



HOUSE OF COMMONS  
CHAMBRE DES COMMUNES  
CANADA

# Standing Committee on Citizenship and Immigration

---

CIMM • NUMBER 086 • 1st SESSION • 42nd PARLIAMENT

---

EVIDENCE

**Wednesday, November 22, 2017**

—  
**Chair**

**Mr. Robert Oliphant**



## Standing Committee on Citizenship and Immigration

Wednesday, November 22, 2017

• (1220)

[English]

**The Chair (Mr. Robert Oliphant (Don Valley West, Lib.)):** I'm going to call to order the 86th meeting of the Standing Committee on Citizenship and Immigration as we continue our study on the federal government's policies and guidelines related to medical inadmissibility of immigrants. We thank the minister and the officials for joining us.

We're partway through the study. We've had some officials here before, as we opened our study, and we've heard witness testimony over the last two days. We're delighted to have the minister here for his thoughts, as well as help from the officials.

Thank you for agreeing to come to see us today.

Minister Hussen.

**Hon. Ahmed Hussen (Minister of Immigration, Refugees and Citizenship):** Thank you, Mr. Chair and members. It's always good to be back before the committee to share with you our perspective.

[Translation]

It is a pleasure to appear once again before this committee.

The government appreciates the committee's decision to undertake this study.

[English]

As you know, Immigration, Refugees and Citizenship Canada has undertaken a fundamental review of the excessive demand provision, and we've consulted with provincial and territorial governments. As I have openly stated to my provincial and territorial counterparts, this review is necessary and long overdue.

To put it into perspective, this provision has been in place for more than 40 years. From a principled perspective, the current excessive demand provision policy simply does not align with our country's values on the inclusion of persons with disabilities in Canadian society. The current objective of the provision is to strike a balance between protecting publicly funded health and social services and facilitating immigration to Canada, while also supporting humanitarian and compassionate objectives in Canada's immigration policy. But there is now a recognized need to realign the policy, to also make it more fair and inclusive of persons with disabilities.

As you know, Mr. Chair, to begin our review of this policy, our government launched consultations with provinces and territories in

October 2016. Departmental officials also engaged stakeholders, including disability advocates.

The results of these discussions, together with consideration of public perspectives, judicial decisions, and media reports, as well as this committee's recommendations, will inform the development of options to be presented for decision by the government.

As my officials indicated previously to this committee, the health inadmissibility provisions are designed in part to reduce impacts on Canada's publicly funded health and social service systems. While a number of policy principles underpin our review of the excessive demand provision, these include the need to continue to protect health and social services.

[Translation]

That being said, the numbers we are talking about are incredibly small.

[English]

As my officials indicated, a cost-benefit analysis found that the total number of decisions on excessive demand made in a single year will result in an estimated savings of about \$135 million over a period of five years of projected health care coverage. That amount represents just 0.1% of all provincial and territorial health spending in 2015.

Since our initial discussions, we have shared potential areas of change with provinces and territories. These have included possible adjustments to the cost threshold, changes in the groups exempted from the provision, redefining the services under consideration, or enhancements in how wait-lists are considered.

[Translation]

This information will give provinces and territories the opportunity to assess these options and the potential impacts on their jurisdictions.

[English]

As we agreed in September at our federal, provincial, and territorial meeting of ministers responsible for immigration, we are committed to ensuring that the policy continues to recognize the need to protect health, social services, and education while treating applicants fairly. In particular, our government wants to ensure that the implementation of this policy aligns with our values regarding the inclusion of persons with disabilities into Canadian society.

Once again, I appreciate that the committee has chosen to undertake a study of this really important and sensitive policy.

• (1225)

[Translation]

The government is eager to receive your recommendations.

I look forward to answering your questions.

Thank you.

[English]

**The Chair:** Thank you very much, Minister, and thank you for your brevity, which gives our committee a lot of time to ask questions of you.

[Translation]

We will start with Mr. Tabbara, from the Liberal Party.

[English]

**Mr. Marwan Tabbara (Kitchener South—Hespeler, Lib.):** Thank you, Mr. Chair.

Thank you, Minister, for being here today.

Minister, in this study we've had individuals come here and share their testimony. One individual was a caregiver. Another individual was a professor at a university. In both cases, they have lived in Canada and paid their fair share of taxes. They felt as though they were good enough to work here, but they weren't good enough to stay. It was hard to hear some of their testimony, because they felt that Canada is not welcoming and is splitting their family.

From ongoing testimony, we feel that there is a two-tiered system. I was wondering if you could elaborate on that and on how we can be more welcoming and how we can strike a balance between allowing these individuals to be here with their families—because they've contributed so much—and health care providers.

**Hon. Ahmed Hussien:** Thank you. That's a really important question.

Before I answer the question, I want to say that Canada has an excellent settlement and integration program, which is the envy of the world, not only because of the government's efforts but also because we have a very welcoming society. Canadians are open to welcoming and embracing newcomers.

I think the reason you hear about these cases, the cases we know about and the ones that don't make it into the media, is that they raise issues around fairness. This is precisely why we've decided to launch a fundamental review of this policy. It's why we are making sure we hear from everyone about how best to move forward with the underlying reasons for the policy, but also bringing it into the 21st century and making sure that the excessive demand policy aligns well with what Canadians expect in terms of the inclusion of everyone in Canadian society.

That is why I'm very eager to get the recommendations and the feedback from this committee on ways to move forward on this. The cases you highlight do raise issues around fairness, and this is precisely why we need to review this policy: to make sure it's in line with Canadian values.

