

**Repeal of the Excessive Demands Provisions  
in  
Canada's Immigration and Refugee Protection Act  
(IRPA)**

**Brief Presented To:**

**Standing Committee on Citizenship and Immigration**

**Brief Prepared By:**



**Council of Canadians  
with Disabilities**  
A VOICE OF OUR OWN

**Conseil des Canadiens  
avec déficiences**  
CETTE VOIX QUI EST LA NOTRE

**November 2017**

**Winnipeg Office** 909-294 Portage Avenue, Winnipeg, MB R3C 0B9, Tel/Tél: 204-947-0303,  
Fax/Télé: 204-942-4625 TTY/ATS: 204-943-4757, Toll Free/Sans Frais: 1-877-947-0303, E-mail/courriel:  
[ccd@ccdonline.ca](mailto:ccd@ccdonline.ca)

**Ottawa Office** 1118-343 Preston Street, Ottawa, ON K1S 1N4, Tel/Tél: 343-291-1118, E-mail/courriel:  
[james@ccdonline.ca](mailto:james@ccdonline.ca)

**Web** [www.ccdonline.ca](http://www.ccdonline.ca) <https://www.facebook.com/ccdonline> **FaceBook**  
**Twitter** <https://twitter.com/ccdonline> <https://www.youtube.com/user/ccdonline> **Youtube**

## **TABLE OF CONTENTS**

<b>INTRODUCTION</b>	<b>3</b>
<b>CCD'S LONG STANDING INTEREST IN IMMIGRATION REFORM</b>	<b>3</b>
<b>DEVELOPMENT OF CANADA'S IMMIGRATION SYSTEM</b>	<b>3</b>
<b>THE ISSUE</b>	<b>4</b>
<b>CURRENT PRACTICES</b>	<b>4</b>
<b>THE PHILOSOPHICAL UNDERPINNING</b>	<b>5</b>
<b>ASSUMPTIONS</b>	<b>6</b>
<b>CULTURAL CONCERNS</b>	<b>6</b>
<b>THE NUMBERS GAME</b>	<b>8</b>
<b>CANADA'S INTERNATIONAL OBLIGATIONS:</b>	<b>8</b>
<b>THE NEED FOR EDUCATION OF IMMIGRATION STAFF</b>	<b>10</b>
<b>FUTURE WORK</b>	<b>10</b>
<b>CONCLUSION</b>	<b>11</b>

## INTRODUCTION:

The Council of Canadians with Disabilities (CCD) is a **national**, human rights organization of people with disabilities working for an accessible and inclusive Canada. CCD is delighted the Standing Committee on Citizenship and Immigration is conducting a review of the Excessive Demands Provision in Canada's *Immigration and Refugee Protection Act*. CCD is encouraged by the questions that Committee members have posed to witnesses from the Department, and we are pleased to contribute to the Committee's study of this ongoing barrier, to urge you in the strongest possible terms to recommend a long overdue reform of the *Immigration and Refugee Protection Act* – the removal of section 38 (1) (c) in order to end inadmissibility on grounds of excessive demands, which would allow otherwise qualified people with disabilities to immigrate to Canada.

## CCD'S LONG STANDING INTEREST IN IMMIGRATION REFORM:

For over 30 years, CCD has been advocating for a more open Canadian immigration policy for persons with disabilities. In the 1984 federal election campaign, CCD asked all candidates to support, "Canada making a commitment to the United Nations to accept 50 or more disabled refugees per year" and called for amendment of the *Immigration Act* to bring it in line with the *Charter of Rights and Freedoms*. In 1991, CCD, along with the now defunct Canadian Disability Rights Council, tried to eliminate ablest discrimination in the *Immigration Act* through Omnibus legislation, but only minor changes were achieved. In 2001 CCD applied for and was granted intervener status in the Angela Chesters case, which unsuccessfully sought to litigate an end to discrimination against people with disabilities seeking to immigrate to Canada.

Each year, the CCD National Office is contacted by people whose immigration plans are being thwarted by the medical inadmissibility criteria. Frequently, these requests involve a desire to keep their family together, and family unification is an integral aspect of Canada's immigration system. We also monitor media reports concerning the medical inadmissibility criteria. Through the media, we have seen parents of children with disabilities rendered inadmissible through section 38 (1) (c) of the IRPA, regardless of their level of income or employment status. We attempt to assist these applicants to obtain needed resources or legal counsel.

