*, it was recognized in *Andrews* v. *Law Society of British Columbia*, [1989] 1 S.C.R. 143 at 182-83, 56 D.L.R. (4th) 1.

[286]See *R.* v. *Schachter* (9 July 1992), [1992] S.C.J. No. 68 (QL).

[287]"It is possible but unlikely [for foreign domestic workers] to qualify for permanent residence at a post abroad under current selection criteria" (*Employment Manual*, *supra*, note 94 at EA 17.42(5)(a)) (*supra*, note 73 and accompanying text). Approximately 700-800 domestic workers entered Canada as independent immigrants in 1990. This represents about 7% of the number admitted under the FDM program. About half were destined for Quebec, which exercises considerable autonomy over its immigrant selection process. Apparently, the government of Quebec has received complaints from employers that domestic workers admitted as permanent residents were leaving their positions very soon after arrival, sometimes in a matter of weeks. (Telephone interview with Barbara Stewart, Canada Employment and Immigration Commission (Policy Branch) (15 May 1991) Ottawa).

the FDM program as its primary target could have disastrous consequences for domestic workers.

From a strategic perspective, a preferable approach would consist of challenging the point system as presently constituted as a manifestation of sex discrimination, contrary to section 15 of the *Charter*. Proper analysis of such a claim warrants an extensive and detailed examination that is beyond the scope of this article.[288] In brief, the basic contention would be that the point system systematically devalues the skills required for domestic work because of its status as "women's work." It does so by allotting very few points for the skill required to perform childcare and domestic labour. "Skill" in this context is measured in terms of "Specific Vocational Preparation" (SVP), expressed by the length of formal training (including apprenticeship and on-the-job training) required to acquire competence in the occupation. Domestic work typically merits two out of a possible ten points for SVP, corresponding to a training period of up to 30 days.[289]

As pay equity proponents have demonstrated time and again, skill is in large measure a socially constructed category.[290] In particular, the skills deployed in "women's work" are disregarded, discounted, or denied because they are treated as inherent to women and therefore not acquired abilities deserving of recognition, much less compensation. When skill is measured by formal training, "women's work" will necessarily diminish in value precisely because most women spend their girlhood in informal training for it. Traditional skill evaluation methodologies (such as those employed in the immigration point system) reproduce this sex bias.[291]

The defect in the point system is not simply that it devalues the skills utilized in domestic work, but also that it uses this determination to reduce or eliminate the points available to applicants under other criteria. Though skill is putatively only one of ten categories[292] of evaluation under the point system, many

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[288]There are certainly litigation strategies other than the ones proposed hereunder. The argument set out is my own, and does not represent any official position taken by any domestic workers association.

[289]The SVP score for every occupation is contained in the *CCDO, 1986, supra*, note 107, compiled by Employment and Immigration. The occupation of domestic work falls within six overlapping and somewhat arbitrary designations, labelled companion, babysitter, parent's helper, domestic servant, children's nurse and housekeeper. Note that under the FDM program, the applicaut must have completed a training course or have a minimum one year's experience on the job.

[290]For a general discussion (from a Marxist-feminist perspective), see Gaskell, *supra*, note 88 at 361.

[291]The Ontario Pay Equity Hearings Tribunal recently addressed the systemic devaluation of the skills involved in nursing *qua* "women's work" in an application under the Ontario *Pay Equity Act* brought by the Ontario Nurses Association. The Tribunal reported, *inter alia*, that traditional job evaluation methodologies reinforce the low value of "women's work" by rendering "invisible the skills and responsibility required in women's work" (*Ontario Nurses' Association* v. *Regional Municipality of Haldimand-Norfork* (29 May 1991), No. 0001-89 (P.E.H.T.) at 7).

[292]Ten factors are considered by the visa officer under the point system. The points awarded for each are bracketed: Education (12), Specific Vocational Preparation (10), Experience (8), Occupational Demand (10), Arranged Employment or Designated Occupation (10), Demographic Factor (10), Age (10), Knowledge of English and French (15), Personal Suitability (10), Relatives in Canada (5).

of the remaining categories such as experience, occupational demand and pre-arranged employment incorporate the skill rating into the calculation of points. For example, experience in a "high skill" occupation is worth more than the same length of experience in a "low skill" occupation; "low skill" occupations in high demand (such as domestic work)[293] will attract *no points whatsoever* under the "occupational demand" category, whereas "higher skill" occupations in lesser demand will earn points;[294] finally, an Immigration officer has discretion to award an applicant *no points whatsoever* for pre-arranged employment if the occupation is too "low skill" and/or the immigration officer doubts the applicant's long term commitment to the occupation.[295] In effect, the domestic worker who attempts to qualify as an independent immigrant has essentially no hope of earning the requisite 70 points under the present point system: as long as her occupation is defined as "low skill," the fact that her occupation is in high demand, that she has demonstrated aptitude and experience as a domestic worker, that she may even have a job offer from a Canadian family, all counts for next to nothing.

Those launching a section 15 challenge to the point system might argue for a reassessment of the points awarded to domestic workers under the SVP rating. Another remedial approach would be to contain the hegemonic role of "skill" in the point system so that the points awarded for experience, occupational demand and pre-arranged employment reflect what the designations denote.

Further elaboration of a *Charter* challenge is unnecessary at this stage. However theoretically attractive it may appear, as a practical resolution to the dilemma of foreign domestic workers, litigation is of limited utility. First, what domestic worker would ever be in a position to advance a *Charter* claim? I speak here not only of the formidable financial impediments to litigation. A challenge to the point system would require a litigant who is injured by it, namely, a prospective immigrant. Locating a domestic worker outside Canada's borders who would voluntarily apply as an immigrant (presumably with the knowledge that she would fail) in order to test the constitutionality of the point

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[293]*Immigration Manual (Selection and Control)*, *supra*, note 83 at IS 15.26(1)(b):

> [A]s the labour force participation of mothers continues to increase, the need for quality child care services to meet the growing demand will pose ever increasing problems for Canadian families. Because of this, we must accept that the demand for foreign domestics is not likely to decrease in the near future.

[294]The points available for occupational demand are derived from the Open Occupation List compiled by Employment and Immigration which lists the occupations officially in demand, and the number of units awarded for each occupation. Strangely enough, the list is not generated by simply examining labour market demand. The skill level of the occupation also figures in the calculus. "Low skill" occupations do not generally appear on the list no matter how great the demand. This means that categories of domestic work do not merely receive few points on the Open Occupation List; they are not on the list at all. Zero points are awarded to domestic workers under occupational demand (Stewart, *supra*, note 193).

