12 September 2023

The Honourable Marc Miller
Minister of Immigration, Refugees and Citizenship
House of Commons
Ottawa, ON K1A 0A6

VIA EMAIL: Marc.Miller@parl.gc.ca

Dear Minister Miller:

RE: Immigration, Refugees and Citizenship Canada (IRCC) Consult, "An immigration system for Canada's future: Strengthening our communities"

We extend our warmest congratulations to you on your appointment as the Minister of Immigration, Refugees and Citizenship. We look forward to seeing the devotion you applied to your role as Minister of Crown-Indigenous Relations brought to immigration and refugee issues in Canada.

The HIV Legal Network is a national organization in Canada that works on legal and policy issues related to HIV and has an extensive history of conducting work on a wide range of issues related to the human rights of people living with HIV, including migration. The HIV & AIDS Legal Clinic Ontario (HALCO) is the only community legal clinic in Canada that provides services to people living with HIV. Immigration and refugee law are a central focus for the clinic. The Coalition des organismes communautaires québécois de lutte contre le sida (COCQ-SIDA) is the Québec coalition of HIV/AIDS organizations and offers legal information to people living with HIV as well as advocating more broadly for measures to protect the rights of people living with HIV.

We write to provide our input to IRCC's ongoing review of Canada's immigration system (An immigration system for Canada's future: Strengthening our communities) and highlight changes to Canada's immigration system that are necessary to protect and respect the rights of people living with HIV. These include:

(i) The immediate revocation of the "excessive demand" regime, pursuant to section 38(1)(c) of the *Immigration and Refugee Protection Act* (*IRPA*);[1]
(ii) The immediate revocation of the danger to public health and safety regime by repealing sections 38(1)(a) and (b) of the *IRPA*;
(iii) Rendering the HIV testing that is currently mandatory for immigration purposes voluntary, as required by the Public Health Agency of Canada (PHAC);

[1] *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

(iv) Implementing measures to ensure that IRCC-panel physicians are meeting the required standards of care for HIV testing, as defined in the *Panel Member Guide to Immigration Medical Examinations 2020* (*Panel Handbook*);[2]

(v) Implementing measures to ensure that refugee claimants have prompt access to health care and other fundamental rights upon arrival in Canada; and

(vi) Implementing measures to ensure that members of the Immigration and Refugee Board (IRB) meaningfully follow the *Guidelines for Proceedings Involving Sexual Orientation, Gender Identity and Expression, and Sex Characteristics* (*SOGIESC Guidelines*).[3]

At present, Canada's immigration system perpetuates harm against people living with HIV. People living with HIV are exposed to anti-HIV stigma throughout the immigration process — be it through an application for asylum, for a work or study permit, or for permanent residence. The measures that create that stigma also introduce significant inefficiency to Canada's immigration system. Notably, these measures have not been proven to achieve their purported goals.

(i) Immediately revoke the "excessive demand" regime by repealing section38(1)(c) of the *IRPA*

Under section 38(1)(c) of *IRPA*, an individual's immigration application may be denied if that individual is expected to place an "excessive demand" on Canada's public health care system.[4] The "excessive demand" threshold is regularly adjusted, and currently stands at CAD $25,689 per year.[5] Accordingly, when IRCC expects that an individual's publicly funded healthcare costs will exceed the threshold, that individual is denied their application to remain in or travel to Canada. The individual is "medically inadmissible."

The "excessive demand" regime is inherently discriminatory and stigmatizing. It is premised on the outdated notion that individuals living with health conditions or disabilities are a burden on society. Individuals that are forced to undergo this assessment are thus exposed to ableist and anti-HIV stigma, as they are reduced to the expected cost of their healthcare, whether or not they are eventually deemed medically inadmissible. The assessment also adds months or years to the immigration process. In the face of these harms, there is no evidence that the measure achieves its purported goal of controlling public healthcare costs in Canada. [6]

Our organizations have long advocated for the revocation of this "excessive demand" regime. In 2017, for instance, the HIV Legal Network and HALCO made submissions to the House of Commons Standing

---

[2] Immigrational, Refugees and Citizenship Canada (IRCC), *Canadian Panel Member Guide to Immigration Medical Examinations 2020*, 4 August 2023, available online at: www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/panel-members-guide.html#intro [*Panel Handbook*].

