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 Immigrants

November 2017

Introduction

The HIV & AIDS Legal Clinic Ontario ("HALCO") and the Canadian HIV/AIDS Legal Network ("Legal Network") welcome this opportunity to provide our submission to the House of Commons' Standing Committee on Citizenship and Immigration with respect to its current review of medical inadmissibility. HALCO is a community legal clinic that provides services to people living with HIV in Ontario, and regularly represents individuals living with HIV in relation to various areas of law, including those who are alleged to be medically inadmissible to Canada due to excessive demand. The Legal Network is a national organization in Canada that works exclusively on legal and policy issues related to the human rights of people living with HIV and AIDS, including in the areas of immigration law and policy and HIV-related stigma and discrimination.

In this submission, we will outline how the excessive demand regime violates the *Canadian Charter of Rights and Freedoms* ("Charter"), contributes to stigma and discrimination against people living with HIV, is inconsistent with international law and the practice of other countries, is a cumbersome and inefficient process to administer, and undermines the objectives of the *Immigration and Refugee Protection Act* ("IRPA"). Given the numerous human rights issues and operational flaws associated with the excessive demand regime, we recommend its total repeal.

Background

The *Immigration and Refugee Protection Act* ("IRPA") 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's associated Regulations set out a comprehensive definition of excessive demand, as follows:

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].

The Regulations define "health services" as any health service where the majority of funds is contributed by governments, including the services of family physicians, medical specialists and hospital care. Every year, Immigration, Refugees and Citizenship Canada ("IRCC") sets the excessive demand threshold — currently at $6,655 — 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.[1] Notably, the IRPA provides some 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.

Over the years, courts have been tasked with providing further guidance on how immigration officers must apply the medical inadmissibility provisions. In *Hilewitz v. Canada (MCI),* the Supreme Court of Canada determined that immigration officers must conduct an individualized assessment that takes into account the specific circumstances of the applicant, instead of a generic assessment based on a health condition.[2] These specific circumstances include an individual's likely demands on public services (rather than mere eligibility for them) and the reasonable probability that these excessive demands will arise (as opposed to a remote possibility). In the case of health services, individualized assessments are relatively limited. In *Deol v. Canada (MCI)*, 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, as promises to pay for health services are unenforceable.[3] However, the subsequent Federal Court decision in *Companioni v. Canada (MCI),* in which HALCO intervened, stipulated that the excessive demand assessment includes consideration of whether an applicant has a viable private insurance plan.[4]

Due to the high cost of antiretroviral medications, people living with HIV are generally medically inadmissible. In HALCO's experience, clients who are medically inadmissible

[1] "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"]
[2] *Hilewitz v. Canada (MCI),* 2005 SCC 57 (Supreme Court of Canada).
[3] *Deol v. Canada (MCI)*, 2002 FCA 271 (Federal Court of Appeal). Social services are treated differently. In *Hilewitz,* the Supreme Court noted that social services in Ontario contemplated the possibility of financial contributions from families able to make them. It is therefore important to consider whether the applicants were willing and able to pay for services, as well as the family support or assistance which might affect use of services.
[4] *Companioni v. Canada (MCI)*, 2009 FC 1315 (Federal Court). 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.

typically have antiretroviral medication regimens that cost $12,000 – $15,000 per year, significantly exceeding the excessive demand threshold of $6,655 per year. As a result, HIV-positive applicants are generally inadmissible to Canada unless they fall within one of the exceptions to the excessive demand rule (i.e., they are the spouse, common-law partner or dependent child of a permanent resident or they are an accepted refugee or protected person, or the spouse, common-law partner or dependent child of an accepted refugee or protected person); can obtain an humanitarian and compassionate ("H&C") exemption from the excessive demand rule; or their individualized assessment shows that the cost of their health care will be below the excessive demand threshold (e.g., if they are on less costly generic antiretroviral medications or have private insurance that covers a sufficient portion of their medications).