[295]Under the FDM scheme, the CEC routinely validates employment offers by Canadian employers to domestic workers abroad. On the other hand, the CEC does not normally validate employment offers to prospective immigrants (as opposed to visitors) if the SVP score for the position is considered too low, or if the officer has reason to believe that the applicant will not remain in her designated occupation (*ibid.*).

system seems a daunting and wholly implausible task. Moreover, at least two recent Federal Court cases suggest that non-citizens outside Canada's borders are excluded from the ambit of Charter protection.[296] Even assuming domestic workers currently in Canada on the FDM scheme could arguably claim standing to challenge the point system, it seems unrealistic to suppose that very many would jeopardize their own chances of obtaining landed immigrant status by embarking on a course of conduct destined to antagonize their employers and the government. Even a domestic worker with no intention of immigrating would surely hesitate before volunteering to participate in lengthy and tedious litigation.

The problem of locating a plaintiff may not be insurmountable, however, if associations representing domestic workers (such as INTERCEDE and the West Coast Domestice Workers' Association) were granted standing to launch an action as plaintiffs. In *Canadian Council of Churches*, the plaintiffs failed in their bid for standing to challenge the constitutional validity of recent amendments to the *Immigration Act* concerning refugee determination. Writing for a unanimous Supreme Court of Canada, Cory J. based his decision primarily on the finding that there were "other reasonable methods" for bringing the matter before the court, namely through individual refugee claimants leading *Charter* challenges on their own. Cory J. suggests that similar claims had in fact been brought by individual refugee claimants in the course of judicial review of unfavourable determinations, and this seemed to weigh heavily against the plaintiff *qua* public interest litigant.[297] Based on the judgment in *Canadian Council of Churches*, the likelihood of domestic workers' associations gaining standing would depend on how seriously the court took the practical impediments to individual domestic workers' capacity to litigate on their own.

Even if we make a propitious leap of faith and imagine not only the advent of litigation, but even its success, the issue does not end there. Society is demonstrably and obstinately unwilling to improve wages and working conditions as a means of retaining people in the occupation of domestic work. As long as this remains true, most live-in domestic workers will use domestic work to get to Canada and leave the occupation (or at least move out of the employer's residence) as soon as they are legally able to do so, leaving empty the labour niche that they are admitted to fill. This may not seem like a problem that need concern foreign domestic worker advocates, but this fact can only rebound to the detriment of the workers themselves. It would be naive to suppose that the courts can effectively compel the government to unconditionally admit people to perform a job that everyone suspects they will abandon at the earliest available opportunity. It is a mistake to think the government can be constitutionally "tricked" into admitting as immigrants a group of people it has gone to such pains to exclude from that category. After all, the very purpose of domestic

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[296] *Canadian Council of Churches* v. *Canada*, [1990] 2 F.C. 534 (C.A.), aff'd on other grounds (1992), 88 D.L.R. (4th) 193, 132 N.R. 241 [hereinafter *Canadian Council of Churches* cited to N.R.]; *Ruparel* v. *Canada (Minister of Employment and Immigration)*, [1990] 3 F.C. 615 (T.D.).

[297] *Ibid.* at 261. It should be noted that the evidence upon which Cory J. based this finding of fact was scanty at best and bordered on conjecture.

workers' precarious immigration status "is to prevent them from improving their condition; for if they could do that, they would soon be like [local] workers, unwilling to take on hard and degrading work or accept low rates of pay."[298] That is why the FDM scheme resorts to the carrot of possible immigration in the future and the stick of deportation at any moment in order to keep domestic workers in line.

Immigration is one of the least controllable aspects of government activity. Not only is it fraught with bureaucratic discretion, but its subjects are, *ex hypothesi*, politically powerless. Public awareness of and concern about immigration issues are nascent and in many ways inchoate, leaving the targets of immigration policy with little recourse to public support.

Without wishing to rely on artificial worst case scenarios, it is important to appreciate the various ways that the practical ability of domestic workers to enter as immigrants may be stymied. First, employment offers may not be validated for purposes of immigration for the very reasons that the domestic worker will not remain in the occupation. Similarly, arbitrary and discretionary factors such as "personal suitability" and "demographic factors" may be manipulated to lower the overall units of assessment. In borderline cases, the corresponding diminution in points may prevent a domestic worker from acquiring the 70 points required by independent immigrants. Finally, there is a residual provision under section 11(3) of the *Immigration Regulations, 1978* which permits a visa officer to refuse to issue an immigrant visa to a person who has been awarded 70 points if "there are good reasons why the number of units of assessment awarded do not reflect the chances of the particular immigrant and his dependants of becoming successfully established in Canada." Though this provision is rarely invoked at present, it might well become more popular in circumstances where the government is confronted with a class of persons it does not want to admit as immigrants and yet cannot exclude on the basis of the point system. This possibility has already been foreshadowed in the role played by the "self-sufficiency" requirement under the present FDM scheme. Once again, entry as a simple visitor on an employment authorization could resurface as the only route for women who desperately need to migrate in order to support their families.

I do not suggest that litigation should be abandoned. Rather, I am claiming that the goal it seeks — admission of domestic workers as immigrants — is desirable but also unlikely to be realized through litigation alone.

Thus, lawyers' propensity for "litigifying" every problem is misguided if pursued in isolation. At the very least, litigation to recoguize domestic workers as "insiders" will only be effective if pursued in tandem with lobbying for legislative reform. I am sympathetic to Allan Hutchinson's posture of "strategic skepticism"[299] toward the transformative potential of litigation. In my view, the instrumental value of the courts as one of several fora where domestic workers

[298]Walzer, *supra*, note 12 at 59.

[299]Book Review of *Making All the Difference* by Martha Minow (1991) 89 Mich. L. Rev. 1549 at 1568.

may apply pressure for legislative reform probably exceeds any direct benefits available from litigation. If, as I suggest, the recognition of domestic workers as "insiders" is unattainable via the courts, then what we need is a realistic assessment of the options which seek to empower foreign domestic workers, given the constraints imposed by their inside/outside status.

My recommendations are pragmatic and admittedly reformist. They begin with an absolute requirement that the government supply domestic workers with full and adequate information before they come to Canada, and comprehensive orientation services once they arrive. The government must also furnish domestic workers with the names, addresses and phone numbers of all social service, public interest and advocacy organizations that assist domestic workers.

With respect to my substantive proposals, I recommend aiming for the admission of foreign domestic workers as landed immigrants, conditioned upon two years employment as a domestic worker.[300] During those two years, the domestic worker would have the option of living-in or living-out, but would be confined to domestic work. She may change employers at will although she should notify Employment and Immigration of her movements so that the government may verify that she has worked continuously as a domestic worker for two years.

The advantage of initially granting landed status is that the sting of the deportation threat is dulled. As long as domestic workers stay in the occupation, they retain their immigration status. Issuance of new employment authorizations would not require a "release letter" from the old employer, but would require an offer of employment from the new one in order to satisfy Immigration's monitoring concerns. In cases where the domestic worker is alleged to be derelict in her duties, the onus will be on the employer to pursue the matter with Immigration officials.

