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VIA ELECTRONIC MAIL: IRCC.MHBDGO-BDGDGMS.IRCC@cic.gc.ca

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Dear Jennifer Lew,

Re: *Canada Gazette*, Part I: Regulations Amending the Immigration and Refugee Protection Regulations (Excessive Demand) (March 27, 2021)

Introduction

The HIV & AIDS Legal Clinic Ontario ("HALCO") and the HIV Legal Network (formerly the Canadian HIV/AIDS Legal Network) make this representation with respect to Canada Gazette, Part I, Volume 155, Number 13: Regulations Amending the Immigration and Refugee Protection Regulations (Excessive Demand).

HALCO is the only community legal clinic in Canada that provides services to people living with HIV. Immigration and refugee law is an important focus of the clinic's work and HALCO has regularly represented, and continues to represent, individuals living with HIV who have been alleged to be medically inadmissible to Canada due to excessive demand. The HIV Legal Network is a national organization in Canada that works exclusively on legal and policy issues related to HIV and AIDS, and is one of the world's leading expert organizations in this field. The HIV Legal Network has an extensive history of conducting work on a wide range of legal and policy issues related to the human rights of people living with HIV or AIDS, including in the area of HIV-related stigma and discrimination and immigration law and policy as it relates to HIV.

While the public policy changes made in 2018 to excessive demand in relation to medical inadmissibility — and in particular the decision to raise the threshold by threefold — are a step in the right direction (as are the proposed regulations to codify the 2018 policy[1]), the excessive demand regime (i) still violates the *Canadian Charter of Rights and Freedoms* ("Charter"); (ii)

[1] Immigration, Refugees and Citizenship Canada, News Release, "Government of Canada brings medical inadmissibility policy in line with inclusivity for persons with disabilities" (16 April 2018), online: www.canada.ca/en/immigration-refugees-citizenship/news.html.

contributes to stigma and discrimination against people with disabilities, including people living with HIV; (iii) is inconsistent with international human rights law and Canada's obligations pursuant to such law; (iv) is a cumbersome and inefficient process to administer; and (v) undermines the objectives of the *Immigration and Refugee Protection Act* ("IRPA"). Incremental changes will not resolve these problems. As we have consistently recommended, we urge the Government of Canada to repeal the excessive demand regime altogether. This is aligned with the recommendation of the Standing Committee on Citizenship and Immigration to eliminate the policy.[2]

Background

In 2002, the *Immigration and Refugee Protection Act* ("IRPA") came into force, which stipulates that foreign nationals are inadmissible to Canada on health grounds if their health condition might reasonably be expected to cause an "excessive demand" on health or social services, or if they have an inadmissible family member (i.e., an inadmissible spouse or dependent child). The IRPA also introduced two important incremental changes to the excessive demand regime. First, the IRPA created exceptions to excessive demand inadmissibility, exempting accepted refugees and protected persons, their spouses, common-law partners and dependent children as well as spouses, common-law partners and dependent children sponsored through family class sponsorships. Second, IRPA's associated Regulations set out a comprehensive definition of excessive demand, which is now defined as:

a) a demand on health services or social services for which the anticipated costs would likely exceed average Canadian per capita health services and social services costs over a period of five consecutive years immediately following the most recent medical examination required under paragraph 16(2)(b) of the Act, unless there is evidence that significant costs are likely to be incurred beyond that period, in which case the period is no more than 10 consecutive years; or

b) a demand on health services or social services that would add to existing waiting lists and would increase the rate of mortality and morbidity in Canada as a result of an inability to provide timely services to Canadian citizens or permanent residents [emphasis added].

