

**November 15, 2017**

**SENT VIA FAX - 613-947-3089**

Standing Committee on Citizenship and Immigration  
Sixth Floor, 131 Queen Street  
House of Commons  
Ottawa ON K1A 0A6  
Canada

Attn: Erica Pereira, Committee Clerk

Dear Honourable Members

**Re: Submission to the Standing Committee on Citizenship and Immigration on  
Medical Inadmissibility of Persons with Disabilities**

---

PooranLaw Professional Corporation (“PooranLaw”) and Community Living Kingston and District (“CLKD”) are pleased to make these joint submissions regarding the issue of the medical inadmissibility of potential immigrants to Canada, specifically as the issue relates to individuals with disabilities and their families.

PooranLaw is a law firm based in Toronto, Ontario, that is dedicated to advocating for individuals with disabilities, their families, and the non-for-profit organizations that support them.

CLKD supports people with intellectual disabilities as they develop their capacity to live, learn, work, and participate in all aspects of living in the community, and engages with the community to develop its capacity to welcome and support people to participate in community life in meaningful, productive ways. They have operated in the Kingston, Ontario area since 1953.

As you are aware, section 38(1) of the *Immigration and Refugee Protection Act* (“IRPA”) identifies three health-related grounds for inadmissibility. It is the third ground, namely “excessive demand on health or social services,” which we seek to address in this submission. It is the position of PooranLaw and CLKD that this provision is not only discriminatory towards people with disabilities and their families, but is also contrary to Canada’s obligations under the *Convention on the Rights of Persons with Disabilities* (“CRPD”), which Canada has signed and ratified in 2010.

The Supreme Court of Canada has established that families of people with disabilities can submit “mitigation plans” to Citizenship and Immigration Canada that demonstrate their ability to personally defray the costs associated with their family member’s disability-related medical and social service-related needs. However, we submit that this committee’s analysis of the issue of medical inadmissibility should not be focused on whether wealthy immigrants can cover the costs of their loved ones’ disability-related needs, but on whether eliminating the “excessive demand” ground for inadmissibility would lead to a more diverse, inclusive Canada.

Canada’s current immigration policies focus on a person’s disability and not the individual themselves. This is to Canada’s detriment. People with disabilities are often valuable and

contributing members of their communities. When given the tools to succeed, they, like everyone else, lead meaningful lives, and contribute to their community's economic, social, and cultural fabric. Moreover, by prohibiting parents of children with disabilities from immigrating to Canada based on the perceived risk associated with their child's disability, Canada is losing out on the skills and talents that those parents could bring to our country.

### ***Discrimination – Section 15 of the Charter***

Section 15 of the Charter of Rights and Freedoms (“the Charter”) states that every individual is equal before and under the law, and has the right to equal benefit of the law without discrimination, including freedom from discrimination on the basis of disability.

This right does not just apply to citizens of Canada. In the Supreme Court decision *Singh v. Minister of Employment and Immigration*, the Court determined that the Charter, and the protections that it provides, apply to “every human being who is physically present in Canada.”

Moreover, the Supreme Court recognized, in *Andrews v. Law Society of British Columbia*, that non-citizens are not only covered by the Charter, but are a vulnerable group in Canadian society: “[r]elative to citizens, non-citizens are a group lacking in political power and as such vulnerable to having their interests overlooked and their rights to equal concern and respect violated.”

The “excessive demand” medical inadmissibility provisions of *IRPA* clearly discriminate on the basis of disability. Canadian citizens with disabilities are granted the full protection of the law, as well as the full benefits of our medical and social service systems. To make a distinction against prospective Canadians, many of whom are either already in Canada, or whose family members are present in Canada at the time of their application, fails to provide these individuals with the protections to which they are entitled under section 15 of the Charter.

### ***Convention on the Rights of Persons with Disabilities***

As a signatory to the CRPD, Canada is obligated to respect and fulfil the terms of this treaty.

Article 18 of the UNCRPD states:

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;

As such, under our international obligations, Canada is obliged to recognize that persons with disabilities have freedom of movement and a freedom to choose their residence and nationality.