Granting the domestic worker the option of living-out while constraining her freedom to abandon domestic work gives her the opportunity to test the government's claim that the reason foreign domestic workers must be compelled to live-in is that there is no demand for live-out domestic workers.[301] If that is the case, foreign domestic workers will presumably remain in live-in situations for the entire two years. If the assumption proves false, then they will be able to fill a labour need without undergoing the privations of live-in domestic work for an extended period. Sponsorship of family members would be precluded during the first year of the program, though the domestic worker would be able to commence her application for sponsorship during the second year of her employment.

In effect, foreign domestic workers would be transformed into a class formally akin to the entrepreneur/investor class of immigrant applicants. Immi-

[300]The idea of granting conditional landed immigrant status is not new. This was the system during the Caribbean scheme from the 1950s to 1973. See *supra*, text accompanying note 29ff.

[301]Anecdotal evidence collected by the West Coast DWA suggests that some employers and domestic workers have voluntarily moved to live-out situations, although this is illegal under the current scheme.

grants in this category are required to accumulate fewer points on the "point system" than other independent immigrants to Canada. The government grants them preferential treatment in exchange for their commitment to make a "minimum investment"[302] in Canada or to start-up and manage a business in Canada. Their immigration status is conditional upon fulfillment of their financial undertakings,[303] just as domestic workers' status would be contingent on continuous employment in the industry for two years. In effect, entrepreneurs and investors buy their way into Canada with cash and the promise to create employment opportunities in the future for at least one Canadian other than the immigrant and his/her dependants.[304] Similarly, domestic workers would buy their way into Canada with their labour and the ability to enhance employment opportunities for one other Canadian (namely, the female employer who would be relieved of her unpaid childrearing duties in order to seek out paid employment). As with entrepreneurs and investors, the government would recognize the anticipated contribution of domestic workers over the period of their two year residence in Canada by easing the points required to obtain landed status. Finally, domestic workers could be held to a lower standard than independent immigrants in terms of the points they must earn to warrant admission under the point system as presently constituted.[305] Like other immigrants, foreign domestic workers would be admitted through provisions enacted under the *Immigration Act* and/or the *Immigration Regulations, 1978* specifically addressed to their situation rather than via the "back door" of informal criteria and bureaucratic discretion as embodied in the current scheme. Domestic workers have been coming in through the back door long enough.

Though my proposals presume the continued immigration of foreign domestic workers, they are not particularly motivated by a desire to serve the interests of Canadian employers. As my concluding discussion emphasizes, the institution of live-in domestic work inherently potentiates exploitation[306] and is, in my view, profoundly problematic from a feminist perspective. In the best of all worlds, women of one region of the planet would not be forced to abandon their own children to raise someone else's. In the second best world, however, I identify the immediate priority as assisting women of LDCs whose migration manifests the urgency of their need.

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[302]Defined as a range between $150 000–$500 000, depending on a variety of factors. See *Immigration Regulations, 1978, supra*, note 73, s. 2(1).

[303]*Ibid.* ss 23(1)(d)(iv)-(v). Note that domestic workers were also conditionally landed as immigrants between 1967 and 1973.

[304]*Ibid.* ss 2(1), 9(1)(b).

[305]Lowering the requisite number of points a foreign domestic worker must earn is an alternative to reforming the point system entirely in order to ameliorate the bias against people whose skills are considered low but whose labour is in high demand. Obviously, reforming the point system is the preferable route in the long run.

[306]My suspicion is that even if wages were improved, the live-in requirement contains an irreducible component of subordination and loss of autonomy that cannot but make it undesirable to any adult woman for any length of time. The only real short-term advantage it has for some women is that it gives them more disposable income to send home than they might otherwise have if they held an ordinary minimum wage job in a city where the cost of living was high.

VII. The Ties That Divide

> We are also saying that in a very fundamental sense all women are treated as immigrants; that even in the countries where we supposedly belong, we are all in some way dispossessed.
>
> –Wilmette Brown[307]

The Feminine Mystique,[308] first published in 1963, is frequently (and not without justification) excoriated as the ultimate symbol of white-middle class-heterosexual-feminist essentialism. Various feminist authors have invoked it as a symbol of what is wrong with contemporary feminism. Some have focused on the class bias,[309] others the racism. Seizing on domestic service, bell hooks dryly observes that when Betty Friedan spoke of women wanting "more" than home, husband and children, "[s]he did not discuss who would be called in to take care of the children and maintain the home if more women like herself were freed from their house labor and given equal access with white men to the professions."[310] Hooks recognized that the answer was poor Afro-American and Chicana women. In Canada, the answer is migrant women — some West Indian, some Anglo-European, but mostly Filipino.

There is a certain temptation to label the domestic worker as "surrogate housewife." After all, domestic workers are hired to perform the tasks assigned to the modern housewife. The social and physical isolation, the invisibility of the work, the physical labour, and interminable nature of the tasks go with the job,[311] no matter who performs it. From a stark economic perspective, the domestic worker is a surrogate housewife who is nominally better off because she is paid for her labour. Equating the domestic worker to a housewife permits one to subsume the oppression of the domestic worker into an analysis of women's oppression *qua* wife and mother. The label is convenient because of its contemporary referent, but the analogy is wrong. Delia's persona, even in her "mothering" capacity, owes little to the role of middle class, twentieth-century housewife. She is neither a substitute mother nor a substitute wife. She is the modern incarnation of the pre-industrial servant.

A servant is not merely a species of employee. The peremptory control employers exercise over domestic workers' time and labour, the "personalization" of relations between the parties, the negation of the domestic worker's autonomous identity, the casual disregard of contractual and/or statutory obligations in favour of "informal" arrangements dictated by the employer's will —

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[307]Quoted in Selma James, ed., *Strangers & Sisters — Women, Race & Immigration (Voices from the Conference "Black and Immigrant Women Speak Out and Claim Our Rights")* (Bristol: Falling Wall Press, 1985) at 58.

[308]Betty Friedan, *The Feminine Mystique* (New York: Norton, 1963).

[309]See, for example, Zillah R. Eisenstein, *Feminism and Sexual Equality: Crisis in Liberal America* (New York: Monthly Rev. Press, 1984) at 192-93.

[310]*Feminist Theory From Margin to Center* (Boston: South End Press, 1984) at 1.