The final point I'll say about it is that this policy has been in place for more than 40 years. We're doing something that no other government has attempted to do, which is to look back and say, "Okay, how can we bring this policy up to Canadian values on how we include people?" We're doing the right thing; it's just making sure that we do it right, and to get it right, we have to hear from the committee, as well as from provinces and territories that are impacted by any possible changes to this policy.

**Mr. Marwan Tabbara:** I want you to elaborate a bit on fairness. I don't think this review is looking at "family" as a unit. I want to ask you about that. When we look at this review and we're looking at policy changes, are we going to be looking at families as units and at their contributions to the greater Canadian society?

**Hon. Ahmed Hussien:** First of all, I think the committee is open to looking at this policy from their own perspective and coming up with their own recommendations. I'm certainly open to that.

Secondly, I want to reassure you and the committee that all options are on the table with respect to moving forward on this policy. You have my word on that. If you think we should have a more comprehensive look at the contributions of family, that is certainly something you can put forward.

The only contribution I'll make to that suggestion is to say that Australia moved forward on that approach, and they weren't able to succeed. They weren't able to succeed in terms of looking holistically at families.

• (1230)

**Mr. Marwan Tabbara:** In regard to humanitarian and compassionate grounds, a lot of testimony was provided. We heard that for individuals to be approved, this avenue is very difficult. One of their family members may have been inadmissible to Canada, and their next option was to apply on humanitarian and compassionate grounds. Some were successful, but very many others weren't. Can you elaborate on that?

**Hon. Ahmed Hussien:** I'll let my official answer that question.

**Ms. Dawn Edlund (Associate Assistant Deputy Minister, Operations, Department of Citizenship and Immigration):** In the material we presented to the committee, Mr. Chair, under the undertakings from our last appearance—specifically, undertaking number 15—we provided statistics to the committee that looked at immigration medical exams from 2013 to 2016: 224 people applied for humanitarian and compassionate consideration, and 91% of them were successful.

**Mr. Marwan Tabbara:** Okay. Never mind, then.

Finally, can you update the committee on the department's ongoing work with provincial and territorial counterparts on medical inadmissibility? During all these testimonies, we heard a limited amount of testimony on provinces and territories.

**Hon. Ahmed Hussien:** Before I let my official respond in detail to the question, I will say the consultations with provinces and territories have been ongoing. I met the ministers responsible for immigration at a federal-provincial-territorial meeting in Toronto, and this was at the top of our agenda. We had an in-depth discussion on how to move forward on this.

There was a variety of opinions around the table. Provinces and territories were very supportive of the review. They think we should look at this again. Some provinces are a little apprehensive about the costs they think they'll have to incur, but they do agree with the general premise that we need to bring this provision in line with our other accepted policies with respect to moving towards an inclusive approach towards people with disabilities.

**The Chair:** Thank you.

I'll let the official respond and—

**Hon. Ahmed Hussen:** That's okay.

**The Chair:** Okay? Very good.

Ms. Rempel.

**Hon. Michelle Rempel (Calgary Nose Hill, CPC):** Thank you, Mr. Chair.

Well, Minister, I think for once we agree on something. Our immigration policy shouldn't be ableist, but it also needs to be cognizant of the need to ensure the sustainability of our social programs. It's a balance in this situation.

We've heard testimony from quite a few experts in the field who have made some suggestions on low-hanging fruit, as it would be, in terms of ways to change the process. One of the things that came up yesterday was the fact that it's not so much the legislative framework around this issue but how the rules are currently being applied.

We've heard about dozens of cases where the rules were applied either unevenly or improperly, so I'm just wondering, have you, as part of the review, instructed your department at all to look at perhaps a new training mechanism or some sort of service delivery standard to ensure that department officials are actually following the law consistently and perhaps putting some more consistency frameworks in place to apply the rules in this situation?

**Hon. Ahmed Hussen:** That's a good question. No, I haven't done that, because my position has been very clear from the beginning that this provision needs to be changed. It's simply not in line with our government's policies with respect to moving towards an accessibility agenda, and also with how Canadians are increasingly of the opinion that we should be more inclusive as a society. I personally think this provision is out of date in terms of looking at those two things—

**Hon. Michelle Rempel:** Are you suggesting then that there would be no framework for this and that it would be removed entirely?

**Hon. Ahmed Hussen:** No, that's not what I'm suggesting. I'm suggesting bringing the policy in line with where Canadians are today.

**Hon. Michelle Rempel:** What does that mean?

**Hon. Ahmed Hussen:** It means being more inclusive and being more fair and addressing issues around fairness.

• (1235)

**Hon. Michelle Rempel:** So how in terms of a legislative change...? You've just said you're not looking at process change, and you're saying that currently there are issues with the legislative framework, so what legislative changes are you proposing?

**Hon. Ahmed Hussen:** Look, the changes we will make depend on the feedback we get from stakeholders, the provinces and territories, and this committee.

We're not there yet.

**Hon. Michelle Rempel:** Thank you.

One of the common denominators in feedback that this committee has received is the application of the rules being inconsistently delivered by your department. Being presumptive and assuming there would be some sort of framework even after the results of your review, what is your department doing to ensure that... There seems to be a friction point with service delivery on this, and part of what immigration lawyers have told us themselves in cases is that they don't know what the criteria are and also that they're being applied unfairly.

We've heard them say that procedural fairness levels are difficult to understand and that most people who want to challenge a finding of medical inadmissibility feel they must hire a lawyer. One of the recommendations that have come up many times is that your department could be simplifying the language in these letters.

Regardless of what the legislative framework changes, it's clear that there's also a service delivery issue. Have you instructed your department to look at those friction points at all as part of your review?