The Case for Repealing Excessive Demand

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.[5] Section 3 of the IRPA mandates that decisions taken under the Act must be consistent with the Charter, including its principles of equality and freedom from discrimination. The excessive demand regime violates the Charter by discriminating against people with disabilities, including people who are living with HIV.

While the excessive demand regime may appear neutral on the surface because it does not single out HIV or any other particular medical condition and focuses instead on the *cost* of an applicant's medical condition, cost is not a neutral factor. Federal and provincial governments incur many costs associated with immigration, such as the cost of language classes, settlement services and the education of newcomer children, but these costs are not considered in the immigration application process. In contrast, IRCC rejects residence applications from people living with HIV solely due to the cost of their life-saving medications.[6] People living with HIV are therefore unfairly disadvantaged by a law that appears neutral — a form of indirect discrimination that contravenes the Charter.[7]

The excessive demand regime also erases the potential contributions that an applicant may make to Canadian society. In *Hilewitz*, the Supreme Court recognized 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."[8] United Nations ("UN") agencies, including the Joint UN Programme on HIV/AIDS ("UNAIDS") and the International Organization for Migration, have

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[5] *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.

[6] For example, a skilled worker who has four young children, all of whom attend public schools at a reported cost of roughly $10,700 to $13,000 per year, would cost a provincial government over $40,000 a year in education expenses alone, but they would not be considered to pose an excessive demand on public resources. However, a single person living with HIV with annual medication costs of $15,000 could be refused due to excessive demand. See "A numerical exploration of education in Canada," *CBC News,* August 5, 2010 (www.cbc.ca/news/a-numerical-exploration-of-education-in-canada-1.922061).

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

[8] *Hilewitz, supra* note 2 at para. 39.

highlighted the positive impact of antiretroviral medication on the longevity and productivity of people living with HIV. With the falling costs of these drugs, "it is increasingly difficult to argue that people living with HIV incur greater costs to the destination country compared to the benefits they could contribute over a long-term stay."[9] People living with HIV participate in the labour force, pay taxes and contribute to their communities in many ways. As 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."[10]

We do not, however, 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 confirm the amount of their health care costs in addition to providing 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. Immigration, Refugees and Citizenship Canada ("IRCC") itself acknowledges the difficulty of conducting a net fiscal benefit assessment.[11] More importantly, a net fiscal benefit analysis would dehumanize applicants by reducing their potential contribution to society solely to quantifiable factors.

No amount of individualized assessment can diminish the reality that the excessive demand regime reduces an applicant living with HIV (or another disability) to the cost of their medications. The reductive analysis of the regime contributes to anti-HIV stigma. In *Hilewitz*, the Supreme Court recognized that even "exclusionary euphemistic designations" can conceal prejudices about disability.[12] By focusing solely on alleged use of health services as grounds for exclusion and ignoring the important contributions that people with HIV make to Canadian society, the excessive demand regime conceals outdated prejudices that people living with HIV — like other people with disabilities — are a burden on Canadian society.

Excessive demand violates Canada's international law obligations

International law prohibits States from discriminating against a person in the enjoyment and exercise of their human rights on the basis of their health status,[13] and the UN has repeatedly

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[9] UNAIDS, *The Gap Report 2014*, 2014, p. 103. Available at http://www.unaids.org/en/resources/documents/2014/20140716_UNAIDS_gap_report. See also UNAIDS and IOM, *Statement on HIV/AIDS Related Travel Restrictions*, June 2014, p. 9.

[10] UNAIDS, *Report of the International Task Team on HIV-related Travels Restrictions: Findings and Recommendations*, December 2008, p. 5.

[11] Testimony of Mr. Michael MacKinnon, Senior Director, Migration Health Policy and Partnerships, Migration Health Branch, Department of Citizenship and Immigration, at the Standing Committee on Citizenship and Immigration, Evidence Number 78 (Unedited Copy), 0905-0910.

[12] *Hilewitz, supra* note 2 at para. 48.