[311]For a discussion of the condition of the women who work at home, see Ann Oakley, *The Sociology of Housework* (New York: Pantheon Books, 1974) *passim*.

these are the indicia of a reversion from employee to servant status.[312] Paradoxically, the domestic worker "contracts" to assume the subordinate status of servant, at which point the contractual model (with its assumption of juridical equality) ceases to inform the internal operation of the relationship.[313]

When employers insist that a domestic worker is "like one of the family," they unwittingly affirm the feudal quality of the relation. At no time was the domestic worker more like "one of the family" than when her status was formally acknowledged to be that of a servant. Prior to the Industrial Revolution, household and family were synonymous and coextensive[314] and functioned as an integrated economic unit of production.[315] Servants living under the master's roof were considered full members in the patriarchal household.[316] In this pre-industrial era, the family and the market were not treated as mutually exclusive categories. It is the historical roots of live-in servitude that render it impossible to fit domestic workers into the contemporary public/private discourse. The role of the foreign domestic worker is not merely anomalous; it is an anachronism.[317]

Rather than depict the domestic worker as surrogate housewife, it might be more accurate to characterize the middle class housewife as the conflation of "two roles, the role of servant (primarily engaged in tasks of physical reproduction) and the role of 'lady of the house' (primarily engaged in management and

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[312]For an articulate and concise comparison of the master/servant and employer/employee relations, see Lewis Coser, "Servants: The Obsolescence of an Occupational Role" (1973) 52 Social Forces 31. Colen & Sanjek, *supra*, note 139; Rollins, *supra*, note 145; Arat-Koc, *supra*, note 80; Glenn, *supra*, note 139; Aitken, *supra*, note 102, elaborate on the particularity of the relation between contemporary domestic worker and employer.

[313]Pateman makes an analogous point with respect to wives: once they enter the marriage contract, their status effectively strips them of the capacity to enter the social contract. This argument is developed at various points in *The Sexual Contract* (*supra*, note 242, c. 1, 6, 8).

[314]Rollins, *supra*, note 145 at 26-27.

[315]According to historian Linda Nicholson, co-habitation (or "domesticity") actually took precedence over kinship in the demarcation of the family unit well into the nineteenth century. Nicholson attributes this priorization to the role of the individual households as single economic units of production, such that a live-in servant was more integral to the maintenance of the family/household than blood relatives residing elsewhere. Within this system of social ordering, the family and the market were integrated rather than counterpoised. To the extent that one can speak of a public/private split, the line was drawn around, rather than between, the market/family nexus (*Gender and History: The Limits of Social Theory in the Age of the Family* (New York: Columbia U. Press, 1986) at 82).

[316]Along with husband/wife and parent/child, the master/servant relation was one of Blackstone's "three great relations in private life" (*Blackstone's Commentaries on the Laws of England* (1765), quoted in Coser, *supra*, note 312 at 31).

[317]As Michael Walzer points out, the inferiority of the servant relative to her master and mistress is not contingent upon, but is integral to, the definition of what it means to be a servant:

> This is the sort of work that is largely dependant on its (degraded) moral character. Change the character, and the work may well become un-doable, not only from the perspective of the worker but from that of the employer, too. "When domestic servants are treated as human beings," wrote Shaw, "it is not worthwhile to keep them" (*supra*, note 12 at 180).

Individual employers may deny that this describes the relationship between them and their domestic workers. Without denying the possibility of exceptional cases, my research simply does not bear out the contention that domestic work is *in fact* accorded dignity and value by this society, notwithstanding abstract claims about how valued child-rearing and homemaking is (or should be).

tasks of social reproduction)."[318] The re-emergence of the domestic worker thus signifies the disentangling of those two roles and the resumption of the pre-industrial bifurcation of mistress and servant among the middle and upper classes. The "labour of love" mystification that effaces the domestic worker's labour is perhaps the most prominent vestige of her connection to the housewife. Even today, women who do not work outside the home are still able to derive status from their husbands. Conversely, the low status of the contemporary domestic worker appears impervious to the social position of her employers and is, in any case, lower than a housewife of any class.[319] After all, the oft invoked refrain that wives are glorified servants[320] derives its rhetorical force by appealing to a shared perception of the natural inferiority of servants.[321] Inverting the trope can only make the domestic worker's lot appear rosier than it really is.

Furthermore, many foreign domestic workers *are* wives and mothers whose own families have been dismembered by the exigencies of Third World poverty and restrictive immigration laws. Assimilating the terms "wife" and "servant" elides this aspect of domestic workers' identity in much the same way as comparing the situation of women and Blacks obscures the existence of Black women.[322] It also privileges the identification of the family as the primary site of all women's oppression by equating the experience of oppression within

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[318]Martha Giminez, "Waged Work, Domestic Labor and Household Survival in the United States" in Jane L. Collins & Martha Giminez, eds, *Work Without Wages: Comparative Studies of Domestic Labor and Self-Employment* (Albany: SUNY Press, 1990) 25 at 40-41.

[319]Christine Bose, "Social Status of the Homemaker" in Sarah Berk, ed., *Women and Household Labor* (London: Sage Publications, 1980) 69 at 76.

[320]As in Lady Chudleigh's 1703 quip: "Wife and servant are the same/but only differ in the name" (quoted in Pateman, *supra*, note 242 at 125). Pateman herself adopts the analogy in her sophisticated analysis, though she qualifies it in various ways.

[321]Bell hooks makes a similar point with respect to white feminists comparing the lot of women to that of slaves and people of colour:

> Just as 19th century white woman's rights advocates attempted to make synonymous their lot with that of the black slave was aimed at drawing attention away from the slave toward themselves, contemporary white feminists have used the same metaphor to attract attention to their concerns. ... When white women talked about "Women as Niggers," "The Third World of Women," "Woman as Slave," they evoked the sufferings and oppressions of non-white people to say "look at how bad our lot as white women is, why we are like niggers, like the Third World." ... [I]f they had been poor and oppressed, or women concerned about the lot of oppressed women, they would not have been compelled to appropriate the black experience. It would have been sufficient to describe the oppression of woman's experience. A white woman who has suffered physical abuse and assault from a husband or lover, who also suffers poverty, need not compare her lot to that of a suffering black person to emphasize that she is in pain (*supra*, note 148 at 141-42).

[322]See Elizabeth Spelman, *Inessential Woman* (Boston: Beacon Press, 1988) at 114-15. As Susan Boyd observes, the historical association of Black women with domestic service in the United States has had an especially distorting impact on Black women's social identity:

> Ideologies of black female domesticity and motherhood have been constructed, through their employment (or chattel position) as domestics and surrogate mothers to white families rather than in relation to their own families. Quoted in Marlee Kline, "Race, Racism and Feminist Legal Theory" (1989) 12 Harvard Women's L.J. 115 at 130).