**Hon. Ahmed Hussen:** I haven't instructed my department to do so. What I can update you on is that my officials have told me they are looking at process improvements in terms of how those decisions are made and how the applications are being processed. They also welcome advice from this committee as we move forward. That's where we are right now.

**Hon. Michelle Rempel:** So then you would commit to undertaking a review of...because, again, there's been I think a significant body of evidence in front of this committee already, showing that part of the friction points or challenges in terms of the application of the framework has been at service delivery points. Would you then commit to undertaking a review of that as part of the overall review you're looking at in this framework?

**Hon. Ahmed Hussen:** There are two things I'll say about that. One of the things we're looking at is a centralized unit to make these decisions so that you can have consistency. The second thing is that overall, in terms of client service improvements—

**Hon. Michelle Rempel:** But specifically in terms of simplifying the language in the—

**Hon. Ahmed Hussen:** Yes. So a centralized unit to make consistent decisions with respect to the—

**Hon. Michelle Rempel:** —to medical inadmissibility.

**Hon. Ahmed Hussen:** Yes.

**Hon. Michelle Rempel:** Is there also work being undertaken to perhaps simplify the language that's coming out in terms of medical inadmissibility letters and the appeals process?

**Hon. Ahmed Hussen:** I can assure you that this is part of our overall client service improvement initiative. It's to improve how we communicate with clients, how they can track their applications, and how they can get faster responses to their inquiries. That will be captured as part of it.

**Hon. Michelle Rempel:** Fantastic.

Just while I have you, as we rarely get a chance to chat, I want to inform you and your officials that I have put the following motion, which I hope I don't have to move, on notice: that the committee report to the House the matter of the failure of the Department of Immigration, Refugees and Citizenship Canada to provide the committee information it requested regarding the issue of asylum seekers on September 28, October 3, and October 5, since privilege may be involved, and give the House an opportunity to reflect on this matter.

**Hon. Ahmed Hussen:** Is that a question?

**Hon. Michelle Rempel:** I'm just informing you, while your department officials are here, of the fact that this motion has been put on notice. I hope I don't have to move it. It's been two months since the committee asked for some of this information. It's getting to the point where it's impacting our ability to look at other issues, such as the supplementary estimates.

**Hon. Ahmed Hussen:** Okay.

**Hon. Michelle Rempel:** Thank you.

**Hon. Ahmed Hussen:** You're welcome.

**The Chair:** You have one minute left, Ms. Rempel.

**Hon. Michelle Rempel:** Fantastic.

Just pushing on the issue of simplifying process, another issue we heard about was that the department is still sending out correspondence about medical inadmissibility by mail, and that sometimes medical certificates expire before a decision is even rendered. I'm wondering if, as part of the review, your department is looking at perhaps delivering those notices via electronic communication or some way that can condense the timeline in terms of decisions so that if the time between getting that medical certificate and an actual decision rendered could be condensed, the decision wouldn't expire.

**Hon. Ahmed Hussen:** Look, whichever way we can do client service better, we're looking at. Client service is at the heart of everything we do. We should put the client at the centre of everything we do. Improving client service is in my mandate letter. We have a unit now in IRCC that is responsible for client service. We have a director general responsible for client service for the first time in the immigration department's history. It's a huge priority for me.

Anything that can go towards improving client service, I'm open to, including on this issue. If you have a specific suggestion, such as the one you just articulated, I'm happy to receive it. It could be part of the recommendations from this committee.

• (1240)

**The Chair:** Thank you, Minister.

Following up on Ms. Rempel's comments, I just want to let the committee and the officials know that almost all the requests of

IRCC have been submitted to the clerk already. They've not yet been distributed to the committee, but they're all in.

**Hon. Michelle Rempel:** No, they're not.

**The Chair:** The ones that we are waiting for are actually not from your department, Minister. They're from other departments that we may have to go after as well. We have received the information from you. Other information is still outstanding, but it's from other departments.

**Hon. Ahmed Hussen:** Thank you for the clarification, Mr. Chair.

**The Chair:** Ms. Kwan.

**Ms. Jenny Kwan (Vancouver East, NDP):** Thank you very much, Mr. Chair.

Thank you to the minister and his officials for agreeing to be here today.

I want to start with a fundamental question.

Minister, in your comments just now, you said, quote, that "this provision is out of date", referring to the excessive demand provision, and that you want to bring the policies more in line with a Canada that is to be inclusive of people with disabilities. We also have a variety of laws in place, namely the charter of freedoms, in terms of our commitment to equality and human rights, and our provincial and federal human rights legislation. As well, Canada is a signatory to the UN Convention on the Rights of Persons with Disabilities.

Now, if you take a look at all of those rights in the context of the Immigration and Refugee Protection Act, you will note that this provision is in fact contrary to those protected rights. To that end, is really the only option in going forward to do away with the provision of excessive demand? No matter how you tinker with the policy and its application, it is not going to align with those stated rights in our charter and our human rights legislation, as well as the fact that Canada has signed on to the UN declaration.

**Hon. Ahmed Hussen:** Your position is that—

**Ms. Jenny Kwan:** No, I'm asking you that question.

**Hon. Ahmed Hussen:** I'm trying to understand your question. You're saying that the only option we should consider is getting a different policy...?

**Ms. Jenny Kwan:** My question to you is, would you agree that our only option is to get rid of the excessive demand provision, given those rights and given your stated goal?