[3] Immigration and Refugee Board of Canada (IRB), *Guideline 9: Proceedings Before the IRB Involving Sexual Orientation, Gender Identity and Expression, and Sex Characteristics*, 17 December 2021, available online at: https://irb.gc.ca/en/legal-policy/policies/Pages/GuideDir09.aspx [*SOGIESC Guidelines*].

[4] *IRPA*, *supra* note 1, s. 38(1)(c).

[5] IRCC, "Medical Inadmissibility," 1 May 2023, available online at: www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/inadmissibility/reasons/medical-inadmissibility.html.

[6] See, e.g., HALCO, "Submission to Immigration, Refugees and Citizenship Canada on Medical Inadmissibility," 25 August 2021, available online at: www.halco.org/2021/news/submission-to-immigration-refugees-and-citizenship-canada-on-medical-inadmissibility.

Committee on Citizenship and Immigration.[7] One year later, **then-Minister of Immigration, Refugees and Citizenship Ahmed Hussen increased the "excessive demand" threshold threefold and promised to repeal the regime entirely.**[8] In 2021, we renewed our call to revoke the regime with submissions to the Migration Health Branch of IRCC.[9] Five years on, the regime remains in effect.

(ii) Immediately revoke the danger to public health and safety regime by repealing sections 38(1)(a) and (b) of the *IRPA*

Section 38(1)(a) concerns the transmissibility of an applicant's health condition, and the impact that the health condition could have on other persons living in Canada.[10] IRCC policy guidelines on this section state:

> Active Pulmonary Tuberculosis (TB) and untreated Syphilis are considered a danger to public health. If the foreign national has either or both of these conditions, they will likely be found inadmissible on the grounds of danger to public safety, unless the foreign national is treated according to Canadian standards. Although the Human immunodeficiency virus (HIV) is not considered a danger to public health, [IRCC] is committed to public health risk mitigation, and provides foreign nationals with HIV with important information that can reduce the risk of transmission.[11]

Section 38(1)(b) concerns an applicant's health condition and the potential risk of a sudden incapacity or unpredictable or violent behaviour that would create a danger to the health or safety of persons living in Canada.[12] IRCC policy guidelines on this section state:

> Health conditions that are likely to cause a danger to public safety include serious uncontrolled and/or uncontrollable mental health problems such as:
> - certain impulsive sociopathic behaviour disorders;
> - some aberrant sexual disorders such as pedophilia;
> - certain paranoid states or some organic brain syndromes associated with violence or risk of harm to others;

---

[7] See HIV Legal Network, "Submission to the House of Commons' Standing Committee on Citizenship and Immigration in relation to its Study of Federal Government Policies and Guidelines regarding Medical Inadmissibility of Immigrations," 15 November 2017, available online at www.hivlegalnetwork.ca/site/submission-to-the-house-of-commons-standing-committee-on-citizenship-and-immigration-in-relation-to-its-study-of-federal-government-policies-and-guidelines-regarding-medical-inadmissibility-o/?lang=en.

[8] See IRCC, "Government of Canada brings medical inadmissibility policy in line with inclusivity for persons with disabilities," news release, 16 April 2018, available online at: www.canada.ca/en/immigration-refugees-citizenship/news/2018/04/government-of-canada-brings-medical-inadmissibility-policyin-line-with-inclusivity-for-persons-with-disabilities.html "the Government agrees with the Standing Committee's recommendation to eliminate the policy and will collaborate with provinces and territories towards its full elimination"; see also Canada, Parliament, House of Commons, Standing Committee on Citizenship and immigration, *Building an Inclusive Canada: Bringing the Immigration and Refugee Protection Act in Step with Modern Values*, 42nd Parl, 1st Sess (December 2017) (Chair: Robert Oliphant).

[9] *Supra* note 6.

[10] *Immigration and Refugee Protection Regulations,* SOR/2002-227, ss. 31(b), (c) [*IRPR*].

[11] IRCC, "Danger to Public Health and Safety", 15 May 2013, available online at: www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/standard-requirements/medical-requirements/refusals-inadmissibility/danger-public-health-public-safety.html.

[12] *IRPR, supra* note 10, s. 33(b).