See also the discussion by bell hooks of the myth of Black matriarchy and the "Aunt Jemima" stereotype perpetuated by white culture (*supra*, note 148 at 70-86).

one's own family with oppression by someone else's family. As Daiva Stasiulis remarks, many migrant women of colour experience this separation from their family as a greater source of suffering than the sex oppression occurring within a family unit:

> The central focus on the family as a site of women's oppression is regarded as highly problematic for black feminists. They argue that in racist societies, the family has provided opportunities for egalitarian relations among women and men, and has functioned as a site for shelter and resistance. Black feminists also decry the focus of feminist theory on the centrality of the family in enforcing women's oppression, when racially restrictive immigration laws have served to destroy black families by separating husbands from wives, wives from husbands, and parents from children. ... The distinct relationship of non-white, non-European women to the state has been encoded in a patchwork of racist immigration policies which actively restricted the entry into Canada of dependents of male or female non-white migrant workers.[323]

From a feminist perspective, the most glaring and problematic reason for resisting the fusion of wife and servant is that it is most frequently the woman of the household who directly supervises the domestic worker. Adopting an analytical approach that asks a domestic worker to identify her oppression with that of her employer insults her lived experience.[324] It also ignores the way domestic services function to reinforce social hierarchy along other dimensions of inequality:

> The presence of the "inferior" domestic, an inferiority evidenced by the performance she is encouraged to execute and her acceptance of demeaning treatment, offers the employer justification for materially exploiting the domestic, ego enhancement as an individual, and a strengthening of the employer's class and racial identities. Even more important, such a presence supports the ideal of unequal human worth: it suggests that there might be categories of people (the lower classes, people of color) who are inherently inferior to others (middle and upper classes, whites). And this idea provides ideological justification for a social system that institutionalizes inequality.[325]

The grim truth is that some Canadian women's access to the high paying, high status professions is facilitated through the revival of semi-indentured servitude. Put another way, one woman is exercising class and citizenship privilege to buy her way out of sex oppression. It is a measure of the personal success

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[323]Stasiulis, *supra*, note 30 at 5-6. For a discussion of British immigration policies that enforce the separation of mothers from children, see Jacqueline Bhabha *et al.*, eds, "Childless Mothers: Children Kept Out," in Jacqueline Bhabha *et al.*, *Worlds Apart: Women Under Immigration and Nationality Law* (London: Pluto, 1985) 102.

[324]Writing about the American experience, bell hooks notes that:

> In the white community, employing domestic help was a sign of material privilege and the person who directly benefitted from a servant's work was the white woman, since without the servant she would have performed domestic chores. Not surprisingly, the black female domestic tended to see the white female as her "boss," her oppressor, not the white male whose earnings usually paid her wage (*supra*, note 148 at 154).

[325]Rollins, *supra*, note 145 at 203. Elizabeth Spelman also develops this last point:

> Those of us who are white may not think of ourselves as racist, because we do not own slaves or hate Blacks, but that does not mean that much of what props up our sense of self is not based on the racism that unfairly distributes benefits and burdens to whites and Blacks (*supra*, note 322 at 121).

of Delia's employer Mary that she is "making it" in a man's world on male terms. It is a measure of her failure on these same male terms that she is blamed as a woman for exploiting Delia, for it signifies the implicit affirmation of the sexual division of labour: Delia is doing "Mary's work."[326]

Obviously, responsibility for domestic labour should fall equally on Dan and Mary or, more broadly, on the institution of the nuclear family. On the other hand, shifting the blame from Mary to the couple hardly absolves Mary. Live-in domestic work inherently tends toward the exploitation of the women who do it. This is true whether or not Mary thinks of herself as a good employer,[327] and whether or not she has Delia babysitting in the evenings so she can attend her LEAF meetings.[328]

The cross-cutting cleavages of gender, class, citizenship, race/ethnicity complicate a feminist understanding of relations between Mary and Delia. Indeed, they pose a challenge to any theory of inequality that is partial, for it becomes increasingly difficult to know which oppression gets top billing and which are only supporting actors.[329]

For example, while feminist legal scholar Catharine MacKinnon acknowledges that "a woman's specific race or class or physiology may define her among women," she warrants that "simply being a woman has a meaning that decisively defines all women socially, from their most intimate moments to their

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[326]Arat-Koc, *supra*, note 80 at 43.

[327]I note in passing that every employer I encountered believes herself to be a "good employer." Suffice to say that the pool of self-described "good employers" is larger than the pool that would emerge by any other measure.

[328]A Brazilian lawyer who shares Mary's position describes her evolving understanding of her role in the subordination of her domestic worker:

> The domestic worker is a double, the other self one leaves at home doing those things that traditionally you, as a woman, should be doing ... I felt it in my own flesh, this other self who freed me so that I could perform my other roles. At the beginning, I felt very guilty: guilt for having a domestic worker, guilt for exploiting another woman's work. But suddenly I began to question why I alone should be feeling guilty, as she is not working just for me but for everybody in my house. This type of guilt is felt by most feminist women who have domestic workers because it seems a contradiction to be a feminist and to employ a domestic worker. But if there is guilt, it should be shared by the entire family — husband, wife and children — who are actually benefiting from somebody else's poorly paid work (quoted in Hildete Pereira de Melo, "Feminists and Domestic Workers in Rio de Janeiro" in Chaney & Garcia Castro, eds, *supra*, note 126, 245 at 260-61).

[329]I use Catharine MacKinnon's work to illustrate the partiality of a theory of sex inequality. I am not using it to suggest that her theory is essentialist. I do not read MacKinnon as denying that her theory is partial. I understand her claim to be that feminism is no less powerful or primary for being partial, anymore than Marxism is irrelevant because class is not a comprehensive category of analysis. Indeed, MacKinnon acknowledges that sex, class or race alone are not general theories of social inequality, though the connections between them may generate one (*Toward a Feminist Theory of the State* (Cambridge: Harvard U. Press, 1989) at 130 [hereinafter *Toward a Feminist Theory*]; *Feminism Unmodified: Discourses on Life and Law* (Cambridge: Harvard U. Press, 1987) at 2-3). For essentialist critiques of MacKinnon focusing on race/ethnicity, see, for example, Angela Harris, "Race and Essentialism in Feminist Legal Theory" (1990) 42 Stanford L. Rev. 581; Kline, *supra*, note 322; Celina Romany, "Ain't I a Feminist" (1991) 4 Yale J. L. & Fem. 23.

most anonymous relations."[330] The former proposition speaks to women's internal relations with one another, while the latter addresses women's external relations with men. If we concentrate solely on the external perspective, we observe that Mary and Delia are both oppressed as women, though in different ways and with differing degrees of severity.[331] MacKinnon describes this fundamental commonality as follows:

> To be treated like a woman is to be disadvantaged ... as an incident of being assigned to the female sex. To speak of social treatment "as a woman" is thus not to invoke any universal essence or homogeneous generic or ideal type, but to refer to this diverse material reality of social meanings and practices such that to be a woman "is not yet the name of a way of being human."[332]

Once we supplement this with the internal perspective, the picture becomes murkier. The trouble is that Mary's race, class and citizenship do not merely define her in the sense of differentiating her from Delia. They constitute her as a particular kind of woman, and they give her real power over Delia. And power, in MacKinnon's theory, is what defines men. True, the assertion of Mary's power is constituted through the disempowerment she experiences in her external relations, specifically the sexual division of labour in the home and the male-centred workplace. Patriarchy illicitly transforms Mary into the proxy for the nuclear family and assigns blame to her for Delia's exploitation. This is no answer to Delia though. Mostly, Delia hears neither the langnage of genuine connection and caring[333] in Mary's voice, nor does she hear Mary speaking with the strangulated voice of a woman with a foot on her throat.[334] She hears the language of power in a different voice. Can we only make sense of the relation by positing Mary as a nominal man in the Mary-Delia nexus,[335] or must we dismiss power relations between women as socially interstitial because both parties are relatively powerless compared to men?[336]

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[330]*Toward a Feminist Theory*, *ibid.* at 90.