**Hon. Ahmed Hussen:** This is how far I will go on your question. I will say that all options are being considered, and that is one of the options. I would say that all options are on the table, but that would depend on where.... Provinces and territories are the most affected by this provision, so we need to hear from them, but we also need to hear from other stakeholders who have appeared before this committee. We need to hear from the committee and we need to hear from Canadians, and then we'll make the decision. The only thing I can say to your question is that that is one of the options, but it's not the only option.

**Ms. Jenny Kwan:** Okay.

I can tell the minister this. The vast majority of the people who appeared before this committee agreed that the section on excessive demands should be eliminated, should be repealed. I believe that there are two witnesses, at best, who appeared before us and put forward a list of actions that maybe can improve the current process.

In addition to that, I can share with the minister that my office has received over a thousand emails calling for the repeal of the excessive demand provision. Also, virtually everyone who appeared before this committee agreed that if Canada is to be consistent with the UN Declaration on the Rights of Persons with Disabilities, we cannot have a law that discriminates against people with disabilities. This discriminates in that if you have a different ability, you have to undergo a different process. That in and of itself already creates a two-tier system, if you will, and discriminates against people with a disability.

I hope the minister will take that into consideration, and I hope that it's not just rhetoric—

**Hon. Ahmed Hussen:** No, it's not rhetoric.

**Ms. Jenny Kwan:** —to say that all options are on the table for consideration, because this matters in terms of people's lives.

**Hon. Ahmed Hussen:** No, of course; it's not fair—

**Ms. Jenny Kwan:** The minister talked about a cost-benefit analysis. In fact, the benefit-analysis side is actually missing with respect to this work.

The witnesses all came forward to talk about the contributions of their family unit, but as well, they talked about the person who has been identified as having a different ability in terms of their contributions. Some of it cannot be quantified in a dollars-and-cents way per se, but some could be. Even then, the excessive demand provision applies to them, but there's no consideration as to the benefits with respect to that. The process in terms of this approach is fundamentally flawed with respect to this. I would ask the minister to take a clear look at this, because the approach that has been undertaken does not take in an evaluation of the benefits side.

The other issue that I would bring to the minister's attention is that in the application of the process, the government officials stated that housing, for example, is not considered as a cost in determining whether a person who contributes is part of the excessive demand.... I have a letter here from a lawyer who brought this up in an actual case. The letter from the officials lists "supportive housing" as an issue to be considered as excessive demand, and that was one of the reasons they were being rejected. The application of the law is flawed.

I will ask the minister this question: would you agree that in terms of how the government came up with the numbers to determine what is deemed to be excessive demand, the analysis is flawed, and that the application of that policy is also flawed?

● (1245)

**Hon. Ahmed Hussen:** First of all, before I answer the question, I would just reassure the honourable member that this is not an exercise in rhetoric on my part. I am very cognizant of the fairness issues that are raised by this policy, which is why I'm very committed to not only conducting the review but also receiving recommendations from this committee.

If we read the provision, the regulation talks about what excessive demand is, and paragraph 1(1)(b) defines social services. Social services include any social services such as home care as well as specialized residence and residential services, so that addresses your issue around housing.

**Ms. Jenny Kwan:** Minister, would you agree that the formula for determining excessive demand, with which the government has come forward, is flawed?

**Hon. Ahmed Hussen:** I can't comment on that. What I can say to you is that the whole policy is being reviewed. As part of your recommendations, if you feel strongly that the process in its application is flawed and you bring forward options to address that flaw, then I'm open to that.

**Ms. Jenny Kwan:** My question to you, Minister—

**The Chair:** I'm afraid that's the end of your time.

I just want to clarify to the committee what I said about the request for information. This committee does have a reputation, a good reputation, for being one of the most demanding with respect to officials' questions, and that's very appropriate.

With respect to this study, the department has responded with 26 answers to questions raised by committee members. I believe a couple may still be in translation, and a couple were combined. However, there are no outstanding questions with respect to our study on medical inadmissibility.

We thank the officials. We know that places a burden on them.

With respect to the motion Ms. Rempel referred to, that had to do with our study on the irregular border crossings, and there remains one outstanding request. That request deals with the request of the provinces and territories to IRCC—there are requests outstanding from other departments—to get information on costs from the provinces engaged in this, and the department is awaiting information from the provinces on that one. So there is an outstanding IRCC request on the other study. However, we do have requests from other departments that may not be as used to our requests as IRCC is.

We thank you for your diligence in getting those answers to us.

I do want to mention, as well, because we have asked about the provinces and territories, that we have also as a committee asked the provinces and territories to weigh in on our study on this, and we have approached the 13 governments. All of them declined to appear before our committee. They were then asked if they'd like to submit written submissions. Two have responded, Nunavut and Saskatchewan, and Saskatchewan's answer is in translation now. Nunavut's was a very brief letter. That's where we are with those requests in our due diligence in attempting to get the provinces' opinions on that.

I think I've clarified that. When I said most of the stuff is in, I mean all of it's in with respect to this study, and we're awaiting one thing on the irregular border crossings.

This gives me a chance to again thank Ms. Edlund in particular but also all of the officials for their work on behalf of the Parliament of Canada, for their accountability to us, and for being effective in doing that.

Thank you.

Mr. Sarai and Mr. Whalen, I believe, are next.

● (1250)

**Mr. Nick Whalen (St. John's East, Lib.):** Thank you very much, Mr. Chair, and thanks, Mr. Sarai, for providing me the first three and half minutes to make some comments and ask some questions.

In the very work that Ms. Rempel and Ms. Kwan have diligently done, they've accurately summarized the situation before the committee, as you would have seen in the blues. The issue isn't whether or not we should change paragraph 38(1)(c). We should. The question is really whether we should eliminate it entirely or, if we do retain it in some fashion, how we can retain it in a way that will preserve the human rights and dignity of applicants and mesh with Canadian values.