- applicants with substance abuse leading to antisocial behaviours such as violence, and impaired driving; and
- other types of hostile, disruptive behaviour.[13]

In 2015, IRCC conducted an evaluation of its health screening and notification policies.[14] With respect to sections 38(1)(a) and (b), it acknowledged:

- *Danger to Public Health*: The current policy on Danger to Public Health was found to be restrictive and unable to adapt quickly to conditions that may become more prevalent; or conditions that may temporarily pose a risk to public health.
- *Danger to Public Safety*: While the objectives of the policy on Danger to Public Safety remain relevant, it is difficult to apply during assessment because public safety-related health concerns are often hard to detect and can overlap with inadmissibility issues related to criminality.

These concerns are relevant today, and they illustrate why inadmissibility under section 38 of the *IRPA* is not the appropriate mechanism to address anticipated risks posed by health conditions. In particular, we raise three main concerns:

1. *The provisions are not useful or effective*

There is a very low rate of refusals under both provisions, which illustrates the limited utility of addressing public health concerns through immigration inadmissibility. As noted above, section 38(1)(a) does not have the capacity to address unprecedented, rapidly developing transmissible conditions. It is also not an effective response for conditions which temporarily pose a health concern. Notably, immigration inadmissibility has not been used during the COVID-19 pandemic due to the temporary nature of its transmissibility. Orders-in-Council were found to be sufficiently effective to respond to the risk.

Section 38(1)(b) is engaged when future threats are anticipated based on previous history. None of the conditions described in the policy guidelines inherently or inevitably lead to public danger. An officer assessing an applicant's medical records would find it almost impossible to identify a public danger stemming from a health condition. IRCC's 2015 evaluation noted:

> … many visa officers interviewed and approximately half of all visa officers surveyed found assessing public safety cases difficult, noting that very few applications related to public safety are identified through the IME (immigration medical examination) process. In addition, [IRCC] visa officers, medical officers and [IRCC] NHQ interviewees noted the difficulty of identifying or assessing public safety cases, primarily due to the fact that the assessment relies on clients to self-identify mental health conditions and if the condition(s) are not obvious or present at the time of the IME, it is very difficult for the panel physician to detect.[15]

2. *The provisions are not necessary given the presence of other tools*

[13] *Ibid*.
[14] IRCC, "Evaluation of the Health Screening and Notification Program," November 2015, available online at: www.canada.ca/en/immigration-refugees-citizenship/corporate/reports-statistics/evaluations/health-screening-notification-program.html#es.
[15] *Ibid*, s. 3.2.2.

The only conditions identified as dangers to public health are active tuberculosis and untreated syphilis. Both are detectable and treatable, and therefore any "danger" they pose is temporary.

IRCC's online instructions acknowledge that either of these conditions can lead to inadmissibility based on section 38(1)(a), "unless the foreign national is treated according to Canadian standards". The primary goal, therefore, should be to ensure that the conditions are detected and treated — not to bar entry to individuals with these health conditions. This is the role of IRCC's Medical Surveillance protocol, through which IRCC notifies provincial health authorities to ensure that the health condition is treated. Currently, only active tuberculosis is subject to the protocol.[16]

A finding under section 38(1)(b) requires an individualized assessment of an applicant's behaviour. If the behaviour was sufficiently dangerous prior to the application to move to Canada, it would likely have resulted in criminality which would be addressed through section 36(1) or (2). If the behaviour became evident after arrival in Canada, there are other tools that can be used to respond to the threat.

3. *There is a high risk of stigmatization under the provisions*

The provisions do not reflect the current societal view of the appropriate manner to respond to health conditions. Section 15 of the *Charter* prohibits discrimination on the basis of mental or physical disability, and commitments under the *Convention on the Rights of Persons with Disabilities* obligate Canada to ensure full and effective participation and inclusion for people with health conditions.[17] By contrast, sections 38(1)(a) and (b) perpetuate an exclusionary and stigmatizing view of people with health conditions as threats to society which can only be managed through abject exclusion. This view is untrue and outdated.

(iii) Render all immigration-related HIV testing voluntary, in conformity with the PHAC guidelines

At present, certain individuals who apply to enter or remain in Canada are required to undergo an immigration medical examination which includes an HIV test — including those who intend to stay in the country for more than six months and those applying for permanent residence.[18] Applicants are told that they have the right to refuse the test, but that if they do so, their immigration application will be treated negatively.[19] The choice is therefore to either undergo the HIV test or forego migration to Canada.

---

[16] IRCC, "Medical Surveillance," 9 May 2014, available online at: www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/standard-requirements/medical-requirements/surveillance-notifications/medical-surveillance.html.