[331]Iris Young offers five dimensions of oppression. These are exploitation, marginalization, powerlessness, cultural imperialism and systemic violence (see Young, *supra*, note 212). Cataloguing Mary (an upper-middle-class white female citizen of Canada) and Delia (a lower-class Filipina non-citizen) along these dimensions is beyond the scope of this paper, but I suggest here that their respective experiences would vary both quantitatively and qualitatively.

[332]"Refiections on Sex Equality Under Law" (1991) 100 Yale L.J. 1281 at 1299.

[333]Carol Gilligan's theory of female moral development posits that young women reason from a standpoint of connection and care, rather than through the male construct of rights and duties (*In a Different Voice* (Cambridge: Harvard U. Press, 1982)).

[334]See the exchange between Catharine MacKinnon and Carol Gilligan in "The 1984 Jaines McCormick Mitchell Lecture: Feminist Discourse, Moral Values, and the Law — A Conversation" (1985) 34 Buffalo L. Rev. 11 at 74-75, wherein MacKinnon objects to Gilligan's description of the "feminine voice" by characterizing it as that which a woman articulates "because his foot is on her throat."

[335]MacKinnon may well affirm this type of fiuid gender assignations. Writing about heterosexuality as a system whereby dominance and submission are eroticized and gendered, she states:

> Whenever women are victimized, regardless of the biology of the perpetrator, this system is at work. But it is equally true that whenever powerlessness and ascribed inferiority are sexually exploited or enjoyed — based on age, race, physical stature or appearance or ability, or socially reviled or stigmatized status — the system is at work (*Toward a Feminist Theory*, *supra*, note 329 at 179).

[336]That MacKinnon's theory may be unable to fully account for every aspect of every situation does not detract from the extraordinary explanatory power that it does possess. See, for example,

Mary's power and her (ab)use of it is problematic from a feminist perspective. Her various privileges cannot be rationalized as being entirely parasitic on Dan's. She cannot be dismissed from a feminist analysis as "exception" in her power without eliminating Delia as exceptional in her disempowerment. They are as interdependent in theory as they are in life.

That Delia is a woman of colour is not a prerequisite to her exploitation, but it can facilitate it. The subject/object dichotomy MacKinnon uses to designate and define the male/female hierarchy also applies to the categories of master/servant, dominant/subordinate race and citizen/alien. Though Mary and Delia are on the same side of the male/female divide, they find themselves on opposite sides of each of these other dualities. This permits Mary to objectify Delia in various ways that are influenced, but not precluded, by gender. For example, Mary can hardly claim that Delia is ideally suited to domestic work because she is a woman without impugning herself, but she can fall back on *Filipino* women being "naturally" hard working, subservient, loyal tidy housekeepers and "good with children." In this context, race, ethnicity and culture conjoin with sex to create a sub-category of women whose subordination other women can rationalize by projecting onto them the stereotypical "feminine" qualities that patriarchy has used against women generally.[337] As bell hooks trenchantly observes, women can use their various privileges to distance themselves from the women they wish to exploit while aligning themselves with the men whose power they seek:

> Throughout American history white men have deliberately promoted hostility and divisiveness between white and black women. The white patriarchal power structure pits the two groups against each other, preventing the growth of solidarity between women and ensuring that women's status as a subordinate group under patriarchy remains intact. To this end, white men have supported changes in the white woman's social standing only if there exists another female group to assume that role. Consequently, the white patriarch undergoes no radical change in his sexist assumption that woman is inherently inferior. He neither relinquishes his dominant position nor alters the patriarchal structure of society. He is, however,

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her discussion of the "wages for housework" debate in "Feminism and Marxism: Attempts at Synthesis" in *Toward a Feminist Theory*, *ibid.*, 60.

[337]Judith Rollins suggests that if the female employer "sees the domestic as an extension of herself, it is of her least capable and least 'femmine' self. Any identification the employer has with the domestic is a negative identification" (*supra*, note 145 at 185). While I agree with Rollins' conclusion, I disagree with her characterization of "feminine." I suggest that the employer's disdain derives from the very fact that the domestic worker represents her "feminine" self — the one that is naturally suited to housework and childcare. Compare the analysis of Barbara Rothman, who describes how the intellectual and creative progress of the Victorian boy was marked by his transition from the "private" world of nurturing women to the "public" world of male education and apprenticeships. She observes that, today, the gender split has been transposed onto race and class dimensions:

> Poor women, women of color, are often valued for their nurturant qualities. I've been told that it is "island women," or "old southern black women," or "Mexican women" who are believed to be so motherly. But by the age of three or four ... these aren't the qualities that are being sought, just as these feminine qualities were inappropriate for the Victorian boy. At this point, European, American, middle-class caregivers are wanted, with class and ethnicity replacing gender in this revised Oedipal story (Rothman, *supra*, note 168 at 206).

> able to convince many white women that fundamental changes in "woman's status" have occurred because he has successfully socialized her, via racism, to assume that no connection exists between her and black women.
>
> Because women's liberation has been equated with gaining privileges within the white male power structure, white men — and not women, either white or black — have dictated the terms by which women are allowed entrance into the system. One of the terms male patriarchs have set is that one group of women is granted privileges that they obtain by actively supporting the oppression and exploitation of other groups of women.[338]

To put the point bluntly, there is nothing egalitarian about hiring a live-in domestic worker and thus, to my mind, nothing feminist about it. A just solution to the dilemma of career and family would involve, at a minimum, equally distributing responsibility for child rearing across the sexes, whether within the nuclear family or through some other arrangement. It would also mean restructuring the workplace and its priorities away from its anachronistic model of the male breadwinner with the stay-at-home housewife. Finally, it would require the state to assume greater responsibility in making childcare available and affordable to all women and paying those who provide childcare a decent wage.