I have to say that at this point I side with Ms. Kwan. On the basis of the evidence before me thus far, I do not see how, in a free and democratic society, we can justify any threshold under the Oakes test that would reflect the importance of section 15 of the charter. Any limitation in this particular context, based on the evidence before us, just seems to be out of line with our values.

I highlight the fact that about 170,000 applicants per year would be affected by the provision. Amongst those, only about 1,000 are rejected, so we are cleansing that 170,000 of 1,000 people who are too sick or disabled to come into the country. Right off the bat, just in making that statement, you realize how egregious this is. When we balance the economic benefit of those 170,000 people and the social benefit of those 170,000 people to the nation at large, it greatly dwarfs the cost of the health care for that 1,000.

I would note further that even if we do look at this \$135 million a year, or whatever number that may be—some people have said it's less, and some of the testimony has been that it underestimates—regardless, that number is de minimis when compared to the overall national spending on those types of services. It's impossible to see how allowing these 1,000 applicants into our country and cleansing our own souls would put social services or the health care system in any real jeopardy.

If the committee recommends that we simply eliminate paragraph 38(1)(c) and you accept this, how can we be sure that the application of paragraphs 38(1)(a) and (b) don't allow discrimination on the basis of disability or health status through the back door in terms of what the committee and you have explicitly asked the government to do through the front door? I want to see if there are any mechanisms within the act that we should also be looking at. If we want to eliminate paragraph 38(1)(c), might there still be some discrimination existing in paragraphs 38(1)(a) and (b) that we haven't canvassed? Nobody has asked for those to be eliminated, and yet I'm concerned that they could allow government and the department to continue to discriminate against the disabled or the infirm.

Thank you.

**Hon. Ahmed Hussen:** I don't think paragraphs 38(1)(a) and (b) are connected to paragraph 38(1)(c). Paragraph 38(1)(b) is self-explanatory, but I believe (a) deals with issues around...an example would be people who have tuberculosis and who are screened to

make sure that they don't spread TB in Canada. That's the public health example. I don't think that's the same as paragraph (c).

I think what we're looking at is paragraph 38(1)(c), and there we have a number of options. One is to double or triple the current threshold as to where it kicks in. Right now, it is at \$33,275. We could double or triple that. Second, we could strengthen or clarify wait-list consideration by adding a schedule of services with wait-lists by jurisdiction. The other one is that in the definition of services we could remove special education and related services from consideration in paragraph 38(1)(c). We could exempt certain immigration groups and consider exempting additional immigration categories in the legislation: temporary residents, economic class, principal applicants, and dependants. We could stay with the status quo, or we could completely eliminate it.

All of those things are under consideration, but we have to hear from you and others on how to proceed with this.

● (1255)

**Mr. Nick Whalen:** Thank you, Minister.

I must say that at this point in time I do not see how raising the threshold and excluding fewer people changes the fact that excluding anyone is prima facie discriminatory and violates Canadian values.

Mr. Sarai.

**Mr. Randeep Sarai (Surrey Centre, Lib.):** Thank you, Minister.

Thank you, Mr. Whelan.

We heard testimony earlier in terms of how much it costs. The average of about \$7,000 is the threshold for medical inadmissibility, that being what an average Canadian expends in a year on medical expenses. When we actually take 170,000, the number Mr. Whelan and I are using—when you take out refugees and you take out family class immigrants, who are exempt already, it's approximately 170,000—it's only 900 people. And for those 900 people, if they were admitted, the average would actually be \$7,000. So we are not pushing the average higher because, as Canadians, we have the same diseases, same illnesses, and same disabilities. Taking all of that into consideration, our expenses are \$7,000. In fact right now we're actually probably lowering the average artificially by excluding them.

I would say that initially I thought it was a good policy, because that would perhaps be a big burden on Canadians, but then I looked back—and I don't want to equate it to this—and it's no different from the slave trade, in which only those selected as the strongest and the most able-bodied were brought from Africa. It's not that that whole policy is good at all, but I'm saying it is akin to discriminating when we're picking only people who are healthy, fully functioning, with no intellectual disabilities and no physical disabilities. I think as a country, when we look at the cost, even if it was double the average per person, we'd be looking at such a small number. Nine hundred times \$7,000 is \$6.3 million. Even if you doubled that, it would still be only \$12 million or \$13 million. If you triple that it's still an inconsequential number compared to overall immigration. I'd like to express my opinion on that, and I want to share that with you, Minister.



Second, the committee has heard from witnesses who applied for permanent residency status in Canada, many of whom have been refused based on medical inadmissibility. What's the IRCC doing to mitigate those challenges related to medical inadmissibility faced by individuals who are already in Canada and who cannot get permanent residency because of one family member? We have heard so far that of those who have applied with a plan of mitigation, very, very few have been accepted. We've also heard some evidence that the expenses used to calculate their inadmissibility are not the ones that are actually used. For example, they're using branded drugs, when in fact our medical—

**The Chair:** If you would like the minister to answer, you'll have to wrap it up and give him a chance. You've getting over time.

**Hon. Ahmed Hussen:** Thank you for the question. I'll let Ms. Edlund take that.

**Ms. Dawn Edlund:** I already spoke about the cases that end up getting approved on humanitarian and compassionate grounds. Ninety-one per cent of folks who have asked for that after a finding of excessive demand have been successful in being granted visas. On the side of the mitigation plan, you'll see in the answer to the undertakings that over the period of 2013 to 2016 just over 700 mitigation plans were successful. Again, those are two different ways in which some of this is mitigated. The actual excessive demand finding is not the end of the story all the time.