[17] United Nations General Assembly, *Convention on the Rights of Persons with Disabilities,* 24 January 2007, A/RES/61/106, available online at: www.refworld.org/docid/45f973632.htm.

[18] See, e.g., IRCC, "Medical exams for visitors, students and workers," 6 June 2023, available online at: www.canada.ca/en/immigration-refugees-citizenship/services/application/medical-police/medical-exams/requirements-temporary-residents.html.

[19] IRCC, "Client Declaration and Notice with respect to the Immigration Medical Exam and Notice with Respect to Vaccination - IMM5743," July 2022, available online at: www.canada.ca/content/dam/ircc/migration/ircc/english/department/partner/pp/pdf/imm5743e.pdf.

Under the PHAC guidelines, HIV testing must be voluntary and based on informed consent.[20] PHAC describes voluntary testing as that "without threat or coercion" and which occurs with "informed consent to proceed with testing."[21] Immigration-related HIV testing does not meet these standards.

Immigration is not a purely voluntary endeavour. Individuals are compelled to migrate for a myriad of reasons, including those that go beyond seeking asylum. For instance, individuals may feel compelled to migrate to be with their families, to access (otherwise inaccessible) education or employment opportunities, or to escape harassment and discrimination (that would not reach the threshold required to obtain refugee protection, as defined in the *IRPA*). For those who view migration to Canada as necessary, the HIV test is coerced. Those individuals are forced to undergo the HIV test and to grapple with its possible harmful consequences to proceed with what they consider essential.[22]

Indeed, the practice of mandating HIV tests for immigration purposes is broadly recognized as coercive, discriminatory, and counterproductive. It has long been dismissed by the international community. For instance, the International Organization for Migration (IOM) — which the IRCC cites as guidance for HIV testing[23] — has strongly rejected the practice:

> The question of mandatory HIV testing is a complex one, and one that is evolving as effective HIV treatment becomes increasingly available. Among various models for offering HIV testing are 'opting in' (purely voluntary testing that the individual may actively accept) and 'opting out' (offering HIV testing that the individual may decline). Opting out is not an alternative in the case of immigration-related HIV testing: for a number of destination countries the decision to migrate comes with the obligation to undergo an HIV test. In line with standard good practice, IOM promotes voluntary counselling and testing (VCT) as an effective means of HIV prevention — for people who move just as for people who are sedentary. IOM joins other agencies and programmes in opposing mandatory HIV testing [-] a position originally formulated almost 15 years ago […] that has remained unchanged […].
>
> Carrying out HIV tests required for immigration […] poses a moral and ethical dilemma The difficulty is that if an individual wishes to migrate to a country that requires HIV testing then there is no choice: the test comes with the decision to migrate, and someone has to carry out the testing.[24]

Additionally, the Joint United Nations Programme on HIV and AIDS (UNAIDS) has recognized that, "Mandatory HIV testing […] reinforce[s] stigmatizing stereotypes against people living with HIV, leading to HIV being viewed as a foreign import that concerns only foreigners" and "fear of discrimination and

---

[20] Public Health Agency of Canada (PHAC), "Human Immunodeficiency Virus – HIV Screening and Testing Guide," 5 August 2014, available online at: www.canada.ca/en/public-health/services/hiv-aids/hiv-screening-testing-guide.html.

[21] *Ibid*.

[22] See, e.g., L. Bisaillon, "Disease, Disparities and Decision Making: Mandatory HIV Testing of Prospective Immigrants to Canada," ," *BibliotéqueOnline* 2/10 (2013),, available online at: https://papyrus.bib.umontreal.ca/xmlui/bitstream/handle/1866/9733/10.pdf, which details the case of a citizen of Chad, who underwent the immigration medical examination, including the mandatory HIV test, in Russia (where she was living at the time) in order to come to study in Canada; her HIV test came back positive and exposed her to the prospect of deportation from Russia back to Chad.

[23] See, *supra* note 2, Panel Handbook.