As long as Mary employs Delia, however, none of these things are likely to happen, for as Audre Lorde says, "the master's tools will never dismantle the master's house."[339] It will always be easier for Mary-the-employer to get Delia to do all the housework than it is for Mary-the-wife to challenge Dan's refusal to do his share.[340] It will always be safer to take advantage of Delia's "flexibility" than to antagonize the partners at her firm by insisting that on-site daycare be a priority or that the firm's "work ethos" be humanized. As long as parents insist on having private, individualized childcare, there will be an incentive to keep domestic work as cheap (and socially devalued) as possible. Provincial governments will not heed shop owners' complaints that paying clerks minimum wage and overtime will put them out of business, but they will listen to parents who say they cannot sustain their middle class professional families unless they can overwork and underpay their domestic workers. The imperative of maintaining the family as a viable social, economic and reproductive unit means that the dual career nuclear family will continue to depend for its survival on women like Delia even as it, by definition, excludes her.

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[338]*Supra*, note 148 at 155. As sociologist Caroline Ramazonaglu states:

> As increasing numbers of women return to work after having children, or remain in work, many are directly dependent on the personal services of other women. Where this dependence is on family labour, or state nurseries, or where poorly paid working women pay poorly paid childminders to take children into their own homes, working relationships are unclear. But where women with careers, businesses, inherited wealth, or wealthy husbands can afford the private domestic labour of others, women clearly stand in contradictory relations to each other and do not have the same interests in the transformation of society (*Feminism and the Contradictions of Oppression* (London: Routledge, 1989) at 108).

[339]Audre Lorde, "The Master's Tools Will Never Dismantle the Master's House" in Lorde, *supra*, note 93, 110 at 112.

[340]Many women report that they use domestic workers to avoid confrontations with their uncooperative partners (Arat-Koc, *supra*, note 80 at 43).

Finally, as long as the government can placate middle class families by furnishing them with live-in foreign domestic workers, the FDM scheme will be used to deflect and fragment the demand for affordable, accessible, publicly subsidized daycare.[341] Couples who can afford the private solution will take it, leaving single, working class and poor mothers to fight the battle alone.

Though my narrative technique has tacitly adopted the perspective of domestic workers, I am not unsympathetic to Mary's dilemma. It is difficult to condemn her for wanting to have both a professional career and a family. As Adrienne Rich writes:

> There is a natural temptation to escape if we can, to close the door behind us on this despised realm which threatens to engulf all women, whether as mothers, or in marriage, or as the invisible, ill-paid sustainers of the professionals and social institutions. There is a natural fear that if we do not enter the common world of men, as asexual beings or as "exceptional" women, do not enter on its terms and obey its rules, we will be sucked back into the realm of servitude, whatever our temporary class status or privileges.[342]

Mary has made a constrained choice, given the current distribution of power. She is unwilling to sacrifice her career to her children, nor to the "revolution" which she may never live to see. So she and Dan hire Delia. Mary is caught between being subordinated as a woman and participating in the domination of another. My goal is not to vilify her, but to ask her to use her experience of subordination as a means of acknowledging her domination of Delia. This is a task beyond the realm of consciousness-raising, for the objective is not that Mary come to realize how both she and Delia are subjugated by men and male society.[343] Rather, I want Mary to understand how she constructs Delia as an object of subjugation and objectification using the same tools that are deployed against her. That is to say, I want Mary to take the lessons of consciousness-raising and turn them inward. This is neither easy nor painless for, as Audre Lorde observes, "it is very difficult to stand still and to listen to another woman's voice delineate an agony ... to which I myself have contributed."[344]

First, consider the possibility that Delia really does like children, and that this is a quality she and Mary share. Mary should know that there is a good

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[341]Commenting on the American situation, Martha Giminez states that "[t]he demand for childcare itself reflects the options open to a society in which an ideological commitment to political equality makes the call for more and affordable servants a political impossibility" (Giminez, *supra*, note 318 at 41-42). Not only is the call for servants politically possible in Canada, it is also politically successful.

[342]"Conditions for Work: The Common World of Women" in *On Lies, Secrets and Silence: Selected Prose, 1966-1978* (New York: W.W. Norton, 1979) 203 at 206-07.

[343]Angela Harris criticizes what she sees as the inherently limited scope of consciousness-raising as described by MacKinnon in *Toward a Feminist Theory, supra*, note 329 at 83-105, for its tendency, *inter alia*, to impose a false unity and primacy on women's experience ("Categorical Discourse and Dominance Theory" Book Review of *Toward a Feminist Theory of the State* by Catharine MacKinnon (1990) 5 Berkeley Women's L.J. 181 at 185-86). My tentative suggestions are not intended to undermine consciousness-raising *per se*; rather, they attempt to push it beyond its current self-imposed boundaries.

[344]Lorde, *supra*, note 93 at 128.

chance Delia has children of her own (or perhaps young siblings or relatives) in the Philippines and would rather be looking after them than "giving unconditional love to white babies in the suburbs of our cities."[345] Secondly, Mary must consider whether Delia's subservient manner is a product of her acculturation to the role of the compliant "Asian female" or is a behaviour pattern adopted in response to the tacit expectations of her employer. Does Delia passively acquiesce without complaint to each of Dan and Mary's requests because they are so reasonable, or because of the brute fact that she may jeopardize her opportunity to gain landed immigrant status if she complains or switches employers? To put it crudely, if you lived daily with the fear of expulsion, you would be pretty docile. In fact, if Mary pauses to think about it, she might realize how often *she* "toes the line" precisely because she fears being excluded, how often *she* self-consciously suppresses her opinions and defers to the senior partner because he can make her life very difficult if he wants to. And because the senior partner knows she will not refuse work or let her resentment leak out, he just keeps taking advantage of her a little more each time. The stakes may be lower for Mary than for Delia — the mommy track versus deportation — but the spectre of exclusion plays out in much the same way: lay low, do what they tell you, and maybe they will let you stay in the game.

What Mary and Dan should do with these insights I cannot say. What I will say is that being a "good employer" does not vitiate Mary's role (however unwilling or unwitting) in the subjugation of foreign domestic workers any more than Dan's being a "sensitive male" exonerates him from reaping the social benefits of patriarchal privilege. A conscientious effort to eschew the exploitive potential of the domestic worker/employer relationship is a point of departure; it is not a destination.

VIII. Postscript

On January 30, 1992, Beruard Valcourt, Minister of Employment and Immigration, imposed a moratorium on the arrival of foreign domestic workers who had not yet been approved for entry into Canada. On April 27, 1992 (as this article was going to press), Valcourt introduced several changes to the FDM program, including renaming it the "Live-in Caregiver Program" (LCP).

