

Inclusive Citizenship: It's Time

Submission to the Standing Committee on Citizenship and Immigration

By
The Canadian Association for Community Living
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“My sister has disabilities and she was born in the States but she’s lived here since she was two. According to the law, immigrants with disabilities cannot permanently stay in Canada, but we’ve lived here 11 years now. I’m just a bit sad that we could have to leave just because she has disabilities. And I would like to know what you are doing or will do to prevent this?”

Question to Prime Minister Justin Trudeau, at a Town Hall meeting in Kingston, Ontario, January 12, 2017

<https://www.youtube.com/watch?v=vOghwdEG-jM>

Background

The Canadian Association for Community Living (CACL) is a Canada-wide association of persons with an intellectual disability, family members and others working to advance the human rights and inclusion of persons of all ages who have an intellectual disability.

Founded in 1958 by parents of children with an intellectual disability who wanted supports and services within the community instead of in institutions, CACL has become one of Canada's ten largest charitable organizations, and has grown into a federation of 10 provincial and 3 territorial associations comprising of 420 local associations and over 40,000 members.

CACL is an association dedicated to growth and change for both individuals with an intellectual disability and for society as a whole. CACL works to promote and achieve the citizenship, full inclusion, and active participation of people with an intellectual disability in all aspects of community life.

CACL is committed to working collaboratively on the development of more inclusive policies and practices in this country. The immigration system is an important area for persons with disabilities that remains largely inaccessible and exclusive. The grounds for medical inadmissibility have a systemic discriminatory impact on people with intellectual and other disabilities and their families. As such, this regulatory mechanism must be abolished to the extent that it perpetuates such disadvantage and further entrenches negative stereotypes which do harm to all Canadians with disabilities, and which do not acknowledge the individual contributions and diversity that people with disabilities bring to Canadian society.

Immigration Law and Disability

Since 1886, Canada’s immigration legislation has consistently listed classes of persons who, because of their health condition, disability, disease or disorder, were denied entry into Canada. These lists of inadmissible classes existed long before Canada introduced universal health care and publicly-funded social services, and were clearly rooted in discriminatory ideas about such conditions. For example, in the 1906 *Immigration Act*, persons who were prohibited from landing in Canada included the “feeble-minded, an idiot, or an epileptic”, or someone “who is insane.” Similarly, the 1952 *Immigration Act* defined prohibited classes to include “idiots, imbeciles or morons”, the “insane”, “psychopathic personalities”, persons with “epilepsy”, and those who were “dumb, blind or otherwise physically defective”.

Both the former *Immigration Act* and the current *Immigration and Refugee Protection Act* (IRPA) have maintained specific classes of persons who are inadmissible into Canada. The categories of inadmissible persons are statutorily identified on distinct grounds, which include security concerns,

human rights violations, criminality and health condition. Within health condition, there are three grounds for inadmissibility: danger to public health, danger to public safety and excessive demands on health or social services.¹

Stereotypes and Assumptions

Persons with disabilities are frequently victims of prejudice and paternalistic stereotypes about the quality of their lives and their ability to contribute socially or economically to society. The underlying basis for these negative attitudes stems largely from a perspective that views persons with disabilities as having a defect, dysfunction, abnormality or impairment that is located in the individual. This point of view is derived from a biological conception of disability, which is known as the medical model of disability.

Implicit in this medical model is the belief that disability is a physiological or psychological defect that needs to be cured or treated. The focus in the medical model is to “fix” the persons with a disability so that they will function more “normally” in society. A corollary to this medicalized view of disability is the belief that persons with disabilities will invariably result in social and economic dependency, and that treatment of the condition will pose a drain on public resources.

The provisions of both the former and current immigration legislation are deeply entrenched in this antiquated medical model of disability. The excessive demands provisions in both the former and current immigration legislation unfairly single out persons with disabilities for closer scrutiny. While the new legislation claims to be focused solely on “health conditions” that place excessive demands on Canada's publicly-funded services, this masks the adverse impact of the legislation on persons with disabilities. The scheme ignores the reality that there are a variety of conditions or circumstances that may lead to a person placing a demand on health care or social services. For example, heavy smokers, unsafe drivers and professional athletes in high-risk sports could all give rise to excessive demands on health or social services.