## DEVELOPMENT OF CANADA'S IMMIGRATION SYSTEM:

Historically, Canada's immigration system, relying on negative stereotypes, excluded immigrants who were female, gay or lesbian, were from non-European countries, or were non-Christian<sup>[1]</sup>. For example, thousands of Jewish people fleeing Nazi Germany were refused entry

---

<sup>[1]</sup> Roy Hanes, "None is Still Too Many: An Historical Exploration of Canadian Immigration Legislation As It Pertains to People with Disabilities." <http://www.ccdonline.ca/en/socialpolicy/access-inclusion/none-still-too-many>

into Canada. Canada has taken steps to remove racism and sexism from the immigration system but less progress has been made on ableism.

When the *Canadian Human Rights Act* was proclaimed, we hoped this important event would signal a new day in Canada's immigration system for immigrants with disabilities, but it did not. Similarly, when the *Charter of Rights and Freedoms* and its non-discriminatory provisions were enshrined in Canada's Constitution, we expected this would result in positive change, but exclusions for prospective immigrants with disabilities continued. CCD believes the *Immigration Act*, both as law and in its practice, continues to discriminate against persons with disabilities and does not meet the equality guarantees of the *Charter*.

Prior to Canada signing and later ratifying the *UN Convention on the Rights of Persons with Disabilities*, the Government of Canada consulted with provincial and territorial officials, and when it went ahead, again we were hopeful, but again we were disappointed.

Now, that the Government of Canada has promised to enact a national disability act, we believe it is timely to amend the *Immigration Act*, either through separate legislation or as part of the national act, and repeal the Excessive Demands provision in the IRPA.

In short, we believe it is now our turn - time to remove the stereotyped notions that are the basis of the arbitrary exclusions provided for in the Excessive Demands provision.

## **THE ISSUE:**

Section 38 (1) (c) provides:

“38 (1) A foreign national is inadmissible on health grounds if their health condition  
(c) might reasonably be expected to cause excessive demand on health or social services.”

While this Section of the IRPA does not explicitly mention the word “disability” it has disparate negative impact on the disability community and is the basis of the ongoing, arbitrary exclusion of persons with disabilities from immigrating to Canada, and CCD reiterates its belief that it is time this provision was repealed.

## **CURRENT PRACTICES:**

Today, in practice, there are three different approaches facing prospective immigrants with disabilities to Canada, depending on their category and resources.

Refugee resettlement is governed by the 1951 *Convention Relating to the Status of Refugees* and has no bearing on economic factors. In 2000 the Department of Citizenship and Immigration exempted Convention refugees and their dependents from the excessive demand clause. They stated "it is inconsistent for Canada to accept that a Convention refugee overseas is in need of protection but treat them as inadmissible because they would cause excessive demands on health services." The Department at the time also stated that "the financial impact on the provinces and territories from these excessive demand exemptions is expected to be relatively small."

Applicants with sufficient funds can commit to cover any so called excessive costs through their own resources. ( For further discussion, see Hilewitz case.)

A last resort is an appeal for ministerial discretion based on humanitarian and compassionate grounds. While CCD appreciates Ministers of Immigration who have invoked this option, this demanding process is embedded in what is an already complex immigration process. It requires that persons with disabilities, rather than highlight their talents, plead their vulnerability and appeal to the compassion of decision makers, further entrenching the image of persons with disabilities as objects of charity.

Resolving these differences and inequities is yet another reason to repeal the Excessive Demands provision in the IRPA.

## **THE PHILOSOPHICAL UNDERPINNING:**

The Excessive Demands provision is mired in outdated, negative and prejudicial assumptions that persons with disabilities inherently constitute a "burden" on society, and conveys the idea that persons with disabilities are really not wanted in our country. It takes a one size fits all approach. When the system encounters a person with a disability, it seems to consider that every individual who has a particular disability is totally alike in health condition, experiences and aspirations, and bases decisions on its beliefs about that disability. It does not take into account individual differences, and that each person has his/her own level of disability, and ways of dealing with life's situations.

For years, disability was viewed in the context of the "Medical Model," where one's condition was considered the real source of an individual's difficulties in life. More recently, this negative, stereotyped approach has been superseded by the "Social Model, " where society's design of the built environment, programs, legislation and services are acknowledged to be the real barriers to equality for persons with disabilities.

While Canada now welcomes members of many formerly excluded groups, the Canadian immigration system when making decisions about certain applicants with disabilities continues to rely upon negative stereotypes, and does not appear to take into account the many contributions people with disabilities are making to society, both in Canada and worldwide.

This prejudicial stereotype results in extra scrutiny, concerning “excessive demands”, being given to applications where disability is a factor. Canada’s immigration system has not adopted an approach that recognizes the benefits that persons with disabilities bring to the growing diversity of Canadian society, and the contributions this group makes. This must change. Ableism continues in Canada’s immigration system, and must be removed.

