

Submission to the Standing Committee on Citizenship and Immigration on Medical Inadmissibility¹

Submitted by Canadian HIV/AIDS Legal Network²

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In Canada, people seeking permanent resident status or temporary residence as students or workers can be rejected on the basis of their HIV status due to the “excessive demand” provision of Canada’s laws³ governing medical inadmissibility.⁴ Relying on the purportedly neutral criteria of the cost of health services, this law renders any applicant who would require more than \$6,655⁵ per year’s worth of health or social services inadmissible to Canada. Due to the high cost of antiretroviral medications, the health-care costs of many people living with HIV are higher than the current threshold.⁶

People living with HIV will be medically inadmissible to Canada unless they (a) fit within one of the exceptions to the excessive demand rule,⁷ (b) are able to reduce the public burden of their medications by switching to generic drugs or obtaining private insurance,⁸ or (c) obtain an exemption from the excessive demand rule on humanitarian and compassionate (“H&C”) grounds.⁹

We recommend that the excessive demand provision be repealed, for the following reasons:

- **The excessive demand provision is discriminatory:** The excessive demand regime violates the *Canadian Charter of Rights and Freedoms* (“Charter”) by discriminating against prospective Canadians on the basis of their disability and relying on outdated and discriminatory attitudes about people living with HIV and other disabilities.¹⁰ The excessive demand regime focuses solely on alleged use of health services as grounds for exclusion and ignores the important contributions that people with HIV make to Canadian society. 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 to a single characteristic: the cost of their medications.
- **The excessive demand provision poses many operational problems:** The excessive demand regime has created a cumbersome, inefficient process that ultimately does little to control health-care costs and therefore cannot be justified. Relatively few medically inadmissible applicants are refused residence and, more importantly, future health-care costs are inherently unpredictable. Health-care costs for many people living with HIV will decrease as generic versions of more medications become available. An applicant living with HIV could also become eligible for private insurance through an employer. The excessive demand threshold itself is also based on inappropriate statistical analyses, resulting in a threshold that is much too low. As a result, the excessive demand provision

results in unfair and arbitrary denials, and subjects those who are ultimately approved to processing delays.

- **The excessive demand provision undermines the objectives of the *Immigration and Refugee Protection Act*:** 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 excessive demand provision violates Canada’s international law obligations and is not in line with other countries’ practices:** The United Nations (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. The excessive demand regime also violates the UN *Convention on the Rights of Persons with Disabilities*. Finally, many other countries do not have such laws, policies or known practices that deny migration based solely on HIV status.

¹ For a more comprehensive analysis and discussion of the issue of HIV and medical inadmissibility, please see *Submission to Immigration, Refugees and Citizenship Canada on Medical Inadmissibility* (English only) co-authored by HALCO, the Canadian HIV/AIDS Legal Network and COCQ-SIDA at www.aidslaw.ca/site/submission-to-immigration-refugees-and-citizenship-canada-on-medical-inadmissibility.

² Endorsed by Asian Community AIDS Services and the Coalition for Accessible AIDS Treatment.

³ *The Immigration and Refugee Protection Act* (IRPA) and associated Regulations.

⁴ Section 38 of the IRPA states that some 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. Under section 42 of the IRPA, foreign nationals can also be inadmissible if they have an inadmissible family member (i.e., an inadmissible spouse or dependent child).

⁵ “Excessive demand on health and social services.” Immigration, Refugees, and Citizenship Canada. Available via www.cic.gc.ca/english/resources/tools/medic/admiss/excessive.asp.

⁶ The cost of antiretroviral medications can vary greatly. In HALCO’s experience, clients who are medically inadmissible typically have antiretroviral medication regimens that cost between \$12,000 to \$15,000 per year.

⁷ Accepted refugees and protected persons, their spouses, common-law partners and dependent children; and spouses, common-law partners and dependent children sponsored through family-class sponsorships are all exempt from medical inadmissibility.

⁸ In *Hilewitz v. Canada (MCI)*, 2005 SCC 57 the court ruled that immigration officers must carry out an individual assessment rather than adopt a generic assessment of excessive demand. In *Deol v. Canada (MCI)*, 2002 FCA 271 the Federal Court of Appeal held that an applicant’s willingness and ability to pay for health services is not relevant to the excessive demand analysis. But in *Companiononi v. Canada (MCI)* 2009 FC 1315 further clarified the need for the excessive demand assessment to include a consideration of whether an applicant has a viable private insurance plan.

⁹ Humanitarian and compassionate applicants are only approved if they can demonstrate that they would experience undue, undeserved or disproportionate hardship in their country of citizenship.

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.”