Immigration, Refugees and Citizenship Canada ("IRCC") sets the excessive demand threshold annually by multiplying the per capita cost of Canadian health and social services by the number of years used in the medical assessment for the individual applicant. The excessive demand threshold as of 2020 is $7,068.[3]

Despite the IRPA's attempts to clarify the definition of excessive demand, courts were tasked with providing further guidance on how immigration officers must apply the medical inadmissibility provisions. In *Hilewitz v. Canada (MCI)* and *De Jong v. Canada (MCI)*, the Supreme Court of Canada determined that immigration officers must conduct an individualized

[2] 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 (December 2017) (Chair: Robert Oliphant) at page 40. [Standing Committee Report]

[3] "Excessive demand on health and social services." Excerpt from the Immigration, Refugees, and Citizenship Canada website, http://www.cic.gc.ca/english/resources/tools/medic/admiss/excessive.asp ["Excessive demand"]

assessment that takes into account the specific circumstances of the applicant, instead of a generic assessment based on a health condition.[4] The specific circumstances were limited to a consideration of social services in the decision.

In the case of health services, these individualized assessments are relatively limited. The decisions in *Companioni v. Canada (MCI)* (Federal Court) and *Lawrence v. Canada (MCI)* (Federal Court of Appeal) clarified the need for the excessive demand assessment to include a consideration of whether an applicant has a viable private insurance plan for healthcare costs.[5]

In 2018, a new medical inadmissibility policy was introduced by the Government of Canada, which increased the excessive demand threshold to three times its previous level and amending the definition of social services to exclude special education, social and vocational rehabilitation services, as well as personal support services.[6] This has brought the 2020 threshold to $21,204.[7]

As of 2019, the average cost of antiretroviral medication regimens is between $13,000 and $19,000 per year for treatments.[8] Though this range may fall below the proposed threshold for excessive demand, some people living with HIV may still face complications associated with their status, necessitating a more expensive and robust treatment regime. Furthermore, many clients of HALCO also often face a higher risk of living with other comorbidities, such as renal failure, neurocognitive disorders, and drug-resistant strains of HIV. As such, this may render some people living with HIV an "excessive demand," or require them to undergo lengthy and numerous immigration medical exams (IMEs).

The Case for Repealing Excessive Demand in Medical Inadmissibility

Excessive demand is discriminatory and violates the Charter

The Charter guarantees equality before and under the law and the right to the equal protection and equal benefit of the law without discrimination, including on the basis of disability.[9] Section 3 of the IRPA specifically mandates that decisions taken under the Act must be consistent with

[4] *Hilewitz v Canada (MCI)*, 2005 SCC 57; *De Jong v Canada* (MCI), 2005 SCC 57.
[5] *Companioni v. Canada (MCI)*, 2009 FC 1315 (Federal Court); *Lawrence v Canada (MCI)*, 2013 FCA 257. In Ontario, applicants are required to exhaust their private insurance before drawing on the province's public drug-funding program. Therefore, an individual with private insurance may not be medically inadmissible due to excessive demand, and their permanent residence application could be accepted.
[6] "Government of Canada brings medical inadmissibility policy in line with inclusivity for persons with disabilities", News Release from Immigration, Refugees, and Citizenship Canada website, https://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
[7] Excessive Demand, *supra*.
[8] Toronto People With AIDS Foundation, "Single Tablet Regimens for HIV Treatment – What You Need to Know" (October 16, 2019), online at: https://www.pwatoronto.org/single-tablet-regimens-for-hiv-treatment-what-you-need-to-know/.
[9] *Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982*, being Schedule B to the *Canada Act (1982)* UK, 1982, c. 11.

the Charter, including its principles of equality and freedom from discrimination. The excessive demand regime violates the Charter by discriminating against people with disabilities.[10]

While the excessive demand regime may appear neutral on the surface because it does not single out any particular medical condition and focuses instead on the *cost* of an applicant's medical condition, cost is not a neutral factor. IRCC could still reject permanent residence applications from people with disabilities due to their alleged use of health services. As a result, people with disabilities are unfairly disadvantaged by a law that appears neutral. This form of indirect discrimination is still discrimination.[11]