I would also say in terms of the costing using branded drugs as opposed to generics that we actually look at the advice from the treating physician and what that treating physician has prescribed for the individual. If it's a branded drug that's more expensive, such as in the context of HIV, that's what we cost against. We don't want to make a supposition that the person should be on a different drug treatment plan that's a generic and that may not work as well for them. If the specialist says the generic is fine, then we recost.

**The Chair:** Thank you.

**The Chair:** Just to clarify for the analyst, which specialist do you mean?

**Ms. Dawn Edlund:** This is the treating physician of the individual.

**The Chair:** That is approved by IRCC?

• (1300)

**Ms. Dawn Edlund:** No. Our medical officers aren't treating anyone. It's the material provided to us that says, "here are the medications the individual is currently taking for their conditions"—for example, for HIV or renal failure or whatever—and then we cost against those medications as they have already been prescribed and are being used by the individual.

**The Chair:** But it is an IRCC-approved panel physician?

**Ms. Dawn Edlund:** No.

**Dr. Arshad Saeed (Director, Centralized Medical Admissibility Unit, Migration Health Branch, Department of Citizenship and Immigration):** It's not necessarily. These are specialists the applicant has already seen in the country of origin. The recommendation comes from them. They're not IRCC panel physicians. They could be specialists.

**The Chair:** All right. Thank you.

I like it when the analyst asks questions like that, because it will help our report, so thank you.

**Mr. Maguire,** you're going to get a little extra bonus. You get six minutes.

**Mr. Larry Maguire (Brandon—Souris, CPC):** Thank you, Mr. Chair.

I want to get right into it.

**Mr. Minister,** has any province or territory explicitly asked for the excessive demand clause to be eliminated?

**Hon. Ahmed Hussen:** No. In my discussions with the provinces and territories, my first question to them was this: do you believe we should move ahead in terms of bringing this policy up to speed, to where Canadians are, in terms of our vision of being more inclusive as a society? The overwhelming response there was that, yes, we should move this policy into the 21st century, in line with our values.

**Mr. Larry Maguire:** Thank you. I appreciate that.

**Hon. Ahmed Hussen:** There was no particular explicit feeling from one province or territory that said let's get rid of it.

**Mr. Larry Maguire:** Have you met with any of the provincial or territorial health ministers?

**Hon. Ahmed Hussen:** No, I met with the ministers responsible for immigration, but before that meeting we had a teleconference where we discussed this issue. They then went back and consulted with their respective health and education and social services ministers, because this impacts those ministers as well. The feedback reflected those consultations.

**Mr. Larry Maguire:** Is there any empirical evidence to suggest that the excessive demand clause is affecting our ability to attract high-skilled immigrants?

**Hon. Ahmed Hussen:** I don't understand the question. Could you clarify that?

**Mr. Larry Maguire:** From the discussions you've had, is there any evidence that the excessive demand clause is affecting or prohibiting anyone, or just simply affecting our ability to attract high-skilled immigrants?

**Hon. Ahmed Hussen:** Not to my knowledge, no.

**Mr. Larry Maguire:** There are some cases, I guess, in some communities that have rallied behind a particular individual or family—

**Hon. Ahmed Hussen:** Yes.

**Mr. Larry Maguire:** —to stay in Canada, but it was determined they had an excessive demand on the health care system. Is there any way we can ensure that Canada is still screening for excessive demand individuals but allowing greater flexibility for individuals or families who are deemed to fill a high-skilled labour shortage?

**Hon. Ahmed Hussen:** Look, that could be one of the ways in which we could change the evaluation mechanism with respect to this policy. It could be one of the ways to address the particular example that you raised. So my answer is that we would examine it if it's something that stakeholders felt we should take into consideration.

**Mr. Larry Maguire:** Thank you.

It has also been suggested that we eliminate immigration medical examinations due to the cost. These are the examinations that determine, as you pointed out, danger to public health, danger to public safety, and excessive demand. Do you believe that Canada should not be conducting immigration medical examinations on potential immigrants to screen for such things as tuberculosis, dementia, and schizophrenia before they immigrate to Canada?

**Hon. Ahmed Hussen:** I don't believe we should eliminate medical examinations related to immigration.

**Mr. Larry Maguire:** If they were eliminated, have you done any analysis, in the discussions, of the future impacts, which would include the future numbers of applications and the cost?

**Hon. Ahmed Hussen:** I don't believe we should eliminate medical examinations related to immigration. That's not the policy of our government, and therefore we haven't done that analysis. We're not moving in the direction of eliminating medical examinations, because they do screen for public health—

**Mr. Larry Maguire:** But if section 38 itself were eliminated—

**Hon. Ahmed Hussen:** Well, even if we moved towards that direction, it's paragraph 38(1)(c), not (a), (b), and (c). So public health is still an issue, right? We would still screen for—

• (1305)

**Mr. Larry Maguire:** But if you eliminated it, have you looked at whether there would be more applicants coming to Canada with disabilities in the future and what the cost might be?

**Hon. Ahmed Hussen:** We haven't looked at the immigration patterns resulting from the elimination of the policy.

In terms of the cost question, I'll ask Ms. Edlund to respond to that.

**Ms. Dawn Edlund:** Go ahead, Michael.

**Mr. Michael MacKinnon (Senior Director, Migration Health Policy and Partnerships, Migration Health Branch, Department of Citizenship and Immigration):** As we indicated previously, we've provided an estimate of the dollar cost related to the specific individuals who have undergone the assessment for a given set of representative decisions. It's difficult to estimate. As I understand it, from what the committee members have described, and you've heard both sides, the estimate may be too high or too low.