[13] The 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. 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, UN 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).

called upon countries to eliminate HIV-related restrictions on entry, stay and residence.[14] The Office of the UN High Commissioner for Human Rights and UNAIDS also hold that HIV-related discrimination in the immigration context violates the right to equality before the law.[15]

The excessive demand regime also violates Canada's obligations under the *Convention on the Rights of Persons with Disabilities*. By ratifying this Convention 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 opportunity.[16] The Convention also requires State Parties to take all appropriate measures to abolish discriminatory laws and practices.[17] 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" and ensure that persons with disabilities have the right to acquire and change a nationality. By effectively preventing people living with HIV from becoming legal residents and fuelling stigma, the excessive demand regime not only violates the right of people living with HIV to equality before the law, but also their rights to education,[18] employment[19] and the highest attainable standard of physical and mental health.[20]

Excessive demand is not in line with other countries' practices

Numerous countries including Austria, Belarus, Belgium, Finland, France, Ireland, Italy, Lithuania, Luxembourg, Norway, Spain, Sweden, Switzerland, the U.K. and the U.S. do not have any laws, policies or known practices that deny migration based solely on HIV status.[21] The U.K., for example, does not impose mandatory HIV testing for those entering the country as visitors or immigrants, nor does it require a declaration of HIV status.[22] Driven by increasing public pressure to reduce the number of asylum seekers and migrants coming into the country on the grounds that they were overburdening the education, health and social welfare infrastructure, the U.K.'s All-Party Parliamentary Group on AIDS in its study of HIV and migration nevertheless concluded 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

[14] See, for example, 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 and UNAIDS, *The Gap Report*, 2014, p. 169.
[15] Office of the United Nations High Commissioner for Human Rights and the UNAIDS, *International Guidelines on HIV/AIDS and Human Rights 2006 Consolidated Version*, s. 131.
[16] Article 3 of the *Convention on the Rights of Persons with Disabilities*. 24 January 2007, A/RES/61/106,
[17] *Ibid*, Article 4a.
[18] Article 13 of *International Convention on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3 and Article 24 of the *Convention on the Rights of Persons with Disabilities.*
[19] Article 6 of *International Convention on Economic, Social and Cultural Rights* and Article 27 of the *Convention on the Rights of Persons with Disabilities.*
[20] Article 12 of *International Convention on Economic, Social and Cultural Rights* and Article 25 of the *Convention on the Rights of Persons with Disabilities*.
[21] See UNAIDS, *Eliminating Travel Restrictions*, undated, available via www.unaids.org/en/targetsandcommitments/eliminatingtravelrestrictions and *The Global Database on HIV-specific Travel and Residence Restrictions*, available via http://hivtravel.org/Default.aspx?pageId=152.
[22] NAM aidsmap, *Immigration and asylum law*, January 2014. Available at http://www.aidsmap.com/Immigration-and-asylum-law/page/1255093/#item1255521.

countries."[23] Similarly, in 2010, bolstered by human rights arguments against its HIV-specific travel ban, the U.S. lifted all restrictions affecting people with HIV wishing to enter or migrate, and prospective migrants are not required to undergo HIV testing as part of the required medical examination for U.S. immigration.[24]

Excessive demand undermines the objectives of the IRPA

By barring otherwise qualified applicants, the excessive demand regime undermines many of the objectives of the IRPA. These objectives include permitting Canada to pursue the maximum social, cultural and economic benefits of immigration, enriching and strengthening the social and cultural fabric of Canadian society, supporting the development of a strong and prosperous economy, reuniting families in Canada, promoting successful integration of permanent residents, and attaining immigration goals through consistent standards and prompt processing. 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.

a. Economic class applicants

Canada seeks to attract global talent through the economic class, in order to bolster the Canadian economy and realize the economic benefits of immigration. However, prospective economic class immigrants are affected most adversely by excessive demand medical inadmissibility. Many applicants refused on the basis of excessive demand are economic class immigrants — 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. Most of these students will have their applications for permanent residence refused due to excessive demand, 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.