Discrimination is inherent to the excessive demand regime itself. No amount of individualized assessments can diminish the reality that the excessive demand regime reduces an applicant living with disabilities to the cost of their health care. The reductive analysis of the excessive demand regime contributes to ableist and anti-HIV stigma. In the *Hilewitz* decision, the Supreme Court of Canada recognized that even "exclusionary euphemistic designations" can conceal prejudices about disability.[12] The excessive demand regime conceals out-dated prejudices that many people living with disabilities are a burden on Canadian society. It is also reflected in the Gazette's description of the concern among provinces and territories that eliminating the excessive demand regime would have "the potential to create an even stronger draw factor for applicants and dependants with high medical needs."[13]

Moreover, by offering no opportunity for decision-makers to assess the potential contributions that an applicant may make to Canadian society, the excessive demand regime erases those many contributions. In *Hilewitz*, the Supreme Court recognized that "no doubt" that "most immigrants, regardless of the state of their resources when they come to Canada, eventually contribute to this country in a variety of ways."[14] United Nations ("UN") agencies, including the Joint United Nations Programme on HIV/AIDS ("UNAIDS") and the International Organization for Migration, have highlighted the positive impact of antiretroviral medication on the longevity and productivity of people living with HIV. People living with HIV participate in the labour force, pay taxes and contribute to their communities in many ways. Support networks formed by individuals participating in AIDS service organizations or by allowing parents and grandparents to reunite in Canada may also ultimately reduce government costs. Consideration of the anticipated contributions of newcomers with HIV is particularly important given the increasingly manageable nature of the medical condition and longer lifespans of people living with HIV.[15] As

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[10] HIV is recognized as a disability. For example, the Ontario Human Rights Commission *Policy on HIV/AIDS-related discrimination* states "AIDS (Acquired Immunodeficiency Syndrome) and other medical conditions related to infection by the Human Immunodeficiency Virus (HIV) are recognized as disabilities within the meaning of the Code." This policy was approved on 27 November 1996 and is available at www.ohrc.on.ca/en/policy-hivaids-related-discrimination.

[11] *Andrews v Law Society of British Columbia*, [1989] 1 SCR 143, 1989 CanLII 2 (SCC).

[12] *Hilewitz, supra* note 13 at para. 48.

[13] *Canada Gazette*, Part I, Volume 155, Number 13: Regulations Amending the Immigration and Refugee Protection Regulations (Excessive Demand) (March 27, 2021) online at: https://canadagazette.gc.ca/rp-pr/p1/2021/2021-03-27/html/reg1-eng.html at page 5 [Regulations Amending Excessive Demand].

[14] *Ibid*, para. 39.

[15] Battista, M. "HIV and Medical Inadmissibility in Canadian Immigration Law" Canadian Bar Association Immigration Law Conference (2013) at page 10. Online at: http://www.cba.org/CBA/cle/PDF/IMM13_paper_battista.pdf.

UNAIDS' International Task Team on HIV-Related Travel Restrictions acknowledged, "HIV-related travel restrictions on entry, stay and residence … do not rationally identify those who may cause an undue burden on public funds."[16]

However, we do not advocate a "net fiscal benefit" approach. Such an approach would maintain all of the complications of the current excessive demand assessment, but would be even more onerous for both applicants and decision-makers. Applicants would still be required to complete the IME, but, depending on their condition, may still have to respond to the procedural fairness letter to confirm the amount of their health care costs as well as provide evidence of the "fiscal benefit" they would provide to Canadian society. Officers would be required to not only complete the medical assessments but also somehow confirm the accuracy of a submission with respect to the applicant's net fiscal benefit. More importantly, a net fiscal benefit analysis would dehumanize applicants by reducing their potential contribution to society solely to quantifiable factors.