[24] IOM, *HIV/AIDS and Population Mobility: Overview of the IOM Global HIV/AIDS Programme 2006*, 2006, available online at: https://publications.iom.int/system/files/pdf/iom_global_hiv_pdf_en.pdf.

deportation may prevent people living with HIV and people at higher risk of HIV from seeking and accessing the HIV prevention, treatment and care services they need, even when they are available."[25]

Today, Canada remains one of few countries that continues to engage in the practice of mandatory HIV testing. The United States, for instance, abandoned the practice in 2010, now treating HIV like any other medical condition for which individuals can choose to test.[26] In the United Kingdom, the government chose not to impose mandatory testing, despite public pressure to reduce the number of migrants entering the country. The United Kingdom's All-Party Parliamentary Group on AIDS found that "the UK Government cannot look to exclude individuals on the basis of poor health in the UK, while simultaneously working to provide access to health in developing countries."[27] Commenting on Canada's practice, Professor Bisaillon at the University of Toronto recently confirmed, "Other OECD countries, including Norway, Denmark and Sweden, use voluntary HIV testing to connect migrants to care and treatment, not to show them the door."[28]

We have long advocated for voluntary HIV testing in Canada. In fact, in 2001, the HIV Legal Network published *HIV/AIDS and Immigration Final Report*, outlining the harms of mandatory testing:

> Mandatory testing of all prospective immigrants and providing counseling and other risk-reducing interventions may prevent the transmission of the disease from a given individual to another, so there could conceivably be some marginal benefit in a relatively small number of instances. However, **by fostering a false sense of security and by undermining people's responsibility for protecting themselves, by singling out immigrants for mandatory testing in a manner that obscures other potential sources of exposure to HIV, the measure may indeed achieve the very opposite of its objective of preventing infection among Canadians. In that sense, as a measure to protect the Canadian public, mandatory testing of all prospective immigrants can be characterized as "arbitrary, unfair, and based upon irrational considerations." In addition, even if mandatory testing of all immigrants were an effective way to prevent spread of HIV within the population, it is not the way that least impairs the right to be free from discrimination.** Encouraging all individuals to undergo voluntary testing and to avoid risky behaviour is a less impairing and far more effective way to protect members of the public from contracting HIV. [29]

Our warnings have in many respects come to bear. Research has revealed, "major problems and gaps in Canada's immigration policy, practice, and process, including exposing the private health information of thousands of applicants to misuse and prejudice," as "migrant applicants who are HIV-positive are thrust into and endure a bureaucratic nightmare of re-testing, doling out a lot of money, and further medical

---

[25] UNAIDS, "Still Not Welcome: HIV-Related Travel Restrictions," 2019, available online at: www.unaids.org/sites/default/files/media_asset/hiv-related-travel-restrictions-explainer_en.pdf.
[26] Centers for Disease Control and Prevention, *HIV Guidance*, 4 January 2010, available online at: www.cdc.gov/immigrantrefugeehealth/panel-physicians/hiv-guidance.html.
[27] Open Parliament, "Mr Maurice Tomlinson (Senior Policy Analyst, Canadian HIV/AIDS Legal Network) at the Citizenship and Immigration Committee," 20 November 2017, available online at: https://openparliament.ca/committees/immigration/42-1/84/maurice-tomlinson-1/only/.
[28] E. Henderson, "Study reveals major problems and gaps in Canada's process of mandatory HIV screening of migrants," *Medical & Life Sciences News*, 30 November 2022, available online at: www.news-medical.net/news/20221130/Study-reveals-major-problems-and-gaps-in-Canadas-process-of-mandatory-HIV-screening-of-migrants.aspx.
[29] HIV Legal Network, *HIV/AIDS and Immigration Final Report*, 2001, available online at: www.hivlegalnetwork.ca/site/wp-content/uploads/2013/04/ImmigRpt-ENG.pdf.

scrutiny, along with uncertainty as to how their information is handled by the immigration department inside and outside Canada."[30]

(iv) Ensure that panel physicians are appropriately trained and equipped to test individuals for HIV and that measures are in place to hold panel physicians accountable to the requirements set out in Panel Handbook

Under the Panel Handbook, panel physicians, in Canada and abroad, are required to undertake measures when conducting HIV tests that bring Canada's immigration HIV testing in line with accepted standards set by the World Health Organization (WHO).[31] Specifically, panel physicians are required to provide culturally sensitive, age and gender appropriate pre- and post-test counselling, with consideration given to legal, ethical, social, and human rights. Pre-test counselling should include information on how HIV is transmitted and prevented; the testing procedure; consent, confidentiality, and reporting; the meaning of the results; and the need to inform anyone at risk if the test is positive. Post-test counselling should include information on the test results; risk reduction strategies, such as partner notification; and a discussion on follow-up and care. Panel physicians are then required to refer individuals to HIV specialists.