The exclusionary regime provided by the “excessive demand” provisions of *IRPA* does just the opposite, depriving people with disabilities of their mobility rights and their ability to “acquire and change a nationality,” solely on the basis of their disability.

Historically, Canada has been seen as a global leader on human rights issues. However, on this particular issue, we are unfortunately failing in both our international obligations as well as in the example that we set to other countries when it comes to the treatment of people with disabilities.

### ***The Community Living Movement in Ontario***

An important part of the mission of CLKD is to work with the community to make Canada more inclusive and diverse. This has required challenging attitudinal barriers towards people with intellectual and developmental disabilities.

One of the critical attitudinal barriers in society that led to the isolation and segregation of people with disabilities was the assertion that they were a burden on society. To remove the burden on society, Canadian governments encouraged the removal of children from their homes and their communities. Policies founded on the assumption of burden has resulted in tremendous harm to Canadian citizens. Community Living started when families refused to let their children be taken away to institutions. These families refused to accept the attitude that their children were burdens to society and therefore needed to be segregated to institutions. Canada’s current immigration policy is explicitly founded on this same historical attitude – exclude those with disabilities as they are burdens on the community.

People with disabilities and the Community Living movement have been successful in Ontario in closing the last, large-scale government operated institutions that kept people with disabilities excluded from their communities. This has been a long struggle and the last such institution in Ontario was closed only recently, in 2009. Large, segregated institutions still exist in some jurisdictions in Canada. At Community Living, we are proud of our contributions that have made Canada a more inclusive, welcoming society. Closing institutions required a shift in social attitudes and government policies away from the assumption that people with disabilities are burdens to society. To our collective benefit, attitudes and government policies now regard people with disabilities as full, contributing citizens in their communities. We realize there is much work to be done to challenge the discriminatory attitudes of segregation and exclusion that still exist. Whether it is education policies that exclude students from their neighborhood schools or immigration policies that are designed to keep people with disabilities out of Canada, Community Living knows that such attitudes and their associated policies are the antithesis of Canadian values.

It is not a question of finding the right ‘balance’ between exclusive attitudes and inclusive values. The focus should not be on whether the dollar value of the immigration policy is set at the correct level to trigger medical inadmissibility. The question we need to ask ourselves and the Committee needs to consider is whether current immigration policy perpetuates attitudes towards Canadians with disabilities that perpetuate isolation and intolerance. We believe there can be no ‘balance’ struck for a policy founded on attitudes that have caused so much harm to Canadians.

We therefore ask the Committee to consider the impact of existing immigration policy on people with disabilities, their families, and Canadian society. It is a message of exclusion, one that Community Living and others have been battling for decades. Current policy violates the

Charter and promotes attitudes which have been used for over a century to isolate, segregate and exclude people with disabilities from being full citizens.

### **Conclusion**

As Canada honoured its 150<sup>th</sup> anniversary this year, we celebrated, as Canadian values, diversity and inclusion. We proudly welcome new Canadians, and pride ourselves on being a country shaped by the hard work of immigrants.<sup>1</sup> However, for some families who wish to make Canada their home, instead of being welcomed and included, the door is slammed in their face – all because they have a family member with a disability.

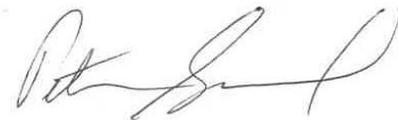
It is our position that the “excessive demand” provisions of the *IRPA* discriminate against people with disabilities and fail to honour Canada’s international obligations. Moreover, they fail to recognize the valuable contributions that people with disabilities and their families make to Canada. This legislation reduces the value of people with disabilities to a mere calculation. It does not acknowledge that, although certain individuals with a disability may have above-average health care or social service needs, these individuals and their families also bring a great value to Canadian society.

It is on this basis that we respectfully request that this committee consider removing the “excessive demand” provisions of the medical inadmissibility test in the *IRPA* to make this legislation more equitable and respectful to people with disabilities and their families.

Sincerely,



Brendon D. Pooran,  
PooranLaw Professional Corporation



Peter Sproul, Executive Director,  
Community Living Kingston and District

---

<sup>1</sup> Statement by the Prime Minister of Canada on World Refugee Day, June 20, 2017.