Excessive demand violates Canada's international law obligations

The UN has repeatedly called upon countries to eliminate HIV-related restrictions on entry, stay and residence. International law prohibits States from discriminating against people on the basis of their health status. In 2006, for example, the Office of the United Nations High Commissioner for Human Rights and UNAIDS published the *International Guidelines on HIV/AIDS and Human Rights*, which describe HIV-related discrimination in the context of travel regulations, entry requirements, immigration and asylum procedures as a violation of the right to equality before the law.[17] In 2011, the UN General Assembly encouraged Member States to eliminate HIV-related restrictions on entry, stay and residence.[18] UNAIDS reiterated this call in 2014, highlighting that countries can make a difference in the fight against HIV by ending all restrictions on the entry, stay and residence of people living with HIV.[19] These calls are in line with international law, which prohibits States from discriminating against a person in the enjoyment and exercise of their human rights on the basis of their health status (which includes HIV status).[20]

In ratifying the *Convention on the Rights of Persons with Disabilities* in 2010, Canada signalled a commitment to uphold the rights of persons with disabilities, including the right to non-discrimination, full and effective participation and inclusion in society, and equality of

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[16] UNAIDS, *Report of the International Task Team on HIV-related Travels Restrictions: Findings and Recommendations*, December 2008, p. 5.
[17] Office of the United Nations High Commissioner for Human Rights and the Joint United Nations Programme on HIV/AIDS, *International Guidelines on HIV/AIDS and Human Rights 2006 Consolidated Version*, s. 131.
[18] UN General Assembly, *Political Declaration on HIV and AIDS: Intensifying Our Efforts to Eliminate HIV and AIDS*, A/RES/65/277, July 8, 2011, para. 79.
[19] UNAIDS, *The Gap Report*, 2014, p. 169. Available at: http://www.unaids.org/en/resources/documents/2014/20140716_UNAIDS_gap_report.
[20] UN Commission on Human Rights has confirmed that "other status" in non-discrimination provisions in international human rights texts should be interpreted to cover health status, including HIV/AIDS. UN Commission on Human Rights, The protection of human rights in the context of human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS), Resolutions 1995/44, ESCOR Supp. (No. 4) at 140, U.N. Doc. E/CN.4/1995/44 (1995); and 1996/43, ESCOR Supp. (No. 3) at 147, U.N. Doc. E/CN.4/1996/43 (1996).

opportunity.[21] The Convention obligates State Parties to "take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities" and to "refrain from engaging in any act or practice that is inconsistent with the present Convention and to ensure that public authorities and institutions act in conformity with the present Convention."[22]

Article 18 of the Convention specifically calls on State Parties to "recognize the rights of persons with disabilities to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others" and ensure that persons with disabilities have the right to acquire and change a nationality. In fuelling stigma and preventing people living with HIV from becoming legal residents, the excessive demand regime prevents people living with HIV from exercising their rights to education,[23] employment[24] and the highest attainable standard of physical and mental health.[25]

Excessive demand causes operational problems

i. Excessive demand inadmissibility does not effectively control health care costs

The excessive demand regime does not achieve its purported goal of controlling health care costs. First, excessive demand inadmissibility does not apply to spouses, dependent children or refugees but primarily to economic class applicants, other family class sponsorships, and humanitarian and compassionate ("H & C") applications.

More importantly, health care costs are not predictable. An applicant may be medically admissible but suffer a catastrophic accident the day after becoming a permanent resident, or develop costly comorbidities associated with a disability, including HIV.

ii. Arbitrary focus on health care costs

The excessive demand provision places arbitrary focus on the use of health care services while ignoring other costs. All potential immigrants to Canada will access, to varying degrees, publicly funded services. This arbitrary focus on health care costs further undermines the rationale of saving government resources and highlights the discriminatory nature of the excessive demand provision.

iii. Cumbersome and inefficient process causes delays

The excessive demand assessment imposes a costly and inefficient process on both the federal government and applicants. As part of the process, the government is required to obtain opinions from medical officers and produce procedural fairness letters for applicants. Applicants then respond by obtaining their own expert medical evidence regarding their health and actual

