

August 5, 2016

VIA EMAIL (consultations@cic.gc.ca)

Honourable John McCallum, P.C., M.P.
Minister of Immigration, Refugees and Citizenship Canada
365 Laurier Avenue West
Ottawa, ON K1A 1L1

Dear Honourable Minister McCallum:

Re: Submission to consultations on the future of immigration in Canada

We are writing on behalf of the HIV & AIDS Legal Clinic Ontario (HALCO) to participate in Immigration, Refugees, and Citizenship Canada's consultation on the future of immigration in Canada.

HALCO, founded in 1995, is a community legal clinic serving the legal needs of low-income people in Ontario who are living with HIV. It is the only such organization in Canada. The clinic is governed by a board of directors, the majority of whom must be persons living with HIV. In addition to providing direct legal services, HALCO engages in public legal education, community development and law reform activities. In 2013-14, the clinic responded to over 4000 inquiries and conducted numerous public legal education workshops.

HALCO submits that any efforts to modernize the Canadian immigration system must include a comprehensive review of the excessive demand provision. The excessive demand provision relies on outdated and discriminatory attitudes about people living with HIV, by focusing solely on alleged use of health services and ignoring the important contributions that people with HIV make to Canadian society. It also undermines the goals of Canada's immigration system and does not fulfill its own stated purpose of controlling health care costs. This provision has no place in a modernized immigration system. HALCO's position is that the excessive demand provision should be repealed; however, we propose in the alternative that the Canadian government undertake a comprehensive review of the excessive demand provision as detailed below.

Excessive Demand – Legislative Framework

Section 38(1)(c) of the *Immigration and Refugee Protection Act* sets out that an individual is inadmissible to Canada if they will cause an excessive demand on health and social services in the five to ten year period after they become permanent residents.¹ The Regulations define excessive demand as a demand for health services that exceeds the per capita health services of the average Canadian. The current threshold is

¹ For permanent resident applicants, officers consider the health costs they will incur during the 5 to 10 years after they become permanent residents. Students and temporary foreign workers may also be inadmissible if they will be eligible for public healthcare services.

\$6,450.00 per year. This inadmissibility applies to principal applicants in addition to their family members – whether or not those family members are actually accompanying them to Canada.

Due to the high cost of the majority of anti-retroviral medications, people living with HIV are generally medically inadmissible under this provision and their applications will be refused.

The IRPA introduced exceptions to this provision. Convention refugees, protected persons and their accompanying spouses and dependent children are exempt from excessive demand inadmissibility. Similarly, excessive demand does not apply to spousal sponsorships and dependent children who are sponsored by their parents.

Effects of the Legislation

The excessive demand provision discriminates against people living with HIV. It contributes to anti-HIV stigma by relying on outdated attitudes that people living with HIV are solely a burden on the Canadian healthcare system and ignores the many contributions that people with HIV make to Canadian society. Many Canadians are shocked to learn that Canada refuses immigrants due to their HIV status.

Historically, the Canadian immigration system has identified particular groups of people as undesirable and unfit for immigration. Over the years, however, policymakers endeavoured to do away with overtly discriminatory policies in favour of an immigration policy that better reflected Canadian values of diversity, equality, and inclusion. The discrimination inherent in the excessive demand provision is out of step with these values.

The excessive demand provision further undermines the goals of Canada's immigration system. The provision squarely impacts the "global talent" that Canada seeks to attract. For example, at HALCO we frequently advise international students who have been infected with HIV during their studies in Canada. Most of these students' permanent resident applications would be refused under the excessive demand provision. The excessive demand provision also undermines the goal of family reunification, as it applies to parents, grandparents and other family class applicants.

The excessive demand provision is not rationally connected to its own purported goal of controlling healthcare costs. In light of the above-cited exceptions, the excessive demand provision only applies to applicants in certain immigration categories. This limits any actual savings in health care costs. The promise of savings in health care costs can also be illusory, as many permanent residents will incur unforeseen medical costs after their arrival in Canada.

The excessive demand provision also imposes a costly and inefficient process on both the government and applicants. Immigration decision-makers are tasked with performing complicated assessments of the likely demands posed by an applicant. For their part, applicants must respond by obtaining further medical documents, detailed evidence of their actual medical costs, or provide extensive evidence of why they merit a waiver of medical inadmissibility on humanitarian and compassionate grounds. In our experience at HALCO, it typically takes over a year to receive a response to a waiver request. These lengthy processes further delay the integration of immigrants living with HIV to Canadian society.

Lastly, over the years, many observers have raised operational concerns with the excessive demand assessments. These concerns have included critiques of the statistical methods used to determine the cost threshold itself and the factors that are considered in the excessive demand assessment (for example, an individual's ability to contribute to the tax system).

Recommendation

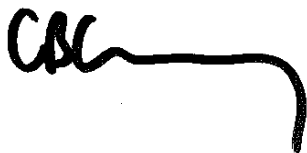
HALCO recommends repealing section 38(1)(c) of IRPA. In the alternative, however, we recommend that the Minister undertake a comprehensive review of the excessive demand provision itself in addition to the procedures for determining excessive demand. Specifically, this review must consider the context of the outdated and discriminatory attitudes that the provision perpetuates and whether the provision actually furthers the goals of the Canadian immigration system (including whether it furthers its own purported goal of controlling health care costs). The review should also consider operational considerations such as the method of determining the excessive demand cost threshold, what factors are considered in the excessive demand assessment, and how to streamline the process. Any such review would require consulting people with disabilities and medical conditions and the organizations that work with and represent them.

We look forward to providing further submissions as the process moves forward, and we thank you for your attention to this matter.

Sincerely,

HIV & AIDS Legal Clinic Ontario

per:



Clare McMullen-Crummey
Staff Lawyer



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