carranza LLP

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By email only to:

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Standing Committee on Citizenship and Immigration (CIMM)
House of Parliament
Ottawa, ON

Dear Ms/Sirs,

RE: REPEAL SECTION 38 (1) c of the *Immigration and Refugee Protection Act*

I am writing as the immigration consultant at Carranza LLP Law Firm, a multiethnic law firm serving migrant communities in the Greater Toronto Area. I am also writing as a member of No One Is Illegal Toronto, a migrant justice organization. I am writing to support the demands of the Migrant Workers Alliance for Change and Caregiver Action Centre in their document sent to the CIMM *Repeal Section 38 (1) c*.

The document sets forth the following reasons for the repeal (with my own additions for each added in):

(1) Section 38(1)(c) is discriminatory

As our firm argued in the case of *Toussaint,* the Federal Court has considered access to health care being blocked by immigration action a serious issue in many cases including *Prasad v. Canada* (MCI) [2003] F.C.J. No. 805 and *Sivagnanam v. Canada* (MCI) [2004] F.C.J. No. 1806, I would also note that Article 12 of the "International Covenant on Economic, Social and Cultural Rights" makes it clear that states have a responsibility to recognize all people's rights to the "...highest attainable standard of physical and mental health" and to assist them in obtaining this and that *De Guzman v Canada (MCI)* 2005 FCA 436 has made it clear that international instruments are determinative of Immigration law. Finally, I would note that section 25 (1) of the *Immigration and Refugee Protection Act* gives a wide discretion to the Minister of Immigration and his delegates to waive criteria in any immigration programs or proceedings.

Our firm currently represents a client who uses a wheelchair on a daily basis. This client is unlikely to be allowed to remain in Canada despite being a celebrated and award winning professor and author. In order to overcome the huge burden set on this person by section 38 (1) c we found it necessary to make an application under section 25 (1) of the *IRPA*. This is a discretionary instrument. Were it not for section 38 (1) c this person would qualify for express entry, which is not a discretionary instrument. This is clearly discrimination and as such falls afoul of Canada's previously mentioned obligations under international law, as well as section 15 of the *Charter of Rights and Freedoms (the Charter)*.

(2) Section 38(1)(c) is anti-poor

Our firm represents a resident of Seton House, the largest men's shelter in Canada. He also uses a wheelchair and who needs significant social services to assist his disability. Again, due to section 38 (1) c, he is without status, without access to the healthcare he desperately needs. When we made an application under section 25 (1) his medical condition was weighed against his compassionate factors. As a poor person, he faces an uphill battle not only to win his application but to obtain medical care. Were he to have a middle class family or upper class family, we could use the Federal Court ruling in *Hilewitz v. Canada; De Jong v. Canada* 2005 SCC 57 to argue that his family could pay his social service costs and his disability would not be an issue. This discrimination based on income also flies afoul of Canada's international obligations and our law as per section 15 of *the Charter*.

(3) Section 38(1)(c) constructs disabled people and their families only in negative terms – solely as a drain on resources

With the people we work with mentioned previously, both have skills they bring to Canada, family here they support and community here they are interdependent with. Even should they not have these things going for them, they are human beings with rights and dignity ensured under Canadian and international law. This dignity and rights are assaulted by a measure under the *IRPA* which treats them not as human beings but as problems to be disposed of.

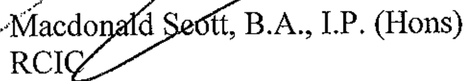
(4) Section 38(1)(c) devalues migrant work

Our firm has had the honour of representing a number of migrant workers who are members of Justicia for Migrant Workers who have been personally injured while working to harvest our crops and food. Despite the ongoing battles in the courts for justice for these workers, we have had to fight that their injuries, received here in Canada have made them inadmissible under section 38 (1) c. It was only after years of fighting (and a death) that Care Givers were no longer forced to take a second medical. These workers give their labour, are separated from their families, and then subjected to discrimination when it comes time to apply to stay in Canada.

Conclusion

The original "excessive demand" was put in place to exclude people with mental health issues and other disabled people. It is time we realize exactly how discriminatory this law is, repeal it and apply the repeal retroactively and retrospectively for the last 10 years,

Yours truly,



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