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[21] Article 3 of the *Convention on the Rights of Persons with Disabilities*.
[22] *Ibid*, Article 4a.
[23] Article 13 of *International Convention on Economic, Social and Cultural Rights* and Article 24 of the *Convention on the Rights of Persons with Disabilities*
[24] Article 6 of *International Convention on Economic, Social and Cultural Rights* and Article 27 of the *Convention on the Rights of Persons with Disabilities*
[25] Article 12 of *International Convention on Economic, Social and Cultural Rights* and Article 25 of the *Convention on the Rights of Persons with Disabilities*.

medical costs. Applicants may need to provide extensive evidence of why they merit a waiver of medical inadmissibility on H&C grounds. As noted above, after applicants provide submissions, immigration officers may need to obtain a new medical opinion or seek further evidence from the applicants. This protracted process adds considerable processing time and expense to all parties involved.

HALCO represents many clients applying for permanent residence on H&C grounds. These applications are based, in part, on the HIV-related hardship applicants would face in their country of origin, including discrimination, stigma and inadequate health care. Typically they are asked to complete several IMEs. Many of HALCO's overseas clients do not live in jurisdictions where panel doctors can conduct IMEs, and therefore must travel to a different country several times to complete the exams. In HALCO's experience, if a client receives a procedural fairness letter addressing excessive demand, having to provide a response often lengthens processing times and exacerbates stress for applicants.

It becomes difficult for applicants attempting to overcome medical inadmissibility to navigate the complicated framework associated with assessing excessive demand criteria. Formatting waivers for excessive demand, replying to procedural fairness letters and determining that IRCC's cost information and analysis is correct requires retaining legal counsel.

This additional cost and processing time has a real impact on the lives of applicants. For example, H&C applicants are not able to sponsor their children until they are permanent residents. HALCO has represented clients whose children turned 22 and "aged out" before the clients became permanent residents and therefore could no longer be sponsored as dependent children.[26] Had these clients not been subjected to the additional year of delay caused by the excessive demand process, they would have obtained permanent resident status in time to sponsor their children. Instead, they face severe hurdles to family reunification, and in some cases, permanent family separation ensued.

iv. Processing excessive demand

Due to the requirement to perform an individualized assessment articulated by the Supreme Court in *Hilewitz*, there is now a procedural fairness process in place for every case where there may be an excessive demand inadmissibility. In all cases where excessive demand medical inadmissibility is an issue, visa or immigration officers are required to obtain a medical officer's opinion and then prepare a procedural fairness letter that sets out the required health care, social services and/or outpatient medication that are required and that form the basis of the officer's opinion that the applicant may be medically inadmissible. Applicants may then respond with their own medical evidence challenging the medical officer's opinion, or accept the medical opinion but submit a plan that details how they will secure the proposed services, the cost of the services and how they will pay for the services.

Depending on the applicant's response, the immigration and visa officers may be required to

[26] Currently, the *Immigration and Refugee Protection Regulations*, SOR/2002-227, s. 1(1), define a dependent child as a biological or adopted child under the age of 22 and who is not a spouse or common law partner. Children over the age of 22 can be sponsored only if they depend substantially on a parent's financial support due to a physical or mental condition.

seek a further opinion from the medical officer, verify the details of the plan proposed by the applicant, or seek further information from the applicant. Thus, responding to a procedural fairness letter can be a lengthy and complex process that can take months, if not years. Furthermore, obtaining medical evidence and mitigation plans can prove to be both time consuming and costly, disadvantaging low-income people who may not possess the financial means to collect the necessary documentation.[27] The analysis provided through *Hilewitz* and subsequent decisions mentioned above frame people with disabilities (including those living with HIV) as financial burdens, and favour those who can overcome this burden through personal wealth or access to wealth. This fails to consider equality values that speak to the contributions and importance of people living with disabilities broadly have to society — values that the Government of Canada itself emphasized in the proposed regulations.[28]

Excessive demand undermines the objectives of the IRPA

The excessive demand provision prevents Canada from pursuing the maximum social, cultural and economic benefits of immigration, as the vast majority of applicants refused on the basis of excessive demand are economic class immigrants; that is, the very immigrants that the Canadian government claims it most wants to attract. The excessive demand provision also impedes family reunification and successful integration of newcomers, as it prevents Canadian citizens and permanent residents from being reunited with their parents, grandparents and certain other family members in Canada. Finally, the excessive demand provision contributes to long processing times, even for applicants who are not medically inadmissible or who receive waivers from excessive demand.