In practice, we have seen panel physicians fall well short of the Panel Handbook requirements. There have been instances in which individuals have not received *any* pre- or post- test counselling; in some cases, panel physicians have failed to inform individuals that they are being tested for HIV. Our experiences have been confirmed by studies of migration-related HIV testing in Canada. For instance, a 2020 study found that "participants may not have received adequate or appropriate pre-HIV test counselling [and] more than half of the participants reported not being informed that an HIV test was a mandatory part of the IME" and "participants reported a wide variety of follow- up referrals and linkage to care and supports following the IME HIV testing process [and] received inconsistent counselling on how to manage their HIV in Canada and disclosure of their HIV-positive status to others."[32]

(v) Ensure that refugee claimants have prompt access to health care and other essentials upon arrival in Canada

Refugee claimants in Canada are entitled to health care, employment, and education while awaiting a decision on their claim — and even following a negative decision, until a removal order has been issued.[33] After passing an eligibility interview (during which immigration authorities assess whether an individual is eligible to make a refugee claim), claimants are provided with a Refugee Protection Claimant Document (RPCD), which confirms their identity and status in Canada. They are then automatically enrolled in the Interim Federal Health Program (IFHP), which provides temporary health care cost coverage, and have their work permit and/or study permits processed.

---

[31] *Supra* note 2 and 25.
[32] A. dela Cruz et al., National Library of Medicine, "Mandatory HIV screening, migration and HIV stigma in Canada: exploring the experiences of sub-Saharan immigrants living with HIV in western Canada," *National Library of Medicine* 40(2) (2020): 38-46, online at: www.ncbi.nlm.nih.gov/pmc/articles/PMC7053853/.
[33] IRCC, "Refugee claimants: Know your rights," 9 January 2020, available online at: www.canada.ca/en/immigration-refugees-citizenship/services/refugees/help-within-canada/rights.html.

The respect for, and protection of, these rights are essential, particularly as individuals can be forced to wait approximately 24 months for a decision on their claim.[34] Yet, frequently changing rules and policy barriers have created confusion leading to months- or years- long delays in the issuing of RPCDs and the associated entitlements.[35] The delays have meant that refugee claimants have faced barriers in renting apartments, accessing bank accounts, obtaining a driver's license, engaging in meaningful employment/education, and accessing essential healthcare services. For individuals living with significant health conditions, such as HIV, these delays can have life-threatening consequences.

(vi) Ensure IRB members are trained in SOGIESC matters and applying the SOGIESC Guidelines

In 2017, the IRB introduced the *Sexual Orientation, Gender Identity and Expression, and Sex Characteristics (SOGIESC) Guidelines* to ensure that members were treating LGBTQ+ refugee claimants fairly.[36] They resulted from persistent criticism of the IRB requiring refugee claimants to "prove" their sexual orientation and relying on stereotypes about sexuality to determine whether someone would receive protection in Canada.[37] The Guidelines now require IRB members to understand the unique challenges faced by LGBTQ+ individuals in corroborating their SOGIESC and avoid stereotyping and incorrect assumptions when making findings of fact. The SOGIESC Guidelines thus mark an important step forward for the IRB and have rightly been lauded by advocates across Canada and beyond.[38]

Despite the important progress, some IRB members have continued to promote discriminatory and stigmatizing ideas about LGBTQ+ refugee claimants, with often life-threatening consequences for those claimants. For instance, a 2021 review of the Guidelines found that "while many [IRB members] felt the training they received was sufficient, the case law review and the survey results raised some concerns around inconsistencies in the application of the Guideline."[39] Additionally, the review revealed that:

---

[34] IRB, "Wait times (all divisions)," 22 March 2021, available online at: irb.gc.ca/en/transparency/pac-binder-nov-2020/Pages/pac8a.aspx?=undefined&wbdisable=true#:~:text=Projected%20wait%20times%20are%20approximately,12%20months%20for%20refugee%20appeals.

[35] See, e.g., CILA, "Joint Letter from CILA, CARL, RLA and AQAADI Urging IRCC to Expedite Scheduling of Eligibility Interviews and Urgent and Timely Processing of Work Permits for Refugee Claimants," 18 September 2022, available online at: https://cila.co/joint-letter-from-cila-carl-rla-and-aqaadi-urging-ircc-to-expedite-scheduling-of-eligibility-interviews-and-urgent-and-timely-processing-of-work-permits-for-refugee-claimants/.