Under the terms of the LCP, applicants from abroad must have "successfully completed a course of study that is the equivalent of Canadian grade 12" and have "successfully completed six months of full-time formal training in a field or occupation" related to the specific type of caregiving position they seek. The LCP appears more flexible than its predecessor with respect to the type of formal training that may qualify as related to a caregiving occupation (*i.e.* childcare, senior home support care or care of the disabled). These require-

[345]Glenda Simms, President of the Canadian Advisory Council on the Status of Women, quoted in "Give support to non-whites, feminists told" *Toronto Star* (5 March 1990) A5.

ments have been enacted in the form of amendments to the *Immigration Regulations, 1978*.[346]

The requirement that domestic workers obtain "release letters" from their employer prior to switching employers has been abolished, though employers will be obligated to provide a departing employee with a "Record of Employment" (ROE) showing how many weeks the domestic worker was employed and a statement of her earnings. The domestic worker may lodge a complaint with the CEC if the employer refuses to issue an ROE.

With respect to the criteria for landing, the domestic worker must only demonstrate a minimum of 2 years employment as a full time live-in domestic worker. There is no longer any requirement to show skills upgrading, savings, community involvement, etc.

Finally, the government has undertaken to provide domestic workers "with counselling information outlining terms and conditions of employment and their rights under Canadian laws" and has pledged that the "counselling role of domestic workers' advocacy groups will be supported and encouraged."[347] Employment and Immigration has also published a new guide entitled *The Live-in Caregiver Program: Information for Employers and Live-in Caregivers from Abroad*[348] which sets out the terms of the LCP with respect to selection abroad, general rights and responsibilities governing the workplace, and the requirements for landing.

It is too soon to evaluate the impact of the new LCP on the number, composition and treatment of domestic workers, though certain features of the scheme warrant tentative speculation. To the extent that the LCP retains the mandatory "live-in" component, the essential nature of the occupation is unlikely to change dramatically, though the government's commitment to fur-

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[346]The *Immigration Regulations, 1978* (as amended by SOR/92-214, ss 1, 2) read as follows:

2(1) "Live-in caregiver" means a person who provides, without supervision, in a private household in Canada in which the person resides, child care, senior home support care or care of the disabled.

...

20(1.1) An immigration officer shall not issue an employment authorization to a person who seeks admission as a live-in caregiver unless the person:

a. has successfully completed a course of study that is the equivalent of Canadian grade twelve;

b. has successfully completed six months of full-time formal training in a field or occupation related to the employment for which the employment authorization is sought;

i. in a classroom setting, as part of the course of study referred to in paragraph (a) or otherwise, or;

ii. in a non-classroom setting where the training is part of a course of instruction given under the direction of a qualified educator or trainer who provides a rated assessment thereof; and;

c. has the ability to speak, read and understand English or French language at a level sufficient to communicate effectively in an unsupervised setting.

[347]Canada Employment and Immigration Commission, *Live-in Caregiver Program Questions and Answers* (Ottawa: Minister of Supply & Services Canada, 27 April 1992) at 1-2.

[348](Ottawa: Minister of Supply & Services Canada, 1992).

nishing domestic workers with counselling information may, if undertaken diligently, reduce the incidence of abuse and exploitation.

Taken in isolation, the relaxing of criteria for landing seems highly commendable. The overall effect of the new scheme, however, is to raise the standards for initial entry to "compensate" for this slackening of the landing criteria. This shift in emphasis may in turn have a disproportionately negative impact on women applying from LDCs, such as the Philippines and the Caribbean nations.

Consider first the requirement that applicants possess the equivalent of a Canadian grade 12 education. Statistics produced by Employment and Immigration indicate that 44% of Filipina domestic workers and 49% of Caribbean domestic workers approved for permanent residence in 1989 did not have 12 years of schooling.[349] Thus, the new educational requirements would effectively exclude almost half of the women who currently comprise the bulk of the foreign domestic worker population. Moreover, the educational requirements seem unrelated to the question of whether applicants possess the skills necessary to perform domestic work. It is even questionable whether it is relevant to the future economic performance of the women who leave domestic work after landing, since the educational attainments of women educated abroad often go unrecognized in the Canadian job market anyway.[350] Even more drastic implications flow from the requirement that applicants must have at least 6 months of formal training in a caregiving occupation. Under the FDM program, applicants could qualify on the basis of formal training or practical experience. While British domestic workers frequently came equipped with certification from the National Nursery Examination Board, the vast majority of women from LDCs entered on the basis of the latter criterion. This will no longer be possible. The guidelines for the implementation of the LCP program unequivocally declare that "[t]raining does not mean experience. Therefore, practical experience, in whole or in part, which is not part of a formal training program or course, does not qualify as a substitute for training."[351] Though it remains to be seen how stringently visa officers will construe their new mandate, the revised six month formal training prerequisite could effectively shut the door on the majority of current applicants from LDCs, most of whom are women of colour.

The shift in emphasis of the LCP toward more rigorous overseas selection criteria also signals a relative fortification of the "gatekeeping" role of visa officers abroad at the expense of immigration officials in Canada. The prospects for

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[349]Canada Employment and Immigration Commission, *Permanent Residents Years of Schooling by Country of Last Permanent Residence for Special Program FDM* (Ottawa: Canada Employment and Immigration Commission, January-December 1989) [unpublished]. To make matters worse for applicants from LDCs, Canadian immigration officials do not necessarily credit years of schooling abroad as the equivalent to schooling in Canada, such that foreign applicants may need to demonstrate more than 12 years of schooling to satisfy the requirement of a Canadian grade 12 education (Canada Employment and Immigration Commission, "Operations Memorandum" IS 92-08 (24 April 1992) at 4 (this "Operations Memorandum" is a change to the *Immigration Manual (Selection and Control)*, but has not yet been given an IS number representing its actual location within the manual).

[350]See Ng & Estable, *supra*, note 124 at 30-31.

[351]"Operations Memorandum," *supra*, note 349 at 5.

future self-sufficiency, which form the basis of applications for landed status under the FDM, will now be the concern of overseas selection officers. This transfer in the locus of decision making may in turn have repercussions on the availability of judicial review of administrative decision making. A foreign domestic worker situated in Canada who is denied her application for landed immigrant status or who faces deportation may challenge Employment and Immigration's actions in a Canadian court, but the rejected applicant in Manila or Hong Kong is hardly in a position to do so.[352] The possibility that bureaucratic arbitrariness and unfairness may go unchecked is thus greater in Canadian visa offices overseas than in Canada, a prospect which can only redound to the detriment of the persons subject to the new LCP.

To the extent that the terms of the new LCP will eliminate significant numbers of women from the pool of eligible applicants, it remains to be seen whether the stricter criteria will permit the entry of enough domestic workers to satisfy employer demands. This factor may influence the long term viability of the LCP as much or more than its political, legal or ethical merits.

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[352]The *Pinto* case is somewhat exceptional in that it concerns an applicant to the program who was still in India, but it must be noted that the party before the Court in Canada was her Canadian would-be employer (*supra*, note 106).