The relevant objectives, as set out in Section 3 of the IRPA, are as follows:

(a) To permit Canada to pursue the maximum social, cultural, and economic benefits of immigration
(b) To enrich and strengthen the social and cultural fabric of Canadian society
(c) To support the development of a strong and prosperous Canadian economy
(d) To see that families are reunited in Canada
(e) To promote the successful integration of permanent residents in Canada
(f) To support, by means of consistent standards and prompt processing, the attainment of immigration goals

These objectives govern the multiple immigration programs set out in the IRPA. To immigrate to Canada, individuals must meet the requirements of one of these programs, be it through the economic class, family sponsorship, or an H&C application. Each of these programs is connected to one of the objectives of the IRPA.

Economic class applicants

Although the Standing Committee on Citizenship and Immigration recommended the full repeal of the excessive demand regime, the proposed amendments stop short of repealing section 38(1)(c) of the IRPA. One of the reasons cited in the Gazette is the cost that would be incurred

[27] Excessive demand, *supra* note 11.
[28] *Canada Gazette*, Part I, Volume 155, Number 13: Regulations Amending the Immigration and Refugee Protection Regulations (Excessive Demand) (March 27, 2021) online at: https://canadagazette.gc.ca/rp-pr/p1/2021/2021-03-27/html/reg1-eng.html at page 5 [Regulations Amending Excessive Demand].

by the provinces and territories if the excessive demand analysis of inadmissibility is repealed.[29] However, excessive demand criteria continue to disproportionately impact economic migrants who contribute significantly to the economy of individual provinces and territories. It is also worth noting that, since the introduction of the 2018 policy tripling the threshold, there has been a "limited increase in costs for health and social services."[30]

Prospective economic class immigrants are affected most adversely by excessive demand medical inadmissibility. The vast majority of applicants refused on the basis of excessive demand are economic class immigrants. These are the very immigrants that the Canadian government claims it most wants to attract. If the excessive demand criterion was repealed, economic class applicants would still need to meet the remaining criteria to become permanent residents, including demonstrating that they have skills which are in demand in Canada.

For example, HALCO frequently advises international students who become infected with HIV during their studies in Canada. These students are often pursuing graduate studies, gaining valuable work experience in Canada through co-op and summer placements, and seeking to put their skills and talents to use in Canada. Some of these students may have their applications for permanent residence refused due to excessive demand. This is despite the fact that these students have skills that are in demand in Canada and, given the opportunity, would contribute to the economy, culture and society of Canada in many ways, including by paying taxes. In another example, Provincial Nominees living with HIV could be denied residence due to health care costs to be incurred by the province that nominated their application. The province has no opportunity to advocate that Nominees be accepted despite their health care costs.

Family class applicants

Some family class applicants, such as parents, grandparents, orphaned nieces and nephews, or family members of "lonely Canadians," remain subject to the excessive demand inadmissibility.[31] This undermines the IRPA's goals of family reunification and promoting the integration of newcomers. Reuniting families reduces stress, promotes mental health and productivity, and increases support networks. Parents and grandparents in particular are stigmatized as 'drains' on Canadian society. However, they make important contributions to society by, for example, providing practical support such as free childcare which allows people with children to return to work rather than rely on social assistance — a particularly important contribution since Canada does not have a national child care strategy, and high fees and long wait lists persist for daycare. This becomes even more beneficial during the COVID-19 pandemic, as people struggle to balance childcare duties and work.