[36] See, *supra* note 3, *SOGIESC Guidelines*.

[37] See, e.g., F. Deif and G. Reid, "Canada Levels the Playing Field for LGBTI Refugees," *Human Rights Watch*, 5 May 2017, online at: https://www.hrw.org/news/2017/05/05/canada-levels-playing-field-lgbti-refugees; and Z. Bielski, , "After a lifetime of hiding, gay refugees seeking protection in Canada are expected to prove their identity," *Globe and Mail*, 1 May 2017, online at: www.theglobeandmail.com/life/relationships/after-lifetime-of-hiding-gay-refugees-to-canada-expected-to-prove-theiridentity/article34858343/.

[38] See, e.g., C. Sanders, "Advocates praise new guidelines for LGBTQ refugee claims," *Winnipeg Free Press*, 4 May 2017, online at: www.winnipegfreepress.com/local/2017/05/04/advocates-praise-new-guidelines-for-lgbtq-refugee-claims; N. Keung, "Refugee board creates guidelines for deciding LGBTQ claims," *Toronto Star*, 5 May 2017, online at: www.thestar.com/news/immigration/refugee-board-creates-guidelines-for-deciding-lgbtq-claims/article_333c880a-5a30-5e50-9fa6-85d47dda1dde.html; and G. Reid, "Canada Sets International Example in LGBT Rights," *Human Rights Watch*, 5 September 2017, online at: www.hrw.org/news/2017/09/05/canada-sets-international-example-lgbt-rights.

[39] IRB, "Review of the implementation of the Sexual Orientation and Gender Identity and Expression (SOGIE) Guideline, 2021, online at: https://irb.gc.ca/en/transparency/reviews-audit-evaluations/Pages/sogie-guideline-implementation-review.aspx.

> Some members referenced the Guideline and applied it while others referenced it but did not apply it in the proceeding and/or the writing of their Reasons. While many members carefully used appropriate wording and avoided stereotypes, some used insensitive language, stereotypes, or inappropriate lines of questioning. Moreover, members felt they needed additional training on credibility assessments and that content should be delivered in an experiential manner (e.g. case studies, group discussions, or even role play) as opposed to theoretical and in lecture format.[40]

The mistreatment of LGBTQ+ refugee claimants continue to this day.[41] The former Executive Director of the Canadian Council for Refugees has recently confirmed that, "Despite the guidelines, there continued to be a lot of complaints about stereotypes, offensive language used and also the whole Western framework, the sense that we know what gays do."[42] Such is contrary to the very purpose of the *SOGIESC Guidelines*. It is imperative that those who decide refugee claims are not promoting the stigma that most LGBTQ+ claimants are fleeing, resulting in further trauma to claimants and their removal to countries where they face persecution.

To conclude, Canada has joined all other countries at the UN in declaring the goal of "ending AIDS" by 2030, as one of the world's shared Sustainable Development Goals.[43] This can only happen by respecting and realizing human rights, including in the context of migration.

We urge you to act on above, and we request a meeting with you in fall 2023 to further discuss these important issues that prevent Canada from living up to its reputation as a welcoming and rights respecting country.

---

[40] *Ibid*.

[41] See, e.g., D. Smith, "Canada's Immigration and Refugee Board updates guidelines for LGBTQ2S+ claimants – but there's more work to be done," *Xtra*, 28 January 2022, online at: https://xtramagazine.com/power/politics/refugees-canada-guidelines-217095; F. Willick, "'My heart is so much hurting': Kenyan father facing deportation pleads to stay," *CBC*, 17 May 2023, online at: www.cbc.ca/news/canada/nova-scotia/kenyan-man-halifax-deportation-1.6829121; and D. Smith, "Canadian immigration minister Sean Fraser says he's committed to LGBTQ2S+ refugees," *Xtra*, 25 March 2022, online at: https://xtramagazine.com/power/lgbtq2s-refugees-ukraine-220397.

[42] D. Smith, "Canada's Immigration and Refugee Board updates guidelines for LGBTQ2S+ claimants – but there's more work to be done," *Xtra*, 28 January 2022, online at: https://xtramagazine.com/power/politics/refugees-canada-guidelines-217095.

[43] See, e.g., UNAIDS, "Canada," 27 February 2018, available online at: www.unaids.org/en/keywords/canada.