Certainly at the level of officials, when we were in discussion with the provincial and territorial departments responsible for immigration, in a number of cases the provincial officials raised the issue that we were not considering the potential of a deterrence effect. That was because we were unable to assess that through an evidence-based approach. It's hard to tell, therefore, whether or not elimination of section 38 in its entirety or just paragraph 38(1)(c) would have a significant impact.

**Mr. Larry Maguire:** I'm sorry, I have a couple of more questions

**The Chair:** You have 13 seconds.

**Mr. Larry Maguire:** When a potential immigrant is deemed to have an excessive demand on the health care system, there are various ways that you can appeal, such as putting forward a mitigation plan. A provincial-territorial authority could say that they fully accept the financial responsibilities, and you as the minister

have the ability to waive that excessive demand clause on humanitarian grounds.

Mr. Minister, I'm just wondering if these avenues are still good enough to ensure that Canada is able to attract the highly skilled immigrants that we are after.

**The Chair:** Very briefly.

**Hon. Ahmed Hussen:** I've already answered the question with respect to whether this affects our ability to attract highly skilled immigrants. In my opinion, I don't think that's the issue at hand here. I think the issue is one of fairness and an incompatibility with our values.

**Mr. Larry Maguire:** Are the three mechanisms of appeal that I suggested valid and good enough?

**Hon. Ahmed Hussen:** Are you saying good enough to address...?

**Mr. Larry Maguire:** —to continue with the present program, and that gives you the right to have the ability to waive that “excessive demand” clause.

**The Chair:** I'm afraid I can't give you a chance to answer. I'm sorry.

Ms. Zahid.

**Mrs. Salma Zahid (Scarborough Centre, Lib.):** Thank you, Chair.

Thanks, Minister, for coming today, and thanks for undertaking the fundamental review of the “excessive demand” provision, because we have heard, in the testimony, how many families have to go through a lot of painful, emotional stress. I am one of them. Many years ago my mother-in-law's case of immigration was rejected because of medical inadmissibility.

We have heard testimony about the effort and the resources that are put into the mitigation plans when an applicant receives a letter warning them that they are facing a finding of medical inadmissibility.

Immigration lawyer Michael Battista said, “They evaporate after a permanent resident becomes a permanent resident”. He added that his phone charge is \$4,000 to \$5,000 to prepare a mitigation plan as it's labour-intensive and those fees don't include extras like expert medical opinions. He added that the system “does seem to be economically biased toward those who can afford the legal fees to fight the determinations.”

Roy Hanes of Carleton University said that this creates a two-tier system: those who can afford to hire legal help and to mitigate their costs, and those who cannot; and the latter more often find the door to Canada is closed.

Minister, can you please tell us what happens to these mitigation plans after they are accepted? I'm not suggesting enforcement of these plans, barring outright fraud. We heard that systemic tracking would be expensive and a bureaucratic nightmare. It does lead to these questions, though. What purpose do these mitigation plans serve? Are they achieving that purpose, and are they creating a two-tier entry into Canada?

**Hon. Ahmed Hussen:** Before I let Ms. Edlund answer the detail of the question, I'll say that the issues around fairness and around accessibility to a Canadian society base that are raised by this policy are precisely why we're studying it. It is precisely why it has raised the issues around fairness. It is why we launched the review, and it's why we thank the committee for studying the issue, because we think that will inform our approach moving forward to make it a fairer issue. As some members have indicated, they would even prefer it to be eliminated completely, and that is certainly one of the options.

• (1310)

**Ms. Dawn Edlund:** The concept of mitigation plans came into play after the Supreme Court of Canada decision in 2005, called Hilewitz and De Jong, in which the two individual applicants wanted to present evidence of how they could mitigate the cost of special education, in one example.

The Supreme Court of Canada said that we as a department need to listen to what those plans are, and understand them and evaluate them. It was after that we put the mitigation plan concept into effect in response to the Supreme Court's decision.

**Mrs. Salma Zahid:** Are they achieving their purpose, do you think?

**Ms. Dawn Edlund:** It's really hard to tell if they're achieving their purpose, because we don't track or monitor them after the fact. As I said the last time I was here before this committee on this study, we don't have any enforcement mechanisms possible to see whether or not someone has actually followed the plan they put forward. We don't have line of sight on that at all.

**Mrs. Salma Zahid:** Thank you.

Minister, we have heard examples of cases of medical inadmissibility that came to your office for appeal on H and C grounds. We heard of cases such as that of a caregiver, Mercedes Benitez, who received a waiver through this route. We also heard that there are many cases that don't receive media attention as Mercedes' case did, and that H and C appeals are an answer to a bad law.

I would like to ask this. When you receive an H and C medical inadmissibility appeal, and if you are overturning 90% of those decisions, does that speak to a deeper issue within the medical inadmissibility process?

**Hon. Ahmed Hussen:** First of all, in the case you referred to, it was an officer who made the humanitarian and compassionate grounds decision. It wasn't me. It was an immigration officer who made the decision.

With respect to the cases that receive media attention and the ones that don't, the fairness issues raised by these cases are the reasons we are where we are now.

I want to remind the committee again that this policy has been in place for more than 40 years. No government has changed it. We are moving ahead and we believe that now is the time to do so. It is precisely because of the heart-wrenching cases that have come up

and that have been concerning to Canadians and to members of Parliament, including you. That is why we believe it's time to move forward on this policy, to bring it in line with our values.