The immigration system identifies persons with disabilities as the only class of persons that present a “threat of costs” because of facilitating their inclusion in society, while ignoring that often these costs are as a result of discriminatory barriers and the social construction of disability.

The excessive demands provisions operate on the assumption that disabling conditions are inherent defects rather than socially ascribed deficits, and that a suitable response to the condition is exclusion rather than accommodation and inclusion. Too often life-defining immigration decisions are made on the basis of these stereotypes and assumptions.

The immigration system readily accepts and accommodates the various social service needs of new immigrants. Publicly-funded supports, including long term expenditures to facilitate language and vocational training and peer support services, are perceived as positive initiatives for non-disabled newcomers, while prospective immigrants with disabilities needing similar or identical support services are perceived as burdens. Legal provisions that discriminate based on such differential and disadvantaging approaches to unique needs cannot be sustained under Canada's *Charter of Rights and Freedoms*.

Sending a message to Canadians

It is important to emphasize not only that prospective immigrants are devalued and their dignity offended by the pejorative stereotyping that underpins the excessive demands provisions, but also

that Canadians with disabilities are given the message that persons like them are not welcome in Canada. Canadians with disabilities see themselves identified by ‘impairments’ and branded as a burden on the public purse, with no value attached to their role in society. The disparate and adverse impact experienced by prospective immigrants with disabilities also undermines the value placed on Canada as a diverse country. By implication, the message given to all Canadians is that persons with disabilities are to be screened out as inferior, second-class members of society.

Redefining Citizenship

Disability is only one characteristic of a person’s life. Along with disability comes a whole host of other human characteristics, attributes and qualities. Canadian jurisprudence has consistently held that because of the diversity of disability, avoidance of discrimination requires that the individual characteristics of the person be taken into account. There is currently no mechanism by which the potential contributions, abilities, talents and skills of persons with disabilities, as well as the support networks available to them, are recognized.

Repealing the ‘excessive burden’ clause insofar as it discriminates against persons with disabilities is in keeping with the Government of Canada’s commitment to human rights for all and the principle of inclusive citizenship represents an opportunity to make a strong values-based statement about persons with disabilities. Further, any examination of the citizenship granting process should be conducted through a disability lens.

The values of dignity, accommodation and inclusion are inherent in the principles of equality and non-discrimination under s. 15(1) of the *Charter*. Dignity requires respect for the intrinsic value of each person’s unique capabilities. Accommodation mandates that steps be taken to facilitate the participation of persons with disabilities in all aspects of community life. Meaningful inclusion in society is the central goal of equality for persons with disabilities.

Recommendation #1

Include a preambular reference recognizing the value and contribution of persons with disabilities.

Recommendation #2

Ensure the model for granting citizenship is infused with universal design and principles of inclusion and accessibility.

Recommendation #3

Repeal section 38(1)c. of the IRPA, given its discriminatory nature, and the merit-based system in place

Conclusions

Immigration in Canada has come a long way and is recognized around the world as a model for an approach that maximizes social inclusion along with respect for diversity – for all but one group, people with disabilities. Stereotypes and assumptions about persons with disabilities impact on the ability of a person with a disability or a family with a family member with a disability to immigrate to Canada. Canadian immigration policy must move forward to become more inclusive and accepting of persons with disabilities. Diversity and respect for human rights are values that are important to Canadians. The continued exclusion of persons with disabilities robs us of diversity,

contradicts our Charter of Rights and Freedoms and perpetuates a message that persons with disabilities are second-class citizens. It is long beyond the time the Government of Canada took meaningful steps to remedy this situation. **Inclusive citizenship. It's time.**

ⁱ The IRPA, enacted in 2001, states in 38(1) "A foreign national is inadmissible on health grounds if their health condition:

- a. is likely to be a danger to public health;
- b. is likely to be a danger to public safety; or
- c. might reasonably be expected to cause excessive demand on health or social services.