In yet another example, HALCO has been contacted on numerous occasions by live-in caregivers whose children overseas tested positive for HIV during the immigration medical exam. These women had been apart from their children for many years while they fulfilled the requirements of the live-in caregiver program and then waited for their permanent residence applications to be

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[23] All-Party Parliamentary Group on AIDS, *Migration and HIV: Improving Lives in Britain. An Inquiry into the Impact of the UK Nationality and Immigration System on People Living with HIV*, July 2003, p. 6. Available at www.appghivaids.org.uk/sites/default/files/pdf/2003/migrationandhiv.pdf.

[24] N. Ordover, "Defying Realpolitik: Human Rights and the HIV Entry Bar," *The Global Database on HIV-specific Travel and Residence Restrictions*, 4 June 2012. Available at http://hivtravel.org/Default.aspx?pageId=149&elementId=10375.

processed.[25] As a result of vicarious inadmissibility, both the children and the caregiver applicant would be inadmissible to Canada due to excessive demand, nullifying the caregiver's years of sacrifice and hard work in Canada.

b. 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.[26] This undermines the IRPA's goals of reuniting families 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, to give an oft-cited 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.

c. Humanitarian and compassionate 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 for H&C frequently raise HIV-related hardship in their country of origin, such as discrimination, stigma and lack of adequate health care. In HALCO's experience, H&C applicants living with HIV are usually granted waivers from the requirement to be medically admissible, on the basis that it would be inhumane to determine that an individual would suffer undue hardship in their country of origin but then refuse their application because they require health services. This is particularly the case when the application is based on health-related hardship, as is common in H&C applications for people living with HIV.

The frequency with which H&C applicants receive waivers demonstrates that the excessive demand assessment for this category is usually a symbolic exercise. Requiring these applicants to obtain the waiver does not reduce health care costs, yet it adds at least one year to the processing time of their immigration application. This undermines the IRPA's objective of promoting the integration of newcomers. Applicants who are unable to demonstrate that they would face serious hardship will not be approved, regardless of their health status.

Excessive demand causes operational problems

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

There is limited evidence that the excessive demand regime meaningfully controls health care costs. As noted above, excessive demand inadmissibility does not apply to spouses, dependent children or refugees but primarily to economic class applicants, other family class sponsorships, and H&C applications. According to the figures reported to the Standing Committee, there are

[25] On November 9, 2017, the processing time for live-in caregiver applications on the IRCC website was 56 months.
[26] The "lonely Canadian" sponsorship refers to sponsorships under section 117(1)(h) of the *Immigration and Refugee Protection Regulations*. Under this section, 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.

only 900-1,000 refusals each year due to excessive demand. IRCC estimates that this results in $135 million in cost savings over each 5-year period, with an average cost savings of $27 million per year.[27] IRCC's calculations, however, appear to be solely based on the initial assessments conducted by a departmental officer.[28] This cost savings estimate does not factor in applicants who may have switched to less expensive medications (e.g., generic medications), who may have access to private insurance, or who may ultimately receive a waiver from IRCC for their inadmissibility. Any actual cost savings would be much less than the cost estimate IRCC has provided.

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, In the case of people living with HIV, the main concern is the cost of prescription medication. While this may seem like a predictable cost, an applicant's medication costs could easily decrease over time. Antiretroviral medications frequently become available in generic forms, drastically reducing an individual's health care costs. One of HALCO's clients, for example, switched to generic forms of antiretroviral drugs, lowering her annual medication costs from over $9,000 to approximately $3,000, thus placing her well within the excessive demand threshold. Persons living with HIV could also obtain a job that offers private health insurance after they become permanent residents, which would disqualify a significant portion of their medical costs from public health care coverage.

b. The excessive demand cost threshold is too low

The excessive demand cost threshold is too low because it measures "above average" demand but not the "excessive" demand stipulated in the Act. As noted above, the excessive demand threshold is set 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 test captures an anticipated health care cost of even one dollar more than the average per capita health cost.