**The Chair:** Thank you, Minister.

We have two minutes left in the meeting. With the committee's agreement, I'd like to give it to the analyst to ask the officials a point of clarification. Is that okay with the committee?

**Some hon. members:** Agreed.

**The Chair:** Madalina, go ahead.

**Ms. Madalina Chesoi (Committee Researcher):** Regarding the drugs that are recommended on a prescription from another country, not all countries have the same generic drugs, and the prices are really different.

If a specialist recommends that a person take drug A, is there a possibility that generic drugs are also specified in that prescription so that when they come to Canada, and if they have access to the generic drugs, they are not penalized?

**Dr. Arshad Saeed:** Thank you.

No, the drugs are recommended by the treating specialists, who are different from panel physicians or IRCC medical officers. The drugs are different in different countries. What we look at when we do the costing is the equivalent medication in Canada—

**The Chair:** Therapeutic substitution.

**Dr. Arshad Saeed:** —therapeutic substitution, and also the publicly funded portion of that, because the whole cost may not be subsidized. We look at the provincial formularies, at what is going to be subsidized by the provincial government, and the cost is based on that.

**The Chair:** Thank you for that.

Ms. Kwan, go ahead.

**Ms. Jenny Kwan:** Thank you, Mr. Chair.

I want to make note of this. We started our committee meeting five minutes late, and then of course, in the middle, Mr. Chair, you interjected. I believe your comments took about four minutes and a bit, and now two minutes with the analyst, which I don't oppose.

What that means is that it robbed me of another round, because I believe the next round would have been five minutes with the Liberal member side, and I would have gotten another round.

• (1315)

**The Chair:** That's fine. You can challenge me. It actually wouldn't have limited you, because we still had five more minutes from the Conservatives and five more minutes from the Liberals, so we wouldn't have gotten there, but I accept that.

My main goal is that the committee as a whole gets the information it needs from the officials who are here, so that's why I felt it was important to clarify decisions that were made.

We've come to the end of our time. The meeting is adjourned.





Published under the authority of the Speaker of  
the House of Commons

---

### SPEAKER'S PERMISSION

---

The proceedings of the House of Commons and its Committees are hereby made available to provide greater public access. The parliamentary privilege of the House of Commons to control the publication and broadcast of the proceedings of the House of Commons and its Committees is nonetheless reserved. All copyrights therein are also reserved.

Reproduction of the proceedings of the House of Commons and its Committees, in whole or in part and in any medium, is hereby permitted provided that the reproduction is accurate and is not presented as official. This permission does not extend to reproduction, distribution or use for commercial purpose of financial gain. Reproduction or use outside this permission or without authorization may be treated as copyright infringement in accordance with the *Copyright Act*. Authorization may be obtained on written application to the Office of the Speaker of the House of Commons.

Reproduction in accordance with this permission does not constitute publication under the authority of the House of Commons. The absolute privilege that applies to the proceedings of the House of Commons does not extend to these permitted reproductions. Where a reproduction includes briefs to a Committee of the House of Commons, authorization for reproduction may be required from the authors in accordance with the *Copyright Act*.

Nothing in this permission abrogates or derogates from the privileges, powers, immunities and rights of the House of Commons and its Committees. For greater certainty, this permission does not affect the prohibition against impeaching or questioning the proceedings of the House of Commons in courts or otherwise. The House of Commons retains the right and privilege to find users in contempt of Parliament if a reproduction or use is not in accordance with this permission.

---

Also available on the House of Commons website at the following address: <http://www.ourcommons.ca>

Publié en conformité de l'autorité  
du Président de la Chambre des communes

---

### PERMISSION DU PRÉSIDENT

---

Les délibérations de la Chambre des communes et de ses comités sont mises à la disposition du public pour mieux le renseigner. La Chambre conserve néanmoins son privilège parlementaire de contrôler la publication et la diffusion des délibérations et elle possède tous les droits d'auteur sur celles-ci.

Il est permis de reproduire les délibérations de la Chambre et de ses comités, en tout ou en partie, sur n'importe quel support, pourvu que la reproduction soit exacte et qu'elle ne soit pas présentée comme version officielle. Il n'est toutefois pas permis de reproduire, de distribuer ou d'utiliser les délibérations à des fins commerciales visant la réalisation d'un profit financier. Toute reproduction ou utilisation non permise ou non formellement autorisée peut être considérée comme une violation du droit d'auteur aux termes de la *Loi sur le droit d'auteur*. Une autorisation formelle peut être obtenue sur présentation d'une demande écrite au Bureau du Président de la Chambre.

La reproduction conforme à la présente permission ne constitue pas une publication sous l'autorité de la Chambre. Le privilège absolu qui s'applique aux délibérations de la Chambre ne s'étend pas aux reproductions permises. Lorsqu'une reproduction comprend des mémoires présentés à un comité de la Chambre, il peut être nécessaire d'obtenir de leurs auteurs l'autorisation de les reproduire, conformément à la *Loi sur le droit d'auteur*.

La présente permission ne porte pas atteinte aux privilèges, pouvoirs, immunités et droits de la Chambre et de ses comités. Il est entendu que cette permission ne touche pas l'interdiction de contester ou de mettre en cause les délibérations de la Chambre devant les tribunaux ou autrement. La Chambre conserve le droit et le privilège de déclarer l'utilisateur coupable d'outrage au Parlement lorsque la reproduction ou l'utilisation n'est pas conforme à la présente permission.

---

Aussi disponible sur le site Web de la Chambre des communes à l'adresse suivante : <http://www.noscommunes.ca>