Humanitarian and compassionate (H & C) applicants

H&C applicants are only approved if they can demonstrate that they would experience undue, undeserved or disproportionate hardship in their country of citizenship. HIV-positive applicants

[29] *Ibid.*
[30] *Ibid* at page 3.
[31] The "lonely Canadian" sponsorship refers to sponsorships under section 117(1)(h) of the *Immigration and Refugee Protection Regulations*. Under 117(1)(h), Canadian citizens or permanent residents with (i) no close family members in Canada, and (ii) no family members eligible to be sponsored as members of the family class are allowed to sponsor a relative who would not otherwise be eligible to be sponsored.

submitting H&C applications frequently raise HIV-related hardship in their country of origin, such as discrimination, stigma and lack of adequate health care. Many of these applications are based largely on health-related hardship.

Requiring these applicants, who may have comorbidities associated with their HIV status, to overcome excessive demand does not reduce health care costs, yet it adds to the processing time of their immigration application. This undermines the IRPA's objective of promoting the integration of newcomers. Those who are unable to demonstrate that they would face serious hardship will not be approved, regardless of their health status.

Other classes

Applicants in other programs can also be affected by excessive demand inadmissibility. For example, on April 14, 2021 the Minister of Immigration, Refugees and Citizenship announced a new pathway to permanent residency for what is estimated to be more than 90,000 temporary workers and international graduates. These applicants are still subject to the excessive demand criteria for medical inadmissibility. IRCC's stated purpose of this new pathway is strengthening Canada's economy, as well as prioritizing those who have been at the frontlines of providing essential services throughout the COVID-19 pandemic.[32]

HALCO's clients have worked throughout the pandemic at warehouses, as Uber drivers, as personal support workers, and at long-term care facilities. These same clients are more vulnerable to the transmission of COVID-19 and its variants due to being immunocompromised; in fact, many of them contracted COVID while providing these services. These same clients, who may be dealing with health complications associated with their HIV-positive status, may still be required to respond to procedural fairness letters regarding medical inadmissibility. After months of working at the frontlines and risking their health, these clients may face further hinderances to the approval of their applications for permanent residence.

Recommendation

Increasing the excessive demand threshold is an inadequate "band aid" solution that does not resolve the problems with the excessive demand regime. The cost threshold model itself (at least theoretically) permits a visa officer to reject an applicant if their health care costs exceed the threshold by even one dollar. An increased cost threshold would not prevent applicants from being required to undergo the lengthy medical inadmissibility procedural fairness process. Raising the excessive demand threshold would also fail to address the underlying human rights concerns inherent in the excessive demand regime.[33]

The excessive demand provision represents a continuing history of discriminatory laws targeting people with disabilities. It discriminates and perpetuates negative stereotypes against people

[32] "New pathway to permanent residency for over 90,000 essential temporary workers and international graduates". News Release from Immigration, Refugees, and Citizenship Canada website, https://www.canada.ca/en/immigration-refugees-citizenship/news/2021/04/new-pathway-to-permanent-residency-for-over-90000-essential-temporary-workers-and-international-graduates.html.

[33] P. Coyte and M. Battista, "The economic burden of immigrants with HIV/AIDS: When to say no?" *J for Global Business Advancement* 3,1 (2010).

living with disabilities by arbitrarily focusing only on the cost of their health care and ignoring the many contributions of people living with disabilities, including HIV, to Canadian society. The provision creates a cumbersome and inefficient process that ultimately does little to reduce health care costs, which are unpredictable. Finally, the excessive demand provision contravenes international law. Further incremental change will not remedy this discrimination and stigmatization, as confirmed by the 2017 report by the Standing Committee on Immigration and Citizenship.

The excessive demand rule is a vestige of years of immigration policies that have excluded people with disabilities with the stated goal of protecting the public purse. No amount of individualized assessments can cure the fact that the excessive demand regime reduces applicants living with HIV and other disabilities to a single characteristic: the cost of their health care.

Therefore, we urge the Government of Canada to remove the excessive demand inadmissibility from the IRPA by repealing section 38(c) of the IRPA.