Health care economists have criticized this threshold because it is "neither a reasonable nor statistically appropriate interpretation of the term 'excessive' demand used in IRPA."[29] IRCC's method of determining the excessive demand threshold is based on statistical models where there is no variation in health care costs and all Canadians incur the same annual costs for health care.[30] In reality, health care costs are skewed to the high end of a statistical model; that is, many users do not use much in the way of health care services, while a smaller number of users have very high health care costs. A statistical model that accurately represents the reality of health care usage consistently yields a significantly higher cost threshold than the model currently

[27] Testimony of Mr. Michael MacKinnon, Senior Director, Migration Health Policy and Partnerships, Migration Health Branch, Department of Citizenship and Immigration, at the Standing Committee on Citizenship and Immigration, Evidence Number 78 (Unedited Copy), 0905-0915

[28] *Ibid.*

[29] 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).

[30] This model is called a "normal" or bell-shaped distribution: the majority of people use the average amount of health care services, while a relatively equal amount of outliers use a lot more or a lot fewer health services.

employed by IRCC.[31] For a demand to be truly "excessive," it should be *statistically greater* than average Canadian use of health care.[32]

However, increasing the excessive demand threshold would be an inadequate "band aid" solution that would not resolve problems with the excessive demand regime. Any excessive demand threshold is necessarily arbitrary due to the various statistical models that could be used to produce this figure. The cost threshold model itself permits refusal if an individual's health care costs exceeds the threshold by even one dollar, and 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.

c. Cumbersome and inefficient process causes delays

The excessive demand assessment imposes a costly and inefficient process on both the federal government and applicants. 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 excessive demand inadmissibility. Accordingly, visa or immigration officers are required to obtain a medical officer's opinion and prepare a procedural fairness letter that sets out the required health and/or social services 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, 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, or seek a waiver of medical inadmissibility on H&C grounds. Depending on the applicant's response, immigration and visa officers may be required to 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. Applicants may also need to provide extensive evidence of why they merit a waiver. This protracted process adds considerable processing time and expense to all parties involved as responding to a procedural fairness letter can take months, if not years.[33]

HALCO represents many clients applying for permanent residence on H&C grounds. These applications are based in part on the HIV-related hardship they would face in their country of origin, including discrimination, stigma and inadequate health care. Despite requesting an excessive demand waiver in the initial application, our clients must still wait to be asked to complete the medical exam and then wait again for the procedural fairness letter, only to repeat the waiver request and wait for a decision. This process alone often takes one to three years.[34] This additional cost and processing time has a tangible impact on applicants' lives. For example, H&C applicants are not able to sponsor their children until they are permanent residents. HALCO recently represented a client whose child turned 19 before the client became a

[31] This statistical model is called "gamma distribution."
[32] Coyte and Battista, *supra* note 29.
[33] Excessive demand, *supra* note 1. This webpage provides a detailed flowchart that demonstrates the full complexity of the excessive demand assessment, including the many levels of decision-making involved.
[34] Some of HALCO's clients have even been required to complete additional medical exams even though they already received an excessive demand waiver.

permanent resident. The child therefore could no longer be sponsored as a dependent child.[35] Had this client *not* been subjected to the additional year of delay caused by the excessive demand process, she could have obtained permanent resident status in time to sponsor her child.

Recommendation

The excessive demand provision represents a continuing history of discriminatory laws targeting people with disabilities. It discriminates and perpetuates negative stereotypes against people living with HIV by arbitrarily focusing only on the cost of their medications and ignoring the many contributions made by people living with HIV to Canadian society. The excessive demand provision also contravenes the Charter and international human rights law and is contrary to the practices of many other countries that do not have similar provisions denying migration solely on the basis of HIV status. Moreover, the provision undermines the ultimate objectives of IRPA and creates a cumbersome and inefficient process that ultimately does little to reduce health care costs, which are unpredictable and which, in the case of people living with HIV, are likely to decline in the future. Further incremental change will not remedy the inherent flaws associated with the excessive demand regime.

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

[35] This case occurred during the period when the age of dependent child was lowered to 19 years from August 1, 2014 to October 24, 2017. The age of dependent has now increased to age 22 (*Immigration and Refugee Protection Regulations*, SOR/2002-227).