#### **ASSUMPTIONS:**

Canada’s outmoded approach is apparent in correspondence, dated September 25, 2017, that S. Langlois sent to CCD on behalf of the Minister of Immigration, Refugee Protection and Citizenship,

“Canada’s immigration law does not discriminate against those with illness or disability. It does strive, however, to find the appropriate balance between those wanting to immigrate to Canada, and the limited medical resources that are paid for by Canadian taxpayers. No particular health condition makes an applicant automatically inadmissible to Canada.

Excessive demand decisions are based on the likely costs of providing care to the individual over time, as well as the impact on publicly funded Canadian health and social services and on medical waiting lists in Canada. Each applicant is assessed on an individual basis, taking into consideration the current state of their health condition(s), the probable prognosis, the anticipated health and social service costs, and the potential impact on waiting lists.”

This response seems to assume that an individual who appears to be perfectly healthy today will remain that way as a resident in Canada. However, this is not necessarily true.

The disability rights movement often uses the phrase “TAB - Temporarily able-bodied” to refer to individuals who are not disabled today. However, statistics tell us the number of persons with disabilities is and will continue to increase as the world’s population continues to age as many individuals live longer lives.

There are various groups of people that can and probably will place future “excessive demands” on health and social services: people who live an unhealthy lifestyle, extreme sports enthusiasts, smokers but these characteristics, as far as we are aware, do not trigger excessive demand evaluations. It is people who occupy the socially constructed category of disability who face such a more rigorous assessment. Moreover, we draw to your attention the fact that most people over the course of their lifetime are likely to acquire some form of impairment, some temporarily and others permanently. We are all just an accident or illness away from encountering society’s disabling barriers. Most people if they live long enough will eventually be using health and social services to address the effects of impairment.

## CULTURAL CONCERNS:

We are also concerned about how cultural views about disability may be affecting life affecting decisions of Medical Officers abroad. From our own experience we know that nondisabled people tend to have harsh judgements about the likely outcomes of lives where disability is a characteristic. We put this before you to show that the current process is fraught with ableist bias.

We note the focus on *likely* future costs over time and the lack of focus on contributions. This approach is particularly problematic when decisions are being made in relation to children with disabilities. We note that CRPD Article 3 (General Principles) calls for, “Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.”

The decisions on excessive demand made by Immigration, Refugee and Citizenship Canada (IRCC) have a negative impact on both those people with disabilities and their families who are prevented from immigrating to Canada and on all Canadians but particularly on people living with disability. IRCC’s decisions on excessive demand convey the message that people with disabilities are such a burden on Canada that they should be kept out. Such messaging is damaging to the dignity of people with disabilities and perpetuates negative attitudes toward people with disabilities here at home.

People with disabilities are integral members of society. Canada has made commitments to the equality and human rights of people with disabilities in the *Charter of Rights and Freedoms*, provincial and federal human rights legislation and the *UN Convention on the Rights of Persons with Disabilities (CRPD)*. The *Immigration and Refugee Protection Act* states that the Act is to be construed and applied in a manner consistent with the *Charter of Rights and Freedoms* and international human rights instruments to which Canada is signatory. (See 3 (3) (d) (f)). Thus, Canada’s immigration law is bound by the principles of equality and non-discrimination set out in s. 15(1) of the *Charter of Rights and Freedoms* and this is reinforced by the CRPD’s Article 18 (Liberty of Movement and Nationality), Article 23 (Respect for Home and Family), Article 25 (Health).

The values of dignity, accommodation and inclusion inform equality and non-discrimination in the context of disability. The dignity of people with disabilities is upheld when the unique capabilities of people with disabilities are respected. Accommodation requires that measures are put in place to enable the full participation of people with disabilities in all spheres of life. Barrier removal is essential for the achievement of full inclusion which is the goal of equality. Currently, these values are being inadequately expressed in Canada’s immigration system.

As it is bound by the *Charter of Rights and Freedoms* and the *Convention on the Rights of Persons with Disabilities*, CCD argues that Immigration, Refugees and Citizenship Canada has an obligation to make its decisions concerning applicants with disabilities in a manner that upholds their equality and human rights. This means acknowledging that Canada accommodates people with disabilities through the provision of health and social services and recognizing that accommodation is not an excessive demand. Undue hardship is the only acceptable justification for not accommodating a person with a disability.

## **THE NUMBERS GAME:**

We understand that some people have raised what we consider the “flood gate” concern. We believe that such a concern is rooted in ableism and the discomfort that many feel when in the presence of persons living with a disability. However, CCD sees no evidence to validate this concern. The World Bank estimates that only ten percent of the world’s population has a disability. Those global citizens with disabilities who do apply will have to meet all the other criteria that are in place for evaluating potential new Canadians and permanent residents. Only one hurdle would be removed.

## **CANADA’S INTERNATIONAL OBLIGATIONS:**

Canada has signed and ratified the UN *Convention on the Rights of Persons with Disabilities* (CRPD). Article 18 of this Convention, the Liberty of movement and nationality Article provides:

### **Article 18 - Liberty of Movement and Nationality**

“1 States Parties shall 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, including by ensuring that persons with disabilities:

- a. Have the right to acquire and change a nationality and are not deprived of their nationality arbitrarily or on the basis of disability;
- b. Are not deprived, on the basis of disability, of their ability to obtain, possess and utilize documentation of their nationality or other documentation of identification, or to utilize relevant processes such as immigration proceedings, that may be needed to facilitate exercise of the right to liberty of movement;
- c. Are free to leave any country, including their own;
- d. Are not deprived, arbitrarily or on the basis of disability, of the right to enter their own country.”



**Article 23, Respect for home and the family, states in part:**

“4. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents.”

Canada’s emphasis on family unification must be extended to persons with disabilities.

**On the subject of Health, Article 25 of the CRPD states:**

"States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation. In particular, States Parties shall:

- (a) Provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes;
- (b) Provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and older persons;
- (c) Provide these health services as close as possible to people’s own communities, including in rural areas;
- (d) Require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent by, inter alia, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private health care;
- (e) Prohibit discrimination against persons with disabilities in the provision of health insurance, and life insurance where such insurance is permitted by national law, which shall be provided in a fair and reasonable manner;
- (f) Prevent discriminatory denial of health care or health services or food and fluids on the basis of disability."

Taken together, these Sections of the CRPD should provide sufficient grounds for repealing the Excessive Demands provision in the IRPA.

Repealing this provision is very timely. Currently, the Government of Canada and many community organizations are actively involved in consultations that we expect will lead to the introduction of a National Act next spring.

CCD believes that it would be appropriate for the Government to introduce amendments to the IRPA in advance of the National Act, or at least include necessary amendments to the IRPA and various other statutes that we sincerely hope will be a hallmark of that piece of legislation, one that we hope will make significant improvements in the lives of Canadians with various disabilities.

#### **THE NEED FOR EDUCATION OF IMMIGRATION STAFF:**

While amending the IRPA is our most significant recommendation, and must come first, its amendment should be accompanied by an educational program to assist Immigration officials to deal effectively with what we hope will be a new day in the annals of Canada's immigration system. The disability rights movement believes firmly in the phrase, "Nothing about us without us," and with this in mind, CCD, as a national organization, that is made up of both cross disability, uni-disability organizations and other national organizations, along with other organizations with whom CCD regularly works, wishes to offer to work collaboratively with your Committee and the Department to help successfully implement the amended legislation we are proposing here. Professors Roy Hanes and Michael Prince, and Natalie Spagnuolo, a doctoral candidate, are all members of CCD'S Social Policy Committee.

#### **FUTURE WORK:**

CCD appreciates the Standing Committee taking up the issue of the Excessive Demands provision in the IRPA. CCD wishes to propose additional areas we suggest the Standing Committee consider for additional study and hearings.

CCD appreciates the work of the Department and of various settlement organizations to assist refugees and immigrants to settle successfully in Canada. However, these organizations are often not adequately familiar with the needs of persons with disabilities, and CCD believes additional resources should be devoted to assisting refugees and immigrants with disabilities to make a successful home in Canada.

This need is particularly acute in the area of refugees, who generally come from war torn countries and inevitably bring with them the effects of what they have witnessed and/or directly experienced.

Under the Safe Third Country Agreement, in effect since December 2004, Canada and the US each declare the other country safe for refugees and close the door on most refugee claimants at the US-Canada border. The Canadian Council for Refugees strenuously opposes the Agreement, because it does not consider the US a safe country for all refugees. CCD encourages the Standing Committee to undertake a separate process to consider whether Canada should suspend this Agreement.

## **CONCLUSION:**

In conclusion, we ask Committee members to ask themselves the following. If outstanding Canadians such as the Hon. Carla Qualtrough, the Hon. Kent Hehr, Catherine Frazee, Sandra Carpenter or Rick Hanson were applying to immigrate to Canada, how would their applications be viewed by immigration officials?

Repeal of Section 38 (1) (c) of the *Immigration and Refugee Protection Act* is an important subject of Canadian